Frank Coffey BE CEng MIEI
CONSULTING ENGINEER

An Bord Pleanala,
64, Marlborough Street,
Dublin 1.
D01 V902

02nd June 2022

Ref: Appeal against the decision of the Planning Authority under Section 5 of the Planning & Development Act, 2000 (as amended), dated the 10th May, 2022, that the use of an area of land measuring 6m by 12m approximately for the occasional/infrequent parking of a car at Sound Road, Kenmare, Co Kerry does not constitute exempted development

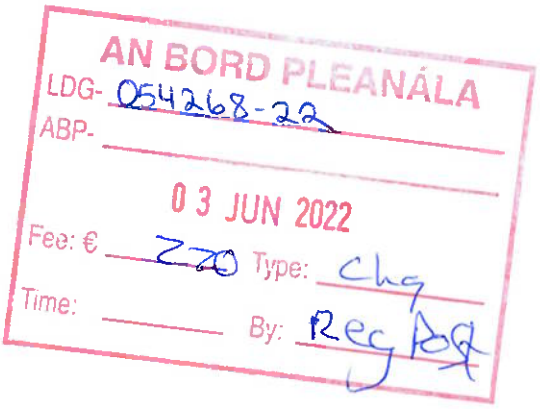
Appellant: Sam Sleator

Dear Sir/Madam,

I act for Sam Sleator, Sound Road, Kenmare and I wish to appeal the declaration of Kerry Co. Co., herewith enclosed.

In support of the appeal, I enclose the following:

1. Planning Authority Decision EX991
2. Fee cheque for €220.00
3. Appeal Report
4. Legal Submission
5. Site Location Map



Yours Faithfully,

Frank Coffey BE CEng MIEI

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VAT No. IE 34669081
Company Registration No. 421777

An Roinn Pleanála
Comhairle Contae Chiarraí,
Áras an Chontae,
Trá Lí, Co. Chiarraí.

Planning Department
Kerry County Council,
County Buildings,
Tralee, Co. Kerry.

COMHAIRLE CONTAE CHIARRAÍ
KERRY COUNTY COUNCIL

Guthán | Tel 066 7183582 Facs | Fax 066 7120328 Rphost | Email plan@kerrycoco.ie Suíomh | Web www.kerrycoco.ie

Application No: **EX991**

Decision Date: **10th May 2022** **Registration Date: 13th April 2022**

Applicant: **Sam Sleator, Sound Road, Kenmare, Co Kerry.**

Agent: **Frank Coffey, Consulting Engineer, Daly's Lane, Killorglin, Co Kerry.**

Development Location: **Sound Road, Kenmare, Co Kerry.**

Development Description: The use of an area of land measuring 6m by 12m approximately for the occasional/infrequent parking of a car.

DECLARATION ISSUED UNDER AND IN ACCORDANCE WITH SECTION 5 OF THE PLANNING AND DEVELOPMENT ACTS, 2000 – 2020

In pursuance of its functions under the Planning & Development Acts 2000 to 2020, Kerry County Council, being the Planning Authority for the County Health District of the County of Kerry, has by order dated **10th May 2022** authorised the issue of a declaration under the provisions of Section 5 of the Planning & Development Acts, 2000 -2020 in accordance with plans and particulars submitted on **13th April 2022**, I hereby certify that, the Planning Authority considers that the works, the subject of the referral under the said Section 5 namely **the use of an area of land measuring 6m by 12m approximately for the occasional/infrequent parking of a car at Sound Road, Kenmare, Co Kerry *does not*** constitute exempted development under the Planning & Development Acts 2000-2020 having regard to the considerations inserted hereunder:-

Schedule 1

(i) The proposed change of use of the land subject of this referral for occasional/infrequent use as a car parking area would constitute a material change of use of the land,
(ii) The said change of use would constitute development that comes within the scope of Section 3(1) of the Planning and Development Act, 2000 (as amended),
(iii) The proposed development would not fall for consideration within the scope of exemptions provided under the Planning and Development Act, 2000 (as amended).

Therefore, the proposed change of use of the land for occasional/infrequent use as a car parking area would constitute development which is not exempted development.

An Appeal against the decision of the Planning Authority under Section 5 of the Planning & Development Act 2000 may be made to An Bord Pleanala within four weeks beginning on the date of the issuing of the declaration by the Planning Authority. An Appeal should be addressed to: An Bord Pleanala, 64 Marlborough Street, Dublin and should be accompanied by the appropriate fee.

Signed on behalf of Kerry County Council

Helen Quille

Date: 10th May 2022

Section 5 Appeal Report

1.0 The appellant, Sam Sleator owns a small plot of ground close to his house at Sound Road (N71), Kenmare. The plot of ground is separate from his house but connected to his rear garden/entrance by a private roadway. Mr. Sleator's residence fronts onto the N71 with a small enclosed area capable of holding one car in front of the house.

It is not possible to park on the N71, in front of the appellants house without blocking the western lane of the N71 – such is the narrowness of the N71 at this point. In fact, a parked car at this location is an obvious traffic hazard. The N71 at this point is also referred to locally as Sound Road.

Parking at the rear of the house is also restricted to one car and on occasions if the front and rear spaces are occupied, there is no safe place to park for visitors, to the house. Mr. Sleator and his wife have a grown-up family residing in the general area and are entitled to regular visits from their children and from their friends – but the lack of parking is off putting for all visitors and is tending to reduce his family support and social contact.

The appellant's (Mr. Sleator's) solution to all this was to purchase a small plot of ground on the laneway between his rear entrance and the N71, to facilitate the occasional visitor car parking.

However, the plot of ground is part of an area zone Passive Open Space and Kerry County Council, the Planning Authority (PA) firstly deemed that the creation of a car park required planning permission - but on application, Mr. Sleator was refused permission to retain a four-bay carpark (PRN 14/378) and on appeal, An Bord Pleanala (ABP) upheld the decision of Kerry County Council in (PL 08. 243811).

Mr. Sleator then restored the plot of ground to be compatible with the prevailing zoning and to the confirmed satisfaction of Kerry County Council.

While Mr. Sleator accepts the decision of ABP - that the construction of a carpark would *"materially contravene the zoning policy"*, now realises that the whole meaning of infrequent parking and the definition of *development* vis-à-vis infrequent parking should have been clarified at the outset.

Accordingly, Mr. Sleator has decided, on advice, to employ the Section 5 route towards seeking some clarity on the matter and having lodged a Section 5 Application and received a subsequent "not exempted" decision from the Planning Authority (PA), Kerry County Council, he is now referring the decision of the PA to ABP to have the matter further examined.

2.0 Section 5 Application

It was very clear what was requested from the PA – a declaration, under Section 5, that the occasional infrequent parking of a car on the applicant site at Sound Road is exempted planning. In other words that, the act of occasional/infrequent parking did not constitute development. The basis of the Section 5 application was further explained on an accompanying sheet with the application form – so that there could be no doubt that what was required was a declaration on the act of occasional parking - not on usage or material change of use. The PA however, seem to be fixated on material change of use and that somehow, the occasional parking of a car on ground zoned passive open space is a material change of use. Even in the most sensitive landscapes such as areas zoned as Special Areas of Conservation (SAC's) the National Parks and Wildlife Services are allowed create up to 40 spaces without recourse to a planning application. This exemption is contained in Schedule 2, Part 1, Class 36 (Development for Amenity or Recreational Purposes) of the Planning and Development Regulations. The point here is that creating a car park does not conflict with the most sensitive zoning and is perfectly allowable under the Planning and Development Acts. Equally, the act of parking a car for a short duration need not be regarded as materially altering the prevailing zoning.

At the very core of the Section 5 Application was essentially the question - is the occasional/infrequent parking of a car on private ground development?

The PA has not addressed this fundamental question first and foremost - before moving on to deal with Change of Use.

If the parking of a car on private lands is not "development", then there is no Change of Use.

The definition of "Development" is contained in Part 3 of the Planning and Development Acts (2000-2021) and is reproduced hereunder.

Development.

3.—*(1) 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.*

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris,

the use of the land shall be taken as having materially changed.

(3) For the avoidance of doubt, it is hereby declared that, for the purposes of this section, the use as two or more dwellings of any house previously used as a single dwelling involves a material change in the use of the structure and of each part thereof which is so used.

There is no mention of the act of parking a car as constituting development. The deposit of a vehicle as mentioned in 3 (2) (b) (iii) does not constitute parking and in any case this section is pointed towards scrappage of vehicles.

There is therefore a case to be made that the PA erred in not first considering whether the act of parking a car temporary or otherwise is "development". This is fundamental to the clarification the appellant seeks.

3.0 Examination of Reasons given by PA for Declaration that Occasional/Infrequent parking is not exempted development

The PA have set out three reasons for denying the exemption as follows;

(a) *"The proposed change of use of the land subject of this referral for occasional/infrequent use as a car parking area would constitute a material change of use".*

Comment - A case can be made that the Planning and Development Acts do not overly dwell on the act of parking a car infrequently or otherwise. In fact, under Section 3 of the Act, car parking is nowhere mentioned. If the temporary parking of a car is not development - then how could there be a material change of use?

(b) "The said change of use would constitute development that comes within the scope of Section 3(1) of the Planning and Development Act, 2000 (as amended),".

Comment - Section 3(1) does not mention car parking. Logically, how can it be taken, that if a person parks a car on a private plot of land (outside the curtilage of a house) for infrequent or occasional short periods, that a material change of use occurs as the PA seem to suggest in the Section5 Declaration?

This is surely taking the interpretation of "material change of use" to unnecessary zealous lengths.

(c) "The proposed development would not fall for consideration within the scope of exemptions provided under the Planning and Development Act, 2000 (as amended),".

Comment - The PA may not be correct in this and given the history of the development and the setting – with the house connected to the appeal site by a private road, a legal interpretation may recognise the appeal site as part of the curtilage of the house.

Conclusion

In their examination of the issues associated with this case, the PA have been less than diligent. They were requested to consider if occasional/infrequent parking was exempted planning but choose instead to regard the application as a change of use proposition.

It is clear from the Planners Report, that they did not ask themselves the following fundamental questions.

(i) Is the act of occasional/infrequent parking "development" in the first instance
(ii) Is occasional/infrequent parking of a duration or weight that it could be classified as change of use
(iii) Should not the context of the case have been considered. The occasional temporary parking is being done to avoid dangerous parking on the N71.
(iv) If as the PA, Section 5 Declaration suggests, that planning is necessary to conduct occasional/infrequent parking – is it not an overzealous interpretation of the meaning of "material change of use" and will it lead to a country wide inundation of planning departments - with similar cases.

Given that the plot of land at the centre of this Section 5 enquiry is, in its current layout, deemed to be restored to passive open space standard, will the occasional/infrequent parking of a car impact greatly on the character of the overall area?

An Bord Pleanala is now asked to consider this case in light of the above arguments and points made. The appellant hopes that ABP drills a little deeper into the issues presented here and that due consideration is given to knock-on effects that the decision of PA could precipitate.

An Bord Pleanala is asked to overturn the decision of the PA (Kerry County Council)

6.0 Legal Submission

The appellants feel very strongly about their right to use their own land for occasional/infrequent parking – in the interest of social contact from their family and to avoid creating a parking hazard on the N71.

However, they appreciate that there are legal definitions and interpretations at the heart if their case and in respect of that they have also obtained legal opinion from Aoife Lynch, Barrister-at-Law, through the offices of Murphy, Healy & Co. LLP, Kenmare.

This legal opinion is at the centre of this appeal to An Bord Pleanala.

Frank Coffey BE CENG MIEI

1st June 2022

MURPHY HEALY
& CO. LLP
Solicitors
Coffey's Row, Kenmare, Co. Kerry
Telephone: 064 6641322; Fax: 064 6642213
Email: law@murphyhealy.com
DX: 165 005 Kenmare

Your Ref: Our Ref: BM/CN/307 Date: 1st June 2022

Submission of the Appellant, Sam Sleator, in respect of an Appeal against the decision of the Planning Authority under Section 5 of the Planning & Development Act, 2000 (as amended), dated the 10th May, 2022, that the use of an area of land measuring 6m by 12m approximately for the occasional/infrequent parking of a car at Sound Road, Kenmare, Co Kerry does not constitute exempted development

Appellant: Sam Sleator, Sound Road, Kenmare, Co. Kerry

Agent: Frank Coffey, Consulting Engineer, Daly's Lane, Killorglin, Co. Kerry

Solicitors for the Appellant: Murphy Healy & Co. LLP, Coffey's Row, Kenmare, Co. Kerry

Date of Decision: 10th May, 2022

Application No.: EX991

INTRODUCTION

Sam Sleator (hereinafter referred to as "*the Appellant*"), is the owner/ occupier of lands situate at Bay View, Sound Road, Kenmare in the County of Kerry (hereinafter referred to as "*the Applicant Site*"), which said lands measure approximately 6m by 12m. [Refer to Site Location Map at **Appendix 1** wherein the Applicant Site is outlined in red]

By Application, dated and marked as received by Kerry County Council (hereinafter referred to as "*the Planning Authority*") the Appellant's Engineer, Frank Coffey BE CEng MIEI, submitted a referral to the Planning Authority pursuant to Section 5 of the **Planning and Development Acts 2000 - 2020** seeking a declaration that "*the occasional/ infrequent parking of a car on the Applicant site at Sound Road is exempted planning*".

By Declaration, issued on the 10th May, 2022, the Planning Authority certified that:

> *"the use of an area of land measuring 6m by 12m approximately for the occasional/ infrequent parking of a car at Sound Road, Kenmare, Co*

Kerry does not constitute exempted development under the Planning & Development Acts having regard to the considerations hereunder:-

Schedule 1

(i) The proposed change of use of the land subject of this referral for occasional/ infrequent use as a car parking area would constitute a material change of use of the land,

(ii) The said change of use would constitute development that comes within the scope of Section 3(1) of the Planning and Development Act, 2000 (as amended),

(iii) The proposed development would not fall for consideration within the scope for exemptions provided under the Planning and Development Act, 2000 (as amended).

Therefore the proposed change of use of the land for occasional/infrequent use as a car parking area would constitute development which is not exempted development."

The Appellant hereby appeals against the Planning Authority's decision.

APPEAL

The Appellant appeals on the grounds that:

(i) The occasional/infrequent parking of a car on the Applicant Site does not constitute development within the meaning of Section 3(1) of the Planning and Development Act, 2000 (as amended),

(ii) The occasional/infrequent parking of a car on the Applicant Site does not constitute a change of use of the Applicant Site, and/or

(iii) More importantly, does not constitute a *material* change of use of the Applicant Site (as is required pursuant to the legislation), and/or

(iv) If, which is not admitted, the occasional/infrequent parking of a car on the Applicant Site is 'development', same is 'exempted development'.

PLANNING HISTORY

1. PRN 14/378

In respect of the Applicant Site, the Appellant sought retention of a domestic private 4 bay car parking area to serve overflow car parking requirements ancillary to dwelling at Bay View, Kenmare, Co. Kerry. The said application for Retention Permission was refused on the 12th August, 2014.

The said refusal was appealed to An Bord Pleanála, Reference Number PL08.243811 and the said appeal was refused on the 12th August 2014.

2. U264-18

The Planning Authority have issued proceedings pursuant to Section 160 of the

Planning and Development Act, 2000 (as amended) in respect of the Applicant Site under the title "*South Western Circuit, County of Kerry, In the Matter of the Planning and Development Act, 2000, as amended, Between: Kerry County Council, Plaintiff and Sam Sleator and Patricia Sleator, Defendants*" and bearing the Record No. 268/2020.

3. P.A. Ref. EX985

The Applicant Site was the subject of a prior application pursuant to Section 5 of the 2000 Act. The Appellant sought a declaration that the act of parking a car is exempted planning. A Declaration, issued by the Planning Authority on the 29th March, 2022, determined that "*the change of use of an area measuring 6m by 12m approx.. for the parking of a car at Sound Road, Kenmare, Co Kerry does not constitute exempted development...*". However, this is not what the Appellant sought to be determined, and so the within application was submitted which more properly reflects the occasional/ infrequent nature of the use and in respect of which the Appellant has sought a determination.

SITE LOCATION

In order to place the use of the Applicant Site in an appropriate context, it is necessary to set out the historical background of the area within which the Appellant's family home and the Applicant Site are situate.

The Applicant Site is situate within c. 50 meters of the Appellant's family home, which is one of four dwellings originally constructed as estate cottages by the Lansdowne Estate in the mid 1800s [See Site Location Map at **Appendix 1**]. These are known as the Bay View Cottages. The Appellant's family home is the South Easterly Cottage (shaded green on the Site Location Map), and his great grandfather took occupancy of the dwelling house in 1902 pursuant to a Lease granted by the Lansdowne Estate. The Appellant and his wife purchased the freehold interest from the Derreen Estate, the successor in title to the Lansdowne Estate, in or around 2007.

The Bay View Cottages are accessed by a cul-de-sac running alongside the cottages, which is owned by the Derreen Estate and over which all residents have a right of way. By reason of this right of way, the occupiers of the properties, including the Appellant, can access their properties.

The abovementioned cul-de-sac runs to the rear of Appellant's house. Access to the house from the cul-de-sac is limited; a person can drive one car along this road and park on this side of the house, where there is space for one car. However, there is no turning area and they would have to reverse back along the same road to where it meets the sea and, with significant difficulty and with some obstruction of other road traffic, turn there.

In the circumstances, visitors to the Appellant's house and the residents thereof (most recently the Appellant) had no alternative but to park their car(s) on the cul-de-sac and while this is not necessarily unlawful, it necessarily involves inconvenience to other road users.

When the Appellant and his wife purchased the freehold interest in the house, planning permission was sought and granted, pursuant to Planning Reference No. 07/1036, to renovate and extend the cottage. The said permission included *inter alia* the construction of a vehicular entrance to the public roadway to the eastern side of the property.

By reason of the construction of the aforesaid vehicular entrance, off road parking was achieved for one car, namely the Appellant's or his wife's, to the front of the house. While this greatly eased the parking burden, the issue remained that the Appellant and his wife were unable to provide safe parking for visitors to the house, most importantly their adult children and grandchildren who visit from time to time. As it is not possible to accommodate more than one car at the front of the house, visitors to the property had no option in the past but to park either on the main road or on the cul-de-sac.

During the summer season, traffic on the Kenmare/ Bantry road (the N71), onto which the abovementioned vehicular access was opened, creates its own hazards even in terms of the Appellant and/or his wife safely accessing and exiting their house. If visitors park on the roadside this can obstruct the flow of traffic and may present a safety hazard, not only to other road users, but to the occupants of the car(s) themselves. Alternatively, visitors would park on the cul-de-sac. However, the occupiers of the other cottages have, in recent years, objected to the parking of cars on the cul-de-sac and have asserted that it is in fact illegal. Whilst this is not conceded by the Appellant, he and his wife have at all times been conscious of maintaining good neighbourly relations, and their neighbours' objections are relevant to the steps that have been taken by the Appellant and his wife to facilitate private, unobtrusive and safe parking for visitors to their family home.

Due to the various parking issues referred to above, the Appellant and his wife purchased the Applicant Site for the purpose of providing essential temporary parking ancillary to and associated with visitors to their house, for domestic and private purposes, in or around 2012.

The Applicant Site property is situate within c. 50 meters of the Appellant's family home and adjoins the right of way. The subject property does not abut a public road, or a road in charge, but abuts the private road over which the Appellant has a right of way. The Appellant submits that the Applicant Site, as well as the Bay View Cottages, were all part of the Derreen Estate, and comprised its original holding on which the Kenmare Cooperage was situate.

Works were undertaken to prepare the Applicant Site including *inter alia* the levelling of the site, a chip surface on a hardcore base was laid, access to the property was enabled by the removal of a section of wall, a low wooden fence was erected (not exceeding 1.2 meters in height) and hedging was planted around the boundary of the site. The said works were completed to a high standard and were as unobtrusive as possible. The subject property has been used for the purpose of private car parking incidental to the enjoyment of the Appellant's house since 2013.

The abovementioned works were the subject of an Enforcement Notice in May, 2014. The Appellant subsequently sought Retention Permission, under PRN 14/378, which was unsuccessful and following which extensive works were undertaken by and on

behalf of the Appellant to the Applicant Site including dismantling the carpark construction by removing the hardcore and surfacing, reinstating the levels and grassing the lands over, so that the Applicant Site was returned to its prior state, namely passive open space.

OCCASIONAL/ INFREQUENT PARKING OF CARS

The Appellant submits that, whilst the parking of four cars at any one time could be facilitated on the Applicant Site, there have never been four cars parked at the same time on the Applicant Site. For the most part, there has only ever been one car, and possibly two, parked thereon at the same time. The reality is that cars are not parked on the Applicant Site unless there are visitors and it is vacant and remains passive open space. As a result, the occasional and infrequent parking of cars on what is a green area, cannot constitute a change of use and/or a material change of use as alleged by the Planning Authority.

The Appellant submits that the Applicant Site is used and is ancillary to the comfortable and reasonable enjoyment of the Appellant's house and, as such, is an integral part of same. The Applicant Site serves the domestic purposes of the Appellant's house in terms of providing essential visitor parking incidental to same. Strictly without prejudice to the Appellant's submission in the previous paragraph, if (which is not admitted), the use of the Applicant Site constitutes 'development' within the meaning of section 3(1) of the 2000 Act, same is exempted pursuant to section 4(1)(j) of the said Act, as it is within the curtilage of the Appellant's house.

APPLICABLE LAW/ PRINCIPLES

The Appellant identifies the following relevant definitions in the 2000 Act:

Section 3(1) provides as follows in respect of 'development':

> *"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."*

Section 2 provides the following definitions of 'use' and 'works' respectively:

> *"use", in relation to land, does not include the use of the land by the carrying out of any works thereon;*
>
> *"works" includes 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.*

Section 4 provides what constitutes 'exempted development'.

As the Section 5 Application does not concern, or relate to, 'works' within the meaning of Section 2 of the 2000 Act and the Applicant Site has been entirely

returned to the condition in which it was, it is submitted that, in the context of determining whether the occasional/ infrequent parking of a car constitutes 'development', the real question to be answered is whether same constitutes a 'material change' in the use of the Applicant Site.

In order for there to be a 'material change' in use, there must be:

(a) an actual change in use, and
(b) the change must be material i.e. material from the perspective of proper planning and development.

The Appellant relies upon the seminal Supreme Court decision of **Butler v. Dublin Corporation 1 I.R. 565** as authority for the proposition that the strictures of the planning code are not intended to apply to changes in use which are so transient in nature that they could not be regarded as material in planning terms. The materiality must be assessed in planning terms. Whether or not there has been a *material* change of use must be determined as a matter of fact.

The Planner has not identified any grounds on which to support a contention that the occasional and temporary parking of a car or two cars, constitutes a material change of use. It is submitted that there are no such grounds on which to support such a contention.

In addition, insofar as the use of the Applicant Site for the occasional/ infrequent parking of a car might be regarded as a change in the use of the lands, the minimal duration of such a change cannot be regarded as 'material' in planning terms. Furthermore, as the parking of a car on the Applicant Site is occasional, it does not constitute 'development' within the meaning of the 2000 Act.

The Planner has not referred to any impact in planning terms *viz* visual impact, traffic impact, water impact or air impact. The Planner refers to the decision of An Bord Pleanála to refuse retention permission in Reference Number PL08.243811. However, the purported 'development' as it existed at the time of that application, does not compare to the Applicant Site as it exists today, as works were undertaken since An Bord Pleanála's refusal to restore the Applicant Site to its prior state including the removal of the hardcore and surfacing, reinstatement of the levels and grassing the lands over.

The Appellant submits that he is entitled to use the Applicant Site for the occasional/infrequent parking of cars, which said use is ancillary and necessary to the use and enjoyment of his home. To suggest that the Appellant is restricted in his use of the Applicant Site is contrary to the purpose of the planning code, and would constitute an unjustifiable, unreasonable and disproportionate interference with the Appellant's property rights.

In this regard, the Appellant refers to the dicta of McKechnie J. in **Reid v. Industrial Development Agency [2015] 4 IR 494**:

> *"The right to own what is one's own is as ancient as the earliest form by which unit groups of society regulated the affairs of those within them. Intrinsic to such a right is an entitlement to undisturbed enjoyment of one's property and if necessary, the right to rebuff all unwelcome*

interferences with it. This right has always been recognised as a bedrock of the common law, with Blackstone describing it as the 'third absolute right inherent in every Englishman...'"

With respect, the Planning Authority cannot be correct in its determination that the occasional/ infrequent parking of a car on the Applicant Site constitutes either a change of use or a material change of use of the Applicant Site.

If the Planning Authority is correct, such a contention would mean that the parking of a car on private lands, outside of the curtilage of a house, would constitute development and thus require planning permission. If this were the case, Planning Authorities would be inundated with applications by landowners every time it was proposed to park a car on their property. Such a determination cannot be allowed stand.

Without prejudice to the foregoing, the Appellant refers to Section 4 of the 2000 Act which provides for exempted development, and, in particular, to subsection (l)(j) which includes development consisting of the use of *inter alia* other land "*within the curtilage of a house for any purpose incidental to the enjoyment of the house as such*".

A former iteration of the said exemption was considered by the Supreme Court in the case of **Dublin Corporation v. Moore [1984] ILRM 339**, and Griffin J. stated that the purpose of the exemption was to enable the curtilage of a dwelling-house (including the driveway) to be used for any purpose incidental to the enjoyment of the dwelling-house as such, including the parking of a private car.

It is submitted that, having regard to the historical development, layout and ownership of the lands within which the Appellant's house and the Applicant Site are situate, the Applicant Site is situate within the curtilage of the Appellant's house, and that, if the occasional/ infrequent parking of a car on the Applicant Site constitutes 'development', which is denied, then same is exempted.

In the alternative, to suggest that such a *de minimis* use as parking a car for a limited and temporary period, constitutes a change, never mind a material change of use of lands, cannot be supported.

CONCLUSION

Having regard to the Declaration issued under and in accordance with Section 5 of the Planning and Development Acts, 2000 – 2020 the Board is asked to determine whether:

(a) the occasional/ infrequent parking of a car on the Applicant Site constitutes a material change of use of the land, such that it amounts to 'development' and,
(b) if so, whether it is exempted development.

The materiality of any alleged change of use, is a matter of fact and, may, involve matters of law. Ultimately, the materiality of any change of use, must be material in planning terms. It is submitted that, on the facts before the Board, the occasional/ infrequent parking of a car on the Applicant Site does not constitute a material

change of use of the land. If, however, it is determined otherwise, and that the said use constitutes 'development' it is submitted that same is exempted.

It is submitted that, as a matter of common sense, and in pursuance of ensuring the proper and lawful application of the planning code, the Planning Authority's decision must be overturned as a disproportionate interference with the Appellant's constitutional property rights, and an unreasonable and illogical application of the planning code.

Signed:

Solicitors for the Appellant

Surveyed 1997-2004
Revised 2013
Levelled

Urban/Rural PLACE Map

Scale:- 1:2,500
Scala - 1:2,500

0 50 100 150 200 250 Metres
0 100 200 300 400 500 Feet

Plot Ref. No. 25195970_1_5
Plot Date 29-MAY-2014

70315

ITM CENTRE PT. COORDS.
490943,570163

DESCRIPTION

MAP SHEETS

1:1000
6363-24

1:2500
6363-D 6408-B

Produced by National Map Services,
Unit 7, South Ring Business Park,
Kinsale Road,
Co Cork
On behalf of Ordnance Survey Ireland,
Phoenix Park, Dublin 8

N