

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

6 July 2022

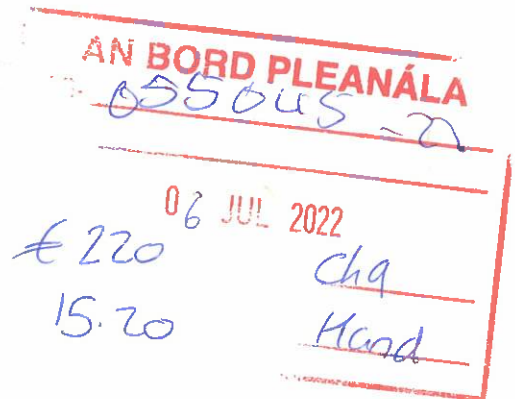
Dear Sir

Rosenallis, Seamount Road, Malahide, Co. Dublin

Application for Declaration under Section 5 of the Planning and Development Act 2000, as amended

Fingal County Council Reference: FS5/025/22

Date of Decision by County Council: 9 June 2022



1. Introduction

This request to the Board under section 5(2)(a) of the Planning and Development Acts 2000, as amended to review a Declaration issued by Fingal County Council has been prepared by IMG Planning Limited, 75 Fitzwilliam Lane, Dublin, D02 CP78, on behalf of Mr Richard Nolan of Rosenallis, Seamount Road, Malahide, Co. Dublin, the applicant for a Declaration in this instance.

This request is made under section 5(3)(a) of the Planning and Development Acts 2000, as amended and relates to a Declaration issued by Fingal County Council on 9 June 2022 that the erection of a 1.2 metre high fence and the provision of edge kerbing along the southern boundary of the above property fronting onto Seamount Road is not exempted development.

A copy of the Declaration issued by the County Council is appended to this request.

A cheque in the amount of €220, in respect of the referral fee, is attached herewith.

75 Fitzwilliam Lane, Dublin 2, Ireland

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E info@imgplanning.ie www.imgplanning.ie \ VAT Registration Number 9784011J

Directors: IM McGrandles, M McGrandles. Registered in Dublin, Ireland. Registered Office: As above.

2. Subject Property and Context

The subject property, Rosenallis, is a detached residential property located to the north of Seamount Road in Malahide. The western boundary fronts onto Knockdara and to the east is the Jameson Orchard residential development. Vehicular access to the property is from Seamount Road in the south east corner of the property. The applicant's ownership extends to the centre of Seamount Road.

The extents of the carriageway of Seamount Road along the southern boundary of the property are not formally defined at present. There is hedge planting parallel to the tarmac road carriageway but there is no physical demarcation in the space between the hedge and the edge of the tarmac road.

3. Proposed Development subject to the Declaration

In order to establish the northern extent of the carriageway and in the interests of traffic safety along Seamount Road, the applicant wishes to erect a 1.2 metre high metal mesh fence along the southern boundary of the property to the south of the existing hedge from the existing vehicular entrance to the junction with Knockdara; a length of some 70 metres. The fence will be positioned on the applicant's property behind a 150 mm high concrete kerb along the northern edge of the existing edge of the tarmac road carriageway.

4. The Question

The question on which a Declaration is sought is:

'Whether the erection of a 1.2 metre high fence and the provision of edge kerbing along the southern boundary of Rosenallis, Seamount Road, Malahide fronting onto Seamount Road is or is not development or is or is not exempted development'.

5. Legislative Provisions

5.1 Planning and Development Act 2000, as amended

'Development' is defined in section 3(1) of the Act as *"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"*.

'Works' are defined in section 2(1) of the Act as including *"any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal."*

Section 4(2)(a) of the Act states that the Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act and under section 4(2)(b) that development may be subject to conditions as may be specified in the regulations.

Section 4(3) of the Act states that exempted development shall be construed as a reference to development which is development which, having regard to any regulations, is exempted development for the purposes of this Act.

5.2 Planning and Development Regulations 2001, as amended

5.2.1 Exempted Development

Article 6(1) of the Regulations states:

"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."

Class 5 in Part 1 of Schedule 2 states that:

"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" is exempted development subject to, inter alia:

1. The height of any such structure not exceeding 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.
2.
3. No such structure shall be a metal palisade or other security fence.

5.2.2 Restrictions on exemption

Article 9(1) of the Regulations states:

"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 (inter alia)—

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act;*
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users;*
- (xi) Obstruct any public right of way;"*

6. Decision of Fingal County Council

Fingal County Council declared that the proposal is considered not to be exempted development for the following reason:

"I recommend that the applicant be informed that the works comprising of the provision of a fence and kerb is development and is considered not to be exempt development under the Planning and Development Act 2000 as amended and the Planning and Development Regulations 2001 Article 9 (1) (a) (iii) by reason of the location of the fence and kerb being directly adjacent to the carriageway which constitutes a traffic hazard."

In this regard the Manager's Report that sets out the reasons for the decision states refers to the report from the Transportation Department, which states as follows:

"The existing boundary hedge restricts sightlines at the entrance to below the required standards. Sightlines of 23m in each direction from a 2m setback of the road edge are required in accordance with the Design Manual for Urban Roads and Streets for a 30km/hr speed limit. Any proposed works to the boundary treatment should take account of the sightline requirements and should improve them bringing them in line with the current standards. As the proposed works do not address the substandard sightlines at the existing entrance and may reduce the available sightlines further. Consequently, in its current format the proposed development is a traffic hazard."

In making its decision, the County Council has agreed that:

- The proposed fence and kerb are 'works' and thus 'development' as defined in section 3(1) of the Planning and Development Act 2000, as amended
- By reason of its height, the proposed fence constitutes 'exempted development' under Class 5 in Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended

7. Grounds for Review of the Declaration of the County Council

The decision of the County Council is singularly based on its view that as carrying out the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users, the restriction on exemption provided for under Article 9(1)(a) (iii) applies.

Notwithstanding the County Council's decision, the applicants do not accept that the provisions of Article 9(1)(a) (iii) applies and contend that the proposed development is exempted development.

It should be noted that as the proposed development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act, the restriction on exemption under Article 9(1) (a) (i) of the Regulations does not apply. Further, as the proposed location is positioned beyond the existing edge of the tarmacadam carriageway it will not obstruct any public right of way, the restriction on exemption under Article 9(1) (a) (xi) of the Regulations does not apply.

The Manager's Report that sets out the reasons for the decision states refers to the report from the Transportation Department, which states as follows:

"The existing boundary hedge restricts sightlines at the entrance to below the required standards. Sightlines of 23m in each direction from a 2m setback of the road edge are required in accordance with the Design Manual for Urban Roads and Streets for a 30km/hr speed limit. Any proposed works to the boundary treatment should take account of the sightline requirements and should improve them bringing them in line with the current standards. As the proposed works do not address the substandard sightlines at the existing entrance and may reduce the available sightlines further. Consequently, in its current format the proposed development is a traffic hazard."

At the outset it is considered that the Transportation Department has taken an wholly absolute position in respect of the provisions of the Design Manual for Urban Roads and Streets (DMURS). It does not have regard to the nature of the entrance (onto the road) in question or its immediate context and conditions in the vicinity, nor the precise details of the proposed development,

The standards for foreword visibility and visibility splays in DMURS (in sections 4.4.4 and 4.4.5, respectively) are noted. DMURS state that visibility splays are applied to priority junctions (defined as "generally have low capacity and are appropriate for low to medium flows") where drivers must use their own judgement as to when it is safe to enter the junction.

Notwithstanding the Stopping Sight Distance (SSD) of 23 metres where the design speed of the road in question is 30 km/h, DMURS states that:

"In general, junction visibility splays should be kept clear of obstructions; however, objects that would not be large enough to wholly obscure a vehicle; pedestrian or cyclist may be acceptable providing their impact on the overall visibility envelope is not significant."

"Slim objects such as signs, public lighting columns and street trees may be provided, but designers should be aware of their cumulative impact."

and that:

“Designers must also take a holistic view of the application of reduced forward visibility splays.”

DMURS also points out that research conducted in UK concluded that there is no evidence that reduced SSDs are directly associated with increased collision risk, as shown on a variety of street types at a variety of speeds and that higher cycle collision rates occurred at T-Junctions with greater visibility because drivers were less cautious where greater visibility was provided.

The entrance to Seamount Road in this instance is a well established entrance to a residential property, which inherently has a low intensity of usage whose gates are set back approximately 5.9 metres from the edge of the carriageway. A vehicle exiting the property therefore has the space to stop and look for vehicles before fully entering the carriageway.

As stated above, at present there is well-established hedge planting parallel to the carriageway along the southern boundary to the west of the entrance (there are also two mature trees). Save for removing or severely reducing the height of the hedge, with the consequential loss of privacy, which would be unacceptable to the applicant, a Stopping Sight Distance (SSD) of 23 metres will not be achieved irrespective of whether the proposed development is carried out or not.

At 1.2 metres above the level of the carriageway, the height of the proposed fence is less than the existing hedge so its presence would not impact on the overall visibility envelope as it currently exists to any significant extent. Even if the hedge was cut down to a similar height or removed entirely, the presence of the fence would not significantly obstruct the view of the road to the west by a person in a vehicle leaving the entrance, particularly as it of a mesh type design (not solid panels).

It is therefore submitted that the placing of a fence of the proposed design along the southern boundary of the subject property will not result in a traffic hazard to vehicles on Seamount Road or the applicant. Accordingly, the provisions of Article 9(1)(a) (iii) Planning and Development Regulations 2001, as amended do not apply.

8. Conclusion

On the basis of the foregoing, it is requested that An Bord Pleanála upon review overturn the decision of the County Council and declare that the proposal falls within the definition of ‘works’ in section 2(1) of the Act and thus is ‘development’ within the definition in section 3(1) of the Act but is exempted

development by virtue of Class 5 in Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended

Yours faithfully

IanMcGrandles

Ian McGrandles
Director

Encls.

Appendix A

Copy of the Declaration issued by Fingal County Council



IMG Planning Limited
75 Fitzwilliam Lane, Dublin
D02 AK77

NOTIFICATION OF DECLARATION UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

Decision Order No. PF/1227/22	Decision Date: 09-Jun-2022
Ref: FS5/025/22	Registered: 16-May-2022

Area: Howth Malahide

Applicant: Richard Nolan

Development: The erection of a 1.2 metre high fence and the provision of edge kerbing along the southern boundary of the property fronting onto Seamount Road. (Class 5 in Part 1 of Schedule 2 of the Planning and Development Regulations 2001 - 2022)

Location: Rosenallis, Seamount Road, Malahide, Co. Dublin, K36 XF61

Application Type: Request for Declaration Under Section 5

Dear Sir/ Madam

With reference to your request for a **DECLARATION** under Section 5 (1) received on 16-May-2022 in connection with the above, I wish to inform you that the above proposal **IS NOT Exempted Development** under Section 5(1) of the Planning and Development Act 2000 for the following reason(s):

1. I recommend that the applicant be informed that the works comprising of the provision of a fence and kerb is development and is considered not to

be exempt development under the Planning and Development Act 2000 as amended and the Planning and Development Regulations 2001 Article 9 (i) (a) (iii) by reason of the location of the fence and kerb being directly adjacent to the road carriageway which constitutes a traffic hazard.

NOTE: Where a declaration is issued under section 5 (1) any person issued with a declaration under subsection (2)(a) 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.

Signed on behalf of Fingal County Council.

 10-Jun-2022
for Senior Executive Officer

James Sweeney

From: Planning Department <Planning@fingal.ie>
Sent: Friday 8 July 2022 10:30
To: James Sweeney
Subject: RE: Referral

James,

With regards FS5/025/22:

The development type is: - 'Other'.

The development description is: The erection of a 1.2 metre high fence and the provision of edge kerbing along the southern boundary of the property fronting onto Seamount Road. (Class 5 in Part 1 of Schedule 2 of the Planning and Development Regulations 2001 - 2022)

The Applicant's Name and Address is: Richard Nolan
Rosenallis,
Seamount Road,
Malahide,
Co. Dublin,
K36 XF61

The Agent's Name and Address is: IMG Planning Limited
75 Fitzwilliam Lane,
Dublin,
D02 AK77

Date of Issue: 9th June 2022 (Decision Date).

If you need anything more, please let me know.

Regards

Donal Moriarty
Planning Dept
087 134 6719

From: James Sweeney <j.sweeney@pleanala.ie>
Sent: 07 July 2022 14:08
To: Planning Department <Planning@fingal.ie>
Cc: Garry Dorgan <G.Dorgan@pleanala.ie>
Subject: Referral

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Hi,

The Board has received a referral dated 06/07/2022 from a first party in relation to your reference FS5/025/22.

Can you please confirm the following:
the development type:
the development description:
applicants name and/or agent with address:
Date of Issue:
Question:

Kind Regards,
James

James Sweeney
Executive Officer
Processing Section
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902
Teil: 01-873-7173
Facs: 01-8722684

Má fhaigheann tú an ríomhphost seo lasmuigh de na gnáthuaireanta oibre, ní bheidh mé ag súil le freagra ná gníomh lasmuigh de d'uaireanta oibre féin.

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Tabhair faoi deara led thoil: aon tuairimí nochtaithe san ríomhphost seo is iad tuairimí an tseoltóra féin agus níl sé intuigthe gurb iad tuairimí An Bhoird Pleanála nó go gcloíonn siad le polasaithe ráite an Bhoird.

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Is ar an seolaí amháin atá sé dírithe. Mura tú an faighteoir beartaithe, tá cosc ar aon nochtadh, cóipeáil, dáileadh, nó aon ghníomh a dhéanamh nó a fhágáil ar lár i dtaca leis an ríomhphost agus d'fhéadfadh sin a bheith mídhleathach. Má tá an ríomhphost seo faighte agat trí dhearmad, cuir an seoltóir nó itservicedesk@fingal.ie ar an eolas. Ní féidir cumarsáid idirlín a ráthú a bheith slán nó saor ó earráidí mar d'fhéadfadh faisnéis a bheith idircheaptha, truaillithe, cailte, scríosta, nó teacht déanach nó neamhiomlán. Dá bhrí sin, ní féidir linn glacadh le freagracht as aon earráidí nó easnaimh atá sa teachtaireacht seo, nó aon iatán, a tháinig chun cinn mar thoradh ar an tarchur ríomhphoist. Tá an teachtaireacht cuardaithe ag bogearraí Frithvíreas.

