

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

15 July 2022

Dear Sir

AN BORD PLEANÁLA	
LDG-	<u>055374 - 22</u>
ABP-	
15 JUL 2022 ^{o.k}	
Fee: €	<u>220</u> Type: <u>chf</u>
Time:	<u>1310</u> By: <u>Hdod</u>

Seamount Road, Malahide, Co. Dublin

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

Fingal County Council Reference: FS5/029/22

Date of Decision by County Council: 20 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 Thomas Condrón of 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 on 20 June 2022 that the erection of a 1.2 metre high fence and the provision of edge kerbing along the northern boundary of his property fronting onto Seamount Road is development and is 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.

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

2. Subject Property and Context

The applicant's property is located to the south of Seamount Road in Malahide to the east of the Jameson Orchard residential development. There are three houses on the property – one occupied by the applicant and the others by members of his family.

Vehicular access to the property and the houses thereon is from Seamount Road. The applicant's ownership extends to the centre of Seamount Road.

The extent of Seamount Road along the northern boundary of the property is not formally defined at present. There is hedge planting parallel to but set back from the tarmacadam carriageway but there is no physical demarcation in the space between the hedge and the edge of the carriageway.

3. Proposed Development subject to the Declaration

In order to establish the southern 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 sections of the northern boundary of the property to the north of the existing hedge from the existing site entrance on the eastern end to the western boundary; a combined length of approximately 45 metres. The fence will be positioned on the applicant's property behind a 150 mm high concrete kerb along the southern edge of the existing edge of the tarmacadam carriageway.

It should be noted that the proposed fence and edge kerbing will not be placed along the northern boundary of one of the houses on the property as the planning permission granted for the house (under Register Reference F13A/0010 and as amended by F14A/0014) requires that the front boundary has to be set back 4 metres from the edge of road along the entire site frontage and in line with adjacent dwellings to the west, in order to provide for a 1.8 metre footpath and grass verge.

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 northern boundary of Seamount Road, Malahide 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 be development and not to exempted development for the following reason:

"The works comprising the provision of a fence and kerb is development and is considered not to be exempt development under the Planning an Development Act 2000 as amended and the Planning and Development Regulations 2001 by reason of the location of the fence and kerb being directly adjacent to the road carriageway thereby impacting sightlines which would 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 two vehicular entrances 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. The proposed works do not address the substandard sightlines at the existing entrance and will reduce the available sightlines further. In addition, the ground levels for the western access are below the road level and the proposed boundary treatment would further add to the issue of reduced sightlines. 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) apply and contend that the proposed development is exempted development.

It should be noted that as the proposed development is positioned only where there is no planning condition attached to a permission under the Act that it would contravene 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 tarmac 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.

At the outset it is considered that the Transportation Department has taken a 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 entrances (onto the road) in question or their 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 states 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 vehicular entrances to Seamount Road in this instance are well established entrances to residential properties, which inherently have a low intensity of usage. The eastern entrance has angled walls of approximately 1.3 metres on either side, and the gates, which are not used, are approximately 4 metres back from the edge of the carriageway. Beyond that to the east, there is a stone pillar that forms part of the entrance feature to the adjoining Jameson Orchard residential development. The western entrance has a pair of double gates set back slightly from the line of the root of the hedge. Due to the placing of an unauthorised footpath along the boundary in front of the applicant's property that the High Court has ordered is removed, the hedge along the northern boundary has been cut back to a significant degree such that there is a space between it and the edge of the tarmac carriageway.

As shown on the attached figure, it is the case that a 2.0m x 23m Visibility Splay is achieved at each entrance when assessed in accordance with section 4.4.5 and Figure 4.63 of DMURS. The proposed fence is located within limited parts of the splays; however, it is submitted that notwithstanding the general advice in DMURS that visibility splays should be kept clear of obstructions, the design of the proposed fence (mesh type and not solid panels) and its height (1.2 metres above the level of the carriageway) are such that its presence will not wholly obscure a vehicle, pedestrian or cyclist using on Seamount Road.

Section 4.4.6 of DMURS states that the required envelope of forward visibility in the vertical plane should encompass the area between a driver eye height in the range of 1.05 metres to 2 metres, and an object height in the range of 0.6 metres to 2 metres. It is noted that in the same section it is stated that this requirement is less of an issue on urban streets that carry traffic at moderate design speeds, i.e. 40-60km/h. As Seamount Road has a 30km/hr speed limit,

this should be even less of an issue. Again it is submitted that the design of the proposed fence and its height are such that its presence will not impact on the overall envelope of forward visibility in the vertical plane.

It is therefore submitted that the placing of a fence of the proposed design along sections of the northern 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



Ian McGrandles
Director

Encls.

Appendix A

Copy of the Declaration issued by Fingal County Council



Ian McGrandles,
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/1285/22	Decision Date: 20-Jun-2022
Ref: FS5/029/22	Registered: 30-May-2022

Area: Howth Malahide

Applicant: Thomas Condron

Development: The erection of a 1.2m high fence and edge kerbing along the northern boundary of the property fronting onto Seamount Road. (Class 5 in Part I of Schedule 2 of the Planning and Development Regulations 2001 -20222.

Location: Seamount Road, Malahide, Co Dublin, K36 P034

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 30-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. 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 2000, by reason of the location of the fence and kerb being directly adjacent to the road carriageway thereby impacting sightlines which would constitute 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.



20-Jun-2022

for Senior Executive Officer