

## Aisling Reilly

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**From:** Peter Thomson <peter@ptplanning.ie>  
**nt:** Wednesday 6 September 2023 08:24  
**To:** John Cannon; Bord; Appeals2  
**Subject:** ABP-317562-23 response  
**Attachments:** 06092023 - ABP-317562-23.pdf

Please see attached.

Regards,

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**Peter Thomson  
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The Secretary,  
An Bord Pleanála,  
64 Marlborough Street,  
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6<sup>th</sup> September 2023

**Re: Response to letter from ABP dated 22 August 2023 enclosing submission from Offaly County Council dated 8 August 2023**

**ABP Referral Ref: ABP-317562-23**

**Offaly County Council ref: DEC23/15**

Dear Sir/Madam,

Further to your letter dated 22 August 2023, set out below is the response to the submissions and observations of Offaly County Council as detailed in their email dated 8 August 2023 ("Offaly Submission").

As detailed in the Section 5 Referral, dated 11 July 2023 ("Section 5 Referral"), Offaly County Council fails to properly consider the applicability of the relevant Class 16 exemption in respect of the "development" the subject matter of the Section 5 Referral. It is our view that the Class 16 exemption exists for the very purpose of the development, the subject matter of the Section 5 Referral.

It is the view of Capital Homes that Offaly County Council predetermined the Section 5 application in circumstances where they had already taken enforcement steps against Capital Homes before issuing a decision in the Section 5. Offaly County Council has not fairly and properly considered the applicability of Class 16 at all and in failing to do so has only sought to extend and reframe the subject matter of the Section 5 Referral, incorrectly determining the matter relying on their decision that the development was unauthorised.

Capital Homes can confirm that the matters raised by Offaly County Council in the Offaly Submission relating to what they refer to as the "*widening of the entrance*" have not been included in the Section 5 Referral in circumstances where Capital Homes are satisfied that the use and works to the entrance are exempt development and no widening to a means of access to a public road as alleged has or will occur. Exempt development of structures, works, plant or machinery needed temporarily in connection with the adjoining development are exempt pursuant to Class 16.

While the gateway, which is set back from the road, may appear to be widened due to the removal of the gates, pier and overgrowth, Capital Homes can confirm

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that the width of the gateway has not been materially widened nor has the means of access from the lands onto the public road been widened at all. While the Offaly Submission states that the "relevant SEE has indicated that the entrance is a hazard", no evidence of any traffic hazard has been identified. To ensure that there is no risk of any traffic hazard arising at all and to address matters of concern raised by Offaly County Council (which have not been evidenced and are denied by Capital Homes), a traffic management plan was prepared and has been implemented in full. At all stages Capital Homes has been open to discuss any matters of concern with Offaly County Council and to address any identified traffic hazard. Unfortunately to date, Offaly County Council seems unwilling to engage and no response has been received nor has any specific traffic issue or construction traffic leading to a public safety concern arising from Capital Homes limited lawful use of the entrance over the last 12 weeks been identified. While sightlines have been raised as a matter of concern, the entrance to the lands is long-standing with a pre-existing right of access for use by heavy machinery. Capital Homes can confirm that there has been no material change in use of the access to the lands. There has been and will continue to be limited use of the access to the development the subject matter of the Section 5 Referral. The development the subject matter of the Section 5 Referral will facilitate the timely completion of the adjoining housing development the subject matter of planning permission reference 19/39.

We trust our position is clear and look forward to a decision in due course.

Yours faithfully,



Peter Thomson, MSc, MIPI