

File With _____

SECTION 131 FORM

Appeal NO: ABP 318947-24Defer Re O/H ☐Having considered the contents of the submission dated (received) 23/02/2024
fromDeclan Sheridan I recommend that section 131 of the Planning and Development Act, 2000
be (not) be invoked at this stage for the following reason(s): no new material issuesE.O.: Pat BDate: 27/02/2024

For further consideration by SEO/SAO

Section 131 not to be invoked at this stage. ☐Section 131 to be invoked – allow 2/4 weeks for reply. ☐

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached
submission

to: _____ Task No: _____

Allow 2/3/4weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File With _____

CORRESPONDENCE FORM

Appeal No: ABP 318947-2u

M _____

Please treat correspondence received on 23/02/2024 as follows:

1. Update database with new agent for Applicant/Appellant _____

2. Acknowledge with BP RL203. Keep copy of Board's Letter ☐

1. RETURN TO SENDER with BP _____

2. Keep Envelope: ☐3. Keep Copy of Board's letter ☐Amendments/Comments Declan Shendon response to Referral31/01/24: 27/02/24

4. Attach to file

(a) R/S ☐(d) Screening ☐(b) GIS Processing ☐(e) Inspectorate ☒(c) Processing ☐RETURN TO EO ☐Plans Date Stamped ☐Date Stamped Filled in ☐EO: Pat BAA: Anthony McNallyDate: 27/02/2024Date: 27/02/2024

Faolán Rashford

From: Declan Sheridan <declansheridan38@gmail.com>
Sent: Friday 23 February 2024 14:59
To: Appeals2
Subject: Planning Declan Sheridan
Attachments: scan23022024.pdf

Caution: This is an External Email and may have malicious content. Please take care when clicking links or opening attachments. When in doubt, contact the ICT Helpdesk.

Sent from my iPhone

Refuzh.

22nd February 2024

An Bord Pleanála

64 Marlborough Street

Dublin 1

Case Number ABP-318947-24

Re: Whether the alteration and reduction in size of boundary fencing is or is not development or is or is not exempted development.

Address: Tirquin, Dublin Road, Cavan, Co. Cavan

Dear Sir/Madam

I refer to your letter dated 31st January 2024 notifying me of my right to make a submission or observation to the Board in relation to the above referral in accordance with section 129 of the Planning & Development Act (as amended).

Background

The matter of this boundary fencing has been ongoing since I first made contact with the Planning Authority by letter dated 19th May 2022 informing it that a fence was being erected on property adjoining my property, that I considered the fence to require planning permission and asking the Planning Authority to initiate enforcement action under the Planning Acts.

Planning History

The Planning history relating to the fence is outlined in the Planners report dated 22nd January 2024 submitted with the referral request.

Correspondence with Planning Authority post ABP Decision 31569/23

When the unauthorised development was first brought to the attention of the Planning Authority in 2022, an enforcement file was opened up, ENF 11-034 and a warning letter issued. Since then it would appear that enforcement proceedings were put on hold while planning applications for retention of the fence were under consideration by the Planning Authority & the Board.

An Bord Pleanála refused permission for the retention of a boundary fence on this site on 26th June 2023. On 1st September 2023 I wrote to the Planning Authority in relation to the unauthorised development, pointing out that a flagrant breach of the planning code existed which they were aware of, and reminding them of their statutory duty to ensure that enforcement decisions are taken expeditiously. On 7th September 2023 the Council's Senior Planner wrote to inform me that the Planning Authority had contacted JB Trident's agent regarding their proposals to remove the unauthorised development. This is the same day that the Applicant's agent submitted an application for a declaration under Section V of the Planning Act 2000 (as amended). *"Erect a new 1.2m height perimeter boundary fence/gate & all ancillary works carried out"*.

On 20th September 2023 I again wrote to the Planning Authority to query why it was liaising with the applicant's agent regarding the matter instead of the owner/applicant and again calling on it to proceed with enforcement action. On 2nd October 2023 I received a further letter from the Senior Planner, again informing me that the Planning Authority was engaging with the Applicant's agent, JB Trident Limited, "with a view to resolving matters".

On 5th October 2023 the Senior Planner wrote to inform me that the aforementioned section V application had been submitted by JB Trident Limited and that a decision had been made to deem the fence as exempted development. Incidentally the planning report was signed off on by the Senior Planner on 2nd October 2023, the same day as he wrote to inform me that the Planning Authority was engaging with the Applicants Agent with a view to resolving matters.

On 9th October 2023 I again wrote to the Planning Authority to draw his attention to the fact that the erection of a new fence and the matter of unauthorised development were entirely separate. The Senior Planners attention was also drawn to the provisions of article 9 (1)(a)(viii) of the Planning & Development Regulations 2001-2023 (restrictions on exemption).

Unauthorised Works

In early December 2023 a Fencing Contractor moved on site to carry out works. The works involved lowering the height of the existing fence posts in situ by cutting them , reducing the height of the fence panels in situ by cutting them. The existing gates were taken off site.

It is apparent that the work as carried out involved an alteration and reduction in size of an existing unauthorised boundary fence, one for which permission for the retention of has been refused. Article 9(1)(a)(viii) states that work that "consists of or comprise the extension, alteration, repair or renewal of an authorised structure or structure the use of which is an unauthorised use shall not be exempted development". The owner did not erect a new fence. On that basis I believe that the manner in which the works were carried out, involving the alteration of an existing unauthorised structure, cannot rely upon the exempted development provisions of the Planning Act.

Planners Report

While the exemption granted by the Planning Authority based on JB Tridents application submitted on 7th September is not the subject of this referral, it should be noted that the seeking of this declaration is as a consequence of that earlier decision of the Planning Authority.

It appears that the planners report dated 2nd October 2023 on that section V application seeks to overlook the situation on the ground:


While the report notes that a planning application relating to a fence has been refused on this site, the report makes no reference to the fact that there is an enforcement file open (ENF 22-034) or that the unauthorised development persists. The report makes no reference to a site inspection noting that there is an existing fence constituting unauthorised development remaining on site, three months after it was refused permission.

It was open to the Planning Authority to request further information under section 5(2)(b) of the Planning & Development Act 2000 (as amended). Given the history of the site, the unauthorised nature of existing development on site, and the limitations placed by the aforementioned article 9 on the exempted development provisions it is reasonable to have expected the Planning Authority to query the applicant's intentions to deal with the unauthorised fence by way of seeking additional information.

Planners Report dated 19th January 2024

The planners report references documents submitted with the referral as cover letter from Declan Sheridan, adjoining landowner with rationale for exemption (dated 6th September 2023). Kindly note that this should refer to letter from Declan Sheridan, adjoining landowner, with rationale as to why the work as carried out is not exempted development (19th December 2023)

Yours Faithfully



Declan Sheridan

