



Board Direction

Ref: RL09.RL2734

A copy of the direction is to issue with the order

The submissions on this file and the Inspector's report were further considered at a meeting of all available Board members held on 22nd February 2011.

Upon examination of the evidence, the Board concluded that the question before it should be restated as:

whether the formation of a doorway for private pedestrian access, including construction of a concrete step, to the public footpath to the side of no. 11 The Walk, Oldtown Mill, Celbridge, Co. Kildare is or is not development or is or is not exempted development.

The Board decided that:

- (a) the formation of the doorway constitutes development which is exempted development and
- (b) the construction of a concrete step is development which is not exempted development.

In relation to the recommendation of the Inspector that the doorway be deemed not to be exempted development, the Board came to a different conclusion. In particular, the Board noted, consequent on the exempted development provisions of Article 6(1) of the Planning and Development Regulations, 2001, as amended, that Class 5 of Part 1 of Schedule 2 to the Regulations gives the following as exempted development:

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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.

The Board also noted that Article 9(1)(a)(ii) states, inter alia, that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.

The Board did not agree with the interpretation of the Planning Authority and of the Inspector in relation to the applicability of this restriction in the case of a pedestrian access onto a footpath, which would otherwise be exempted development under the provisions of Class 5 of Part 1 of Schedule 2 to the Regulations.

The Board concluded that the restriction under Article 9(1)(a)(ii), placed on the formation of an access onto a public road more than 4m wide is concerned essentially with the question of traffic safety. The interpretation favoured by the planning authority and by the Inspector would remove the exemption provided for a pedestrian gateway under Class 5 of Part 1 of Schedule 2 to the Regulations in many cases where the gate opens onto a public footpath, with no implications for traffic safety. The Board considered that this is not the intended objective of the regulations.

Notwithstanding the definition of “public road” given in the Roads Act, 1993, as applied per Section 2(1) of the Planning and Development Act, 2000, the Board considered that, applying a purposive interpretation of the Regulations, the word “access” as applied at the said Article 9(1)(a)(ii) refers to an access suitable for a vehicle and not to a pedestrian access onto a footpath.

DRAFT ORDER

WHEREAS a question has arisen as to whether the formation of a doorway for private pedestrian access, including construction of a concrete step, to the public footpath to the side of no. 11 The Walk, Oldtown Mill, Celbridge Co. Kildare is or is not development or is or is not exempted development within the meaning of the Planning and Development Act 2000;

AND WHEREAS the said question was referred to An Bord Pleanála by Paul Coughlan and Mary Wickham on the 30th March 2010:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to -

- (a) sections 2, 3 and 4 of the Planning and Development Act, 2000,
- (b) articles 6 and 9 of the Planning and Development Regulations, 2001,
- (c) class 5 of part 1 of Schedule 2 to the said Regulations,
- (d) the definition of ‘public road’ within the meaning of the Planning and Development Act, 2000 and the definition of ‘public road’ within the meaning of the Roads Act, 1993,
- (e) the meaning of the word “access” as applied at Article 9(1)(a)(ii) of Planning and Development Regulations, 2001, and
- (f) the location of the concrete step outside the curtilage of the house.

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the formation of a pedestrian doorway is development which comes within the scope of the exempted development provisions of Class 5 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001,
- (b) the restrictions on exempted development contained at Article 9(1)(a)(ii) of Planning and Development Regulations, 2001, do not affect the

exemption under the said Class 5 for a solely pedestrian access onto a public footpath and

- (c) the formation of the doorway for pedestrian use is, therefore, exempted development.
- (d) The construction of a concrete step to serve the said doorway is development;
- (e) the said step has been constructed outside the curtilage of the site and does not come within the exempted development provisions of the Planning and Development Act, 2000 or of the Planning and Development Regulations, 2001, as amended and is, therefore, not exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the said formation of a doorway for private pedestrian access to a public footpath is development which is exempted development and the construction of a concrete step to serve the said doorway is development and is not exempted development.

Board Member: _____ Date: 28th February 2011
Karl Kent