



An
Bord
Pleanála

Board Direction
ABP-300285-17

The submissions on this file and the Inspector's report were considered at a Board meeting held on 08/04/2019.

The Board decided, as set out in the following Order, that

WHEREAS a question has arisen as to whether:

- (1) the clearing of vegetation from the closed railway line in or around the locality of Kiltimagh is or is not development or is or is not exempted development,
- (2) the change of use of the closed railway line to use as a velorail is or is not development or is or is not exempted development,
- (3) the re-building of the closed railway line in parts to facilitate its use as a velorail is or is not development or is or is not exempted development,
- (4) the works required to re-build the closed railway at public crossings are or are not development or are or are not exempted development,
- (5) the official status of the railway line as 'closed' means that any development work taking place on the line is or is not development or is or is not exempted development, and
- (6) any development work on the closed railway to facilitate a velorail is

or is not development or is or is not exempted development, and

- (7) whether the planning authority consider that the true definition of the railway line is closed, and any usage of the railway line for either rail traffic or velorail traffic will require a railway order from the Department of Transport:

AND WHEREAS Brendan Quinn requested a declaration on the question from Mayo County Council and the Council issued a declaration on the 25th day of October, 2017, stating that –

- (1) the clearing of vegetation from the closed railway line in or around the locality of Kiltimagh is not development,
- (2) the change of use of the closed railway line to use as a velorail is development and is exempted development,
- (3) the re-building of the closed railway line in parts to facilitate its use as a velorail is development and is exempted development,
- (4) the works required to re-build the closed railway at public crossings are development and are exempted development,
- (5) whether “the official status of the railway line as ‘closed’ means that any development work taking place on the line is or is not development or is or is not exempted development” is not a question as to what is or is not development or is or is not exempted development with the meaning of section 5 of the Planning and Development Act 2000,
- (6) whether “any development work on the closed railway to facilitate a velorail” is too general a question to permit a response with the meaning of section 5 of the Planning and Development Act 2000, and

(7) “whether the planning authority consider that the true definition of the railway line is closed, and any usage of the railway line for either rail traffic or velorail traffic will require a railway order from the Department of Transport” is not a question as to what is or is not development or is or is not exempted development with the meaning of section 5 of the Planning and Development Act 2000:

AND WHEREAS Brendan Quinn referred this declaration for review to An Bord Pleanála on the 21st day of November, 2017:

AND WHEREAS, having regard to the nature of the questions and the documentation submitted as part of the referral, An Bord Pleanála decided to reformulate the questions as follows -

Whether -

- (i) the removal of vegetation from a railway line;
- (ii) the works facilitating the change of use of the railway line to use for velorail;
- (iii) the change of use of the section of closed railway line for use as a velorail; and
- (iv) the change of use of the station building from use as a museum to use as a tourist/leisure attraction for velorail,

are or are not development and are or are not exempted development:

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

- (a) Sections 2(1), 3(1), 4(1)(aa), 4(2)(a) and 4(4) of the Planning and Development Act 2000, as amended,
- (b) Articles 6(1), 9(1) and 10(1) and (2)(a) of the Planning and Development Regulations 2001, as amended,
- (c) Parts 1 and 4 of Schedule 2 to those Regulations,
- (d) Sections 2(1), 38 and 43 of the Transport (Railway Infrastructure) Act 2001, as amended,
- (e) Section 2(1) of the Railway Safety Act 2005, as amended, and
- (f) The Transport Act 1950,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The removal of vegetation from a railway line does not constitute development within the meaning of section 3(1) of the 2000 Act;
- (b) The works facilitating the change of use of the railway line to use for velorail constitute development within the meaning of section 3(1) of the 2000 Act;
- (c) The works facilitating the change of use of the railway line to use for velorail, as carried out by and/or on behalf of Mayo County Council under license from CIÉ, are exempted development under section 4(1)(aa) and 4(1)(f) of the 2000 Act that do not come within the restrictions on exempted development under section 4(4) of that Act;
- (d) Based on the prolonged period of non-use of the subject railway line for the carrying of fare-paying passengers or the conveyance of merchandise, the use of the railway line as a “railway” has been in

practical terms abandoned;

(e) The change of use of the closed railway line, the use of which as a “railway” has been in practical terms abandoned, to use as a velorail, would entail the making of a material change of use of the land or structure within the meaning of section 3(1) of the 2000 Act;

(f) There are no exemptions under the 2000 Act, the 2001 Regulations, the 2001 Act, or otherwise, for the change of use from abandoned “railway” use to velorail use; and

(g) The change of use of Kiltimagh Railway Station from museum use (Class 10 of Part 4 of Schedule 2 of the Planning and Development Regulations 2001), in part, to use for velorail services (Class 2(c) of Part 4 of Schedule 2 of those Regulations), a use that can in the context, having regard to the provisions of Article 10(2)(a) of those Regulations, be considered ‘*a use ordinarily incidental to*’ Class 10, would not constitute a material change of use within the meaning of section 3(1) of the 2000 Act and is not development.

Appropriate Assessment Screening

The Board agreed with the screening assessment and conclusion carried out in the Inspector’s report dated 29th March, 2019, that the proposed development, individually or in combination with other plans or projects, would not be likely to have a significant effect on the River Moy Special Area of Conservation (Site Code:002298) or any other European site in view of the sites’ conservation objectives, and a Stage 2 Appropriate Assessment (and submission of a Natura impact statement) is not, therefore, required.

NOW THEREFORE, An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act, hereby decides that:

(i) The removal of vegetation from a railway line **IS NOT development**;

(ii) The works facilitating the change of use of the railway line to use for velorail, carried out by or on behalf of Mayo County Council, **IS development that IS exempted development**;

(iii) The change of use of the railway line, the use of which for use as a “railway” has been in practical terms abandoned, to use as velorail **IS development that IS NOT exempted development**;

(iv) The change of use, in part, from museum use (Class 10) to use for velorail services (Class 2(c)) **IS NOT development**.

Board Member:

Date: 08/04/2019

Dave Walsh