



An  
Bord  
Pleanála

**Board Direction**  
**ABP-300489-17**

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The submissions on this file and the Inspector's report were considered at a Board meeting held on December 10<sup>th</sup> 2018.

The Board decided, as set out in the following Order, that the importation of soil for the purposes of site restoration and restoration works using imported inert soil in relation to authorised quarry lands is development and is not exempted development at Cartron, Durrow, Co Offaly.

Board Order as follows:-

**WHEREAS** a question has arisen as to whether the importation of soil for the purposes of site restoration and restoration works using imported inert soil in relation to authorised quarry lands is or is not development or is or is not exempted development at Cartron, Durrow, Co Offaly.

**AND WHEREAS** Trevor Hinch of Hinch Plant Hire, Mountmellick, Co Laois requested a declaration on this question from Offaly County Council on the 30<sup>th</sup> day of November 2017, and the Council referred the question to An Bord Pleanála for determination, under Section 5 (4) of the Planning and Development Act, 2000, as amended, on the 20<sup>th</sup> day of December 2017.

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

- (a) Sections 2(1), 3(1), 4 and 177O of the Planning and Development Act 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,
- (c) The planning history of the site and in particular the grant of substitute consent for the quarry in question, under An Bord Pleanála reference number SU19.SU0095 dated the 29<sup>th</sup> day of June 2015, and
- (d) The submissions on file and the nature of the proposal.

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The importation of soil for the purposes of site restoration and restoration works using imported inert soil on lands constitutes 'works' as defined in Section 2(1) of the Planning and Development Act 2000, as amended and is therefore development; and
- (b) The subject works involve the importation and deposition on land of inert soil (whether or not it is deemed to comprise a waste or a by-product) and therefore, pursuant to Section 3 (2)(b)(iii) of the Planning and Development Act, 2000, as amended, the use of the land has materially changed, and therefore is development.
- (c) The grant of substitute consent under An Bord Pleanála reference number SU19.SU0095 required, under condition number 2, that the developer was to submit to, and agree in writing with, the planning authority, within three months of the date of the order (that is, within three months of the 29<sup>th</sup> day of June 2015), an implementation programme for the progressive restoration of the site in accordance with Section 9.4 of the submitted remedial Environmental Impact Statement and drawing number CD014/02, and also

required that restoration works were to be implemented in accordance with the agreed programme;

- (d) No evidence has been submitted that the developer had submitted this implementation programme, as required by this condition, and that such an implementation programme had been agreed in writing with the planning authority, nor that any restoration works that have taken place on the subject site, including the importation of soil and its use on the site for restoration, has been carried out in accordance with such an agreed programme;
- (e) If it could be established that the soil that has been infilled was not waste, then the development in question would be classified as land reclamation, and potentially, if the lands in question were to be restored as part of a farm holding, and not used as a quarry at any time in the future, would come within the scope of Article 8C of the Planning and Development Regulations 2001, as amended, but,
- (f) Having regard to the lack of evidence of compliance with condition number 2 of the grant of substitute consent under An Bord Pleanála reference number SU19.SU0095, any exemption that would otherwise apply is restricted pursuant to Article 9 (1)(a)(i) of the Planning and Development Regulations, 2001, as amended, as such restoration would, in the absence of the agreed programme, contravene this condition, and therefore the development in question is not exempted development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (4) of the Planning and Development Act, 2000, as amended, hereby decides that the importation of soil for the purposes of site restoration and restoration works using imported inert soil in relation to authorised quarry lands is development and is not exempted development at Cartron, Durrow, Co Offaly.

**Note:** The Board noted the provisions of the legislation, as they relate to grants of substitute consent, under Section 177O (1) of the Act, whereby a grant of substitute consent “*shall have effect as if it were a permission under Section 34 of the Act and where a development is being carried out in compliance with a substitute consent or any condition to which the consent is subject, it shall be deemed to be authorised development*”. In the circumstances of this case, no evidence was provided by the referrer which established that condition 2 of the grant of substitute consent had been complied with, and accordingly the development in question could not be deemed to be authorised development. Furthermore, if it is the case that condition number 2 of the grant of substitute consent in this instance has not been complied with, and that restoration works were taking place other than in compliance with this condition, the Board noted the provisions of Section 177O (2), whereby, if development is “*not being carried out in compliance with a grant of substitute consent or any condition to which the substitute consent is subject it shall, notwithstanding any other provision of the Act, be unauthorised development*”. The Board decided not to deal with this matter further, in the context of this referral, as enforcement is a matter for the planning authority.

*[Please issue a copy of this Direction with the Board Order to the parties.]*

**Board Member**

**Date:** 10<sup>th</sup> December 2018

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Philip Jones