



An
Bord
Pleanála

Board Direction
ABP-303109-18

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

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

Board Order as follows:-

WHEREAS a question has arisen as to whether (a) removal of trees and other vegetation from the site is or is not development and/or is or is not exempted development, and (b) the infilling of the existing hole with unknown infill material and top soiling of the filled hole and the carrying out of works to allow water held in the hole to discharge to natural drainage network, is or is not development and/or is or is not exempted development.

AND WHEREAS Michael Brennan, requested a declaration on this question from Wexford County Council, and the Council issued a declaration on the 9th day of November 2018 stating that the matter in respect to (a) removal of trees and other vegetation from the site is exempted development, and that the matter in respect to (b) the infilling of the existing hole with unknown infill material and top soiling of the filled hole and the carrying out of works to allow water held in the hole to discharge to natural drainage network, is not exempted development.

AND WHEREAS Michael Brennan referred this declaration for review to An Bord Pleanála, on the 28th day of November 2018.

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, as amended,
- b. Section 4(1)(l) and 4(4) of the Planning and Development Act, 2000, as amended,
- c. Articles 5, 6 and 8 of the Planning and Development Regulations, 2001, as amended and Class 11 of Part 3 of Schedule 2 of the said Regulations, as amended,
- d. the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended by SI No. 86 of 2008), and
- e. the submissions on file:

AND WHEREAS An Bord Pleanála has concluded that:

- a. the removal of trees and other vegetation from the site is not development,
- b. the infill development does not come within the scope of the exemption set out under section 4(1)(l) of the Planning and Development Act 2000, as amended,
- c. the infill development does not come within the scope of the exemption set out in Article 8B of the Planning and Development Regulations, 2001, as

amended, because the subject site is a former wetland as defined in Article 5 of the Planning and Development Regulations, 2001, as amended,

- d. the infill development does not come within the scope of the exemption set out in Article 8C of the Planning and Development Regulations, 2001, as amended, in respect of Land Reclamation, because the material used for infill is unknown which may give rise to filling with waste material as defined in the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended), and the site is a former wetland.
- e. the infill development does not come within the scope of Class 11 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, (Land Reclamation - infilling of wetlands) because of non-compliance with the Conditions and Limitations Column 1 of that Class, as the area in question exceeds the 0.1 hectares, and

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that (a) the said removal of trees and other vegetation from the site is not development, and (b) the said infilling of the existing hole with unknown infill material and top soiling of the filled hole and the carrying out of works to allow water held in the in the hole to discharge to natural drainage network, at Crosstown, Ardavan, County Wexford is development and is not exempted development.

Board Member:

Date: 12/04/2019

Stephen Bohan