



An  
Bord  
Pleanála

**Board Direction**  
**ABP-304569-19**

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The submissions on this file and the Inspector's report were considered at a Board meeting held on January 16<sup>th</sup>, 2020.

The Board decided, as set out in the following Order, that the carrying out of drainage works, namely field drainage for agriculture and the laying of a culvert as part of such drainage works, and the upgrading of internal access by laying of hardcore to facilitate access to uplands, including agricultural lands and forestry, at Ballyoonan, Omeath, Co. Louth is development and is not exempted development.

Board Order as follows:-

**WHEREAS** a question has arisen as to whether the carrying out of drainage works, namely field drainage for agriculture and the laying of a culvert as part of such drainage works, and the upgrading of internal access by laying of hardcore to facilitate access to uplands, including agricultural lands and forestry, at Ballyoonan, Omeath, Co. Louth, is or is not development or is or is not exempted development:

**AND WHEREAS** Gerard Watters, c/o Ger Fahy Planning of "Annaghdown", Pagestown, Kilcloon, Co Meath, requested a declaration on this question from Louth Council and the Council issued a declaration on the 3<sup>rd</sup> day of May 2019 stating that the matters were development and were not exempted development:

**AND WHEREAS** Gerard Watters referred this declaration for review to An Bord Pleanála on the 30<sup>th</sup> day of May 2019:

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

- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 8B, 8G and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 13 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) Class 3 of Part 3 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (e) the location of the subject site in proximity to Carlingford Lough;
- (f) the nature of land uses and pattern of development in the area:

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

- (a) the carrying out of drainage works for agriculture, including the provision of a culvert, and the laying of hardcore as part of internal access to uplands, including agricultural lands and forestry, involved the carrying out of works, and therefore constitute development.
- (b) The carrying out of drainage works for agriculture (which included the provision of two culverts) would come within the scope of the exemption provided for under Article 8B of the Planning and Development Regulations 2001, as amended, and also the exemption provided for under Class 3 of Part 3 of the Second Schedule to these Regulations, but the restriction on exemption set out in Section 4 (4) applies in this instance, as the competent authority has determined that the works, which are in the vicinity of a fast flowing stream that connects to the Carlingford Shore Special Area of Conservation (site code 002306), would have required

appropriate assessment, and are therefore not exempted development.

- (c) The laying of hardcore to facilitate access to uplands, including agricultural lands and forestry, as stated, does not come within the scope of Article 8G of the Planning and Development Regulations, 2001 (as amended) as there is no evidence of forests or woodland that are served by this road, and the development does not come within the scope of Class 3 of Part 1 of the Second Schedule to the Regulations, because the subject road that has been laid is a new road, for the use of vehicles, and the works involved therefore do not constitute the repair or improvement of an existing street, road or way, nor the construction of any private footpath or paving. It 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 Planning and Development Act 2000, as amended, hereby decides that the carrying out of drainage works, namely field drainage for agriculture and the laying of a culvert as part of such drainage works, and the upgrading of internal access by laying of hardcore to facilitate access to uplands, including agricultural lands and forestry, at Ballyoonan, Omeath, Co. Louth, is development and is not exempted development.

**Note 1:** In making its decision, the Board confined itself to the question that had been raised with the planning authority and formed the subject matter of its declaration, because it was this declaration that has been referred to the Board for review. Accordingly, the Board did not include, in its Order, any determination in relation to the works to the derelict house, which had been raised by the referrer in his submission of 30<sup>th</sup> May 2019. However, the Board noted that this issue was also

considered by the Inspector in her report. In this regard, the Board concurred with the view of the Inspector, that the works to this house, which would constitute development, would not come within the scope of Section 4 (1)(h) of the Planning and Development Act, 2000, as amended, for the reasons outlined by the Inspector, and would not come within any other exemption provision of the Acts and Regulations, and would therefore not be exempted development.

**Note 2.** The Board noted the Appropriate Assessment Screening report submitted by the referrer as part of the referral. However, the Board was not satisfied, for the reasons set out in the Inspector's report, which it adopts, that appropriate assessment was not required for these works. In this context, the Board has had regard to case law, and in particular ECJ Judgement C-323/17 (People over Wind).

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

**Board Member**

**Date:** 16<sup>th</sup> January 2020

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Philip Jones