



An
Bord
Pleanála

**Board Direction
ABP-305296-19**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 16/12/2019.

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

WHEREAS a question has arisen as to whether the construction of earthen embankments is or is not development or is or is not exempted development:

AND WHEREAS Gerard McLaughlin requested a declaration on this question from Donegal County Council and the Council issued a declaration on 1st day of August, 2019 stating that the matter was development and was not exempted development:

AND WHEREAS Gerard McLaughlin referred this declaration for review to An Bord Pleanála on the 28th day of August, 2019:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,

- (d) Section 177(U)(9) of the Planning and Development Act, 2000, as amended,
- (e) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Class 3 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (g) the pattern of development in the area including the topography and watercourses:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The earthen embankment is adjacent a drainage ditch, which would convey large volumes of water in the event of extreme rainfall,
- (b) The earthen embankment would not serve any function related to the diversion of surface water or the protection of lands in times of normal weather patterns as it would be sited above the water level,
- (c) The purpose of the earthen berm and its function in times of extreme rainfall events is not evidently connected with the function of the drainage ditch and it was considered that it would not assist in the protection of lands in such extreme circumstances and as such could not be considered to be a structure which is connected with the drainage ditch.

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 construction of an earthen embankment for the purpose of drainage improvements is development and is not exempted development.

Board Member:

Date: 16/12/2019

Terry Ó Niadh