



An
Bord
Pleanála

Board Direction
ABP-305550-19

The submissions on this file and the Inspector's report were considered at Board meetings held on 11/02/2020 and 19/08/2020.

At the meeting of the 11th February, the Board decided to defer consideration of this case and to issue a Section 132 notice to the referrer requesting the submission of an Appropriate Assessment Screening Report. This was submitted by the referrer on the 14th day of April 2020.

At the meeting of the 19th August 2020, the Board decided, as set out in the following Order, that

Board Order as follows:-

WHEREAS a question has arisen as to whether the construction of an agricultural shed and all associated site works at Derrinacahara, Dunmanway, County Cork is or is not development and is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Declan White on the 2nd day of October, 2019:

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

- (a) sections 2 and 3 of the Planning and Development Act 2000 (as amended),
- (b) articles 5-11 of the Planning and Development Regulations 2001 (as amended), with particular reference to articles 6(3) and 9(1)(a)(viiB),
- (c) Part 3 of Schedule 2 *Exempted Development – Rural* of the Regulations, with particular reference to Class 9, and
- (d) the submissions of the parties to the referral,
- (e) the Appropriate Assessment Screening Report submitted by the referrer in response to a section 132 notice issued by An Bord Pleanála,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the construction of an agricultural shed and its associated site works constitute ‘development’ for the purposes of the Planning and Development Act, and
- (b) The Board, as the relevant competent authority in relation to appropriate assessment, has determined that an appropriate assessment would have been required prior to the construction of the subject development;
- (c) The structure, which it is stated is intended to be used for storage, would generally comply with the description, limitations and conditions of Class 9 of Part 3 of Schedule 2 to the Planning and Development Regulations 2001, as amended, but does not comply with condition and limitation number 3 of this Class, and

- (d) Having regard to the fact that appropriate assessment would be required prior to the construction of the subject development, the development is not exempted development by reason of Section 4 (4) of the Planning and Development Act, 2000, as amended, and by reason of Article 9 (1)(a)(viiB) of the Planning and Development Regulations, 2001, as amended.

NOW THEREFORE the Board, in exercise of the powers conferred on it by section 5 of the 2000 Act, has decided that the construction of an agricultural shed and its associated site works constitute development and that development is not exempted development.

Note: In deciding not to accept the recommendation of the Inspector that the development would constitute exempted development, the Board in considering the Inspectors conclusions on the Need for Appropriate Assessment noted the proximity of the subject development to the Bandon River and the sensitive qualifying species and habitats of the Bandon River Special Area of Conservation (Site code: 002171). At the meeting of 11th day of February 2020, the Board decided to defer consideration of the referral and in accordance with section 132 of the Planning and Development Act 2000, as amended, requested the referrer to submit an Appropriate Assessment Screening Report.

At the meeting of the 19th day of August, the Board, as the relevant competent authority in relation to appropriate assessment, carried out a screening for Appropriate Assessment based on the Appropriate Assessment Screening Report submitted by the referrer in response to the further information request. The Board noted that the agricultural shed development is not directly connected with or necessary to the management of a European Site.

The Board accepted the conclusion carried out in the Appropriate Assessment Screening Report in respect of the identification of the Bandon River Special Area of Conservation (Site code: 002171) as the European Site which could potentially be

affected. The Board concurred that the main likely impacts arising from the proposed development during construction and operation would be on the qualifying species and habitats of the Bandon River Special Area of Conservation particularly the potential for impacts arising from increased silt levels in surface water run-off, inadvertent spillages of hydrocarbons from fuel and hydraulic fluid and run-off of uncured cement. However, the Board was not satisfied on the basis of the proximity of the subject development to the River, and the absence of mitigation measures, that there would not be likely significant effects on the conservation objectives of this European Site particularly in the context of the sensitive qualifying species and habitats of the European Site. The Board therefore concluded that a Stage 2 Appropriate Assessment would be required.

Copy of Board Direction to issue with the Board Order.

Board Member:

Date: 19/08/2020

Maria FitzGerald