



An
Bord
Pleanála

Board Direction
ABP-306103-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on 01/07/2020.

The Board decided by a majority of 2:1 as set out in the following Order, that

Board Order as follows:-

WHEREAS a question has arisen as to whether land reclamation through re-contouring of lands within farm holdings at Binnion, Clonmany, Co. Donegal or is not development or is or is not exempted development.

AND WHEREAS William Doherty and Patrick Doherty requested a declaration on this question from Donegal County Council and the Council issued a declaration on the 11th day of November, 2019 stating that the matter was development and was not exempted development

AND WHEREAS William Doherty and Patrick Doherty referred this declaration for review to An Bord Pleanála on the 6th day of December, 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 177U(9) of the Planning and Development Act, 2000, as amended,
- (e) article 6(1), article 6(3), article 8C and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (g) the planning history of the site, and
- (h) the report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the excavation and removal of rock within the subject site constitutes development and falls within the definition of quarrying;
- (a) the excavation and removal of rock from field B as identified on the mapping submitted by the landowners/occupiers is stated to form part of the land reclamation works carried out in part and proposed within fields A, B, C, E and F as identified on the mapping submitted by the landowners/occupiers, being the farmholding concerned;
- (b) the excavation and removal of rock from field D as identified on the mapping submitted by the landowners/occupiers is not stated to form part of the land reclamation works at this farmholding, carried out in part and proposed within fields A, B, C, E and F as identified on the mapping submitted by the landowners/occupiers;
- (c) the excavation and removal of rock from field B as identified on the mapping submitted by the landowners/occupiers, where such rock is used solely for

land reclamation within the farmholding that includes this field, comes within the scope of article 8C;

- (d) the re-contouring of lands within fields A, B, C, E and F, consisting of land reclamation of the farmholding in question, comes within the scope of article 8C;
- (e) the excavation and removal of rock from field D does not come within the scope of article 8C, as this field does not form part of the farmholding, and no other exempted development provision under the Regulations applies;
- (f) the development would not be likely to have a significant effect on North Inishowen Coast SAC (Site Code: 0020120 or any other European site).

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 land reclamation through re-contouring of lands at Binnion, Clonmany, County Donegal is development and is exempted development, where it has taken place or is intended to take place within fields A, B, C, E and F and the activity which has taken place at field D is development and is not exempted development, as this field does not form part of the farmholding.

In deciding not to accept the recommendation of the Inspector that the entirety of the development should be determined to not be exempted development, the Board considered that the identified activities within fields A, B, C, E and F, fall within the meaning of land reclamation works on a farmholding, as per article 8C and considered also that farmholding is not determined solely by reference to legal title.

Board Member:

Date: 09/07/2020

Chris McGarry