

An
Bord
Pleanála

Board Direction
ABP-308254-20

The submissions on this file and the Inspector's report were considered at a Board meeting held on 25/06/2021.

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

Board Order as follows:-

WHEREAS a question has arisen as to whether

- i) Erection of fencing which blocks habitually open access points,
- ii) Erection of a large vehicular access gate across a public footpath,
- iii) Deep trenching and mounding on lands which are / have been habitually open to the public,

is or is not development or is or is not exempted development.

AND WHEREAS the Friends of the Irish Environment requested a declaration on this question from Fingal Council and the Council issued a declaration on the 27th day of August, 2020 stating that the matter is development and is not exempted development (i and ii), and is development and is exempted development (iii),

AND WHEREAS Tetrarch Capital Ltd. referred this declaration for review to An Bord Pleanála on the 23rd day of September, 2020.

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) 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) 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,
- (h) the pattern of development in the area,
- (i) the submissions on file, and
- (j) the report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the erection of fencing constitutes works which is development and which comes within the scope of Class 11 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001, as amended, but is de-exempted by reason of exceeding the height limitation set out in item 1 of Column 2, Conditions and Limitations of Class 11;
- (b) the erection of a gate constitutes works which is development and which comes within the scope of Class 9 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001, as amended, but is de-exempted by reason of exceeding the height limitation set out in Column 2, Conditions and Limitations of Class 9;

- (c) deep trenching and mounding constitutes works which is development and which does not come within the scope of Class 3 of Part 3 of Schedule 2 to the Planning and Development Regulations 2001, as amended, as these works are not deemed to fall within the exempted development category of rural and no other exemption for these works is provided for in legislation;

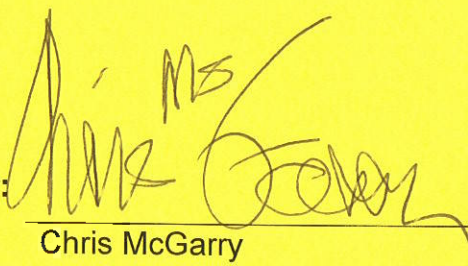
NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that the following works.

- i) Erection of fencing which blocks habitually open access points,
- ii) Erection of a large vehicular access gate across a public footpath,
- iii) Deep trenching and mounding on lands which are / have been habitually open to the public,

Along the boundary of Old Tramway and Howth Castle Estate, Howth, County Dublin,

are development and are not exempted development.

Board Member:

 MS
Chris McGarry

Date: 25/06/2021

