

An
Bord
Pleanála

**Board Direction
ABP-308711-20**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 01/09/2022.

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

Board Order as follows:-

WHEREAS a question has arisen as to whether the continued quarry operations authorised under Condition No. 1 of the Substitute Consent SU23.SU009 on lands at Ballydine and Butlerstown, Kilsheelan, County Tipperary, is or is not development or is or is not exempted development.

AND WHEREAS Abaigeal Smyth requested a declaration in relation to quarrying including extraction of rock and discharge of water at the lands described above, from Tipperary County Council on the 31st of August 2020 and no declaration issued from the Planning Authority.

AND WHEREAS Tipperary County Council requested a declaration on this question under the provisions of section 5(4) of the Planning and Development Act, 2000 (as amended) on the 13th of November 2020.

AND WHEREAS An Bord Pleanála reformulated the question as follows:

- whether continued quarry operations, including extraction beyond that for which Substitute Consent was sought and received under 23.SU0009 is or is not exempted development,
- whether the continued substantial discharge of quarry water and use of infrastructure for this purpose is or is not exempted development,
- are the continued quarry operations authorised under condition 1 of 23.SU0009.

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

- (a) Section 2 and 3 of the Planning and Development Act, 2000, as amended,
- (b) The Board's decision under SU23.SU0009 signed on the 10th of October 2013
- (c) The nature and scale of activities undertaken at the quarry site subsequent to the Board's decision under SU23.SU0009,
- (d) the planning history of the site, and
- (e) the submissions on file, including the Section 5 referral from Abaigeal Smyth submitted to Tipperary County Council on the 31st August 2020 and the questions set out therein.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the continuation of quarry operations including extraction beyond that for which substitute consent was sought and received under 23SU0009 would constitute development;
- (b) no permission exists for works entailing the continuation of quarry operations including extraction beyond that for which substitute consent was sought and

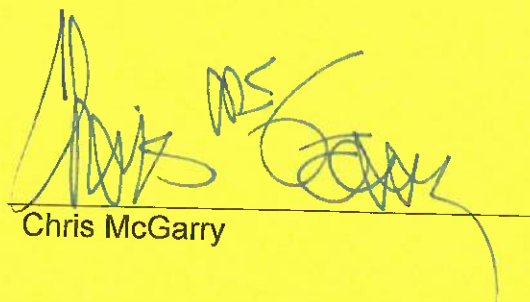
received, nor is there any exemption available within the relevant legislation for such works;

- (c) the questions referring to the continued discharge of quarry water and use of infrastructure for this purpose and continued quarry operations authorised under condition 1 of 23.SU0009 (which statutory notice refers to water management system) relate to interpretation of a condition attached to a consent;
- (d) the interpretation of such conditions does not come within the scope of a referral under Section 5(4) of the Planning and Development Act 2000, as amended, which is restricted to considering whether a particular matter is or is not development or is or is not exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (4) of the Planning and Development Act, 2000, as amended, hereby decides that,

- (a) the continuation of quarry operations including extraction beyond that for which substitute consent was sought and received under 23SU0009 would constitute development that is not exempted development and,
- (b) the questions relating to the continued discharge of quarry water and use of infrastructure for this purpose and the continued quarry operations authorised under condition 1 of 23.SU0009 are dismissed under section 138(1)(b)(i) of the Planning and Development Act 2000, as amended.

Board Member:



Chris McGarry

Date: 15/09/2022

