

An  
Bord  
Pleanála

Board Direction  
ABP-313086-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 24/08/2023.

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

**WHEREAS** a question has arisen, as to whether an existing 'dam-type structure' constructed on an open watercourse close to where it connects to the sea is, or is not development, or is, or is not exempted development, at Drimna Beg, Sneem, Co. Kerry.

**AND WHEREAS** Chris Fitzgibbon, through his agent Teicniuil Priory Consulting Engineers Ltd, The Courtyard, Fair Hill, Killarney, Co. Kerry, requested a declaration on these questions from Kerry County Council and the Council issued a declaration on the 22<sup>nd</sup> day of February 2022 stating that the matter was development and was exempted development:

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 16<sup>th</sup> day of March 2022:

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 8B, 8G and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 13 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) Class 3 of Part 3 of the Second Schedule of the Planning and Development Regulations, 2001, as amended,
- (e) the location of the subject site in proximity to Kenmare River SAC (Site Code: 002158);
- (f) the nature of land use and the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that:

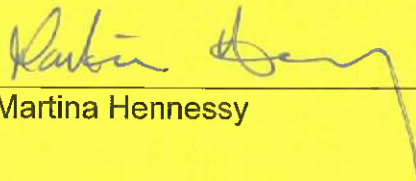
- (a) the dam-type structure constructed on an open watercourse close to where it connects to the seas by culverting of the open channel and the construction of the farm track / passage involved the carrying out of works, and therefore constitute development.
- (b) the culverting of the open watercourse was not for the purposes of field drainage for agriculture, rather for the provision of the link farm track / passage and therefore would not come within the scope of the exemption provided for under Article 8B of the Planning and Development Regulations 2001, as amended, or the exemption provided for under Class 3 of Part 3 of the Second Schedule to these Regulations,
- (c) the provision of the farm track / passage to link two folios of land, does not come within the scope of Article 8G of the Planning and Development Regulations, 2001 (as amended) as there is no evidence of forests or woodland that are served by this passage, and the development does not come within the scope of Class 3 of

Part 1 of the Second Schedule to the Regulations, because the subject passage that has been laid is a new road, for the use of vehicles, and the works involved therefore do not constitute the repair or improvement of an existing street, road or way, nor the construction of any private footpath or paving. It is therefore not exempted development,

(d) the restriction on exemption set out in Section 4(4) applies in this instance, as the competent authority has determined that the works, which are in the vicinity of Kenmare River Special Area of Conservation (Site Code 002158), would have required appropriate assessment, and are therefore not exempted development.

**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 carrying out of the works, namely the construction of a 'dam-type structure' on an open watercourse close to where it connects to the sea at Drimna Beg, Sneem, Co. Kerry, is development and is not exempted development.

Board Member:

  
Martina Hennessy

Date: 28/08/2023

