

An
Bord
Pleanála

Board Direction
BD-014605-23
ABP-314075-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 13/11/2023.

The Board decided, as set out in the following Order, that the construction of a man-made lake for its natural habitat/private amenity space is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the construction of a pond and its natural habitat /private amenity space, is or is not development or is or is not exempted development:

AND WHEREAS Julian & Claire Hastings requested a declaration on this question from Wexford County Council and the Council issued a declaration on the 17th day of June, 2022 stating that the construction of a 'pond' within the curtilage of a dwelling house was development and was not exempted development:

AND WHEREAS Julian & Claire Hastings referred this declaration for review to An Bord Pleanála on the 11th day of July, 2022:

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) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

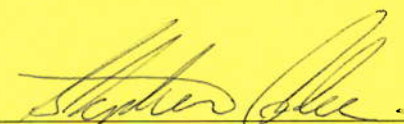
AND WHEREAS An Bord Pleanála has concluded that:

- (a) The construction of a pond and it's natural habitat/private amenity space, constitutes 'works' and 'development' as defined in Section 2 and Section 3, respectively, of the Planning and Development Act, 2000, as amended.
- (b) the laying out and use, as a landscape/amenity feature, of the land as a man-made lake (entailing excavation of significant quantities of soil and its deposition on adjoining lands) does not come within the scope of –
 - (i) Section 4(1)(a) of the Planning and Development Act ,2000 (as amended) not being a development for the purposes of agriculture,

- (ii) Class 33(a) of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 (as amended), not being the laying out of a park, private open space or ornamental garden, or
- (iii) Class 3 of Part 3 of Schedule 2 to the said Regulations, not being a pond:
- (c) the potential consequences in planning terms, having regard to the scale, nature and depth of the development including relative to hydrological and environmental considerations, being development of a man-made lake that does not come within the scope of any of the legislative provisions for exempted development.
- (d) There are no provisions in the Planning and Development Act 2000 (as amended) or in the Planning and Development Regulations 2001 (as amended), that would afford the said development to be deemed 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 construction of a man-made lake for it's natural habitat/private amenity space is development and is not exempted development.

Board Member:


Stephen Bohan

Date: 17/11/2023

