

An
Bord
Pleanála

Board Direction
ABP-316012-23

The submissions on this file and the Inspector's report were considered at a Board meeting held on 09/04/2024.

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

WHEREAS a question has arisen as to whether

- the importation of and deposit of soil and /or subsoil,
- the use of the shed and activities on site for sorting, bagging of soil and/or subsoil and transportation off site,
- the parking of commercial vehicles and
- the erection of a 3m high timber fence

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

AND WHEREAS Tom Kelliher, Pat O'Reilly and others requested a declaration on this question from Kildare Council and the Council issued a declaration on the 1st day of March, 2023 stating that the matter was development and was not exempted development:

AND WHEREAS Tom Kelliher, Pat O'Reilly and others referred this declaration for review to An Bord Pleanála on the 1st day of March, 2023:

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

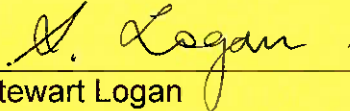
- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Section 4(1)(l) of the Planning and Development Act, 2000, as amended,
- (c) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) Waste Management (Facility Permit and Registration) Regulations 2007 (as amended by SI No. 86 of 2008)
- (f) The submission on file by the referrer and the owner to the planning authority,
- (g) the planning history of the site,
- (h) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The importation of soil for the purpose of sorting, bagging and transport off site constitutes 'works', and 'development' as defined in Section 2 and Section 3, respectively, of the Planning and Development Act, 2000, as amended.
- (b) The recovery of excavated inert soil, for the purpose of the improvement or development of land, is identified in the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended) as a waste activity that requires a certificate of waste registration from the planning authority.
- (c) 'Land reclamation' comes within the scope of works referred to in the Land Reclamation Act, 1949, and would normally constitute exempted development as set out in section 4(1)(l) of the Planning and Development Act, 2000, as amended. However, the works in question, comprising imported waste material, does not come within the meaning ascribed to land reclamation, as set out in article 8C of the Planning and Development Regulations, 2001, as amended, and therefore, do not constitute exempted development under section 4(1)(l) of the Act.

- (d) The erection of a 3m high fence is in excess of the limitation under CLASS 4 of Part 3, of Schedule 2.

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 importation and deposit of soil along with sorting, bagging of soil and/or subsoil and transportation off site, parking of commercial vehicles and erection of a 3m high fence is development and is not exempted development.

Board Member:  **Date:** 10/04/2024
Stewart Logan