



An
Bord
Pleanála

Board Direction
ABP-317396-23

The submissions on this file and the Inspector's report were considered at a Board meeting held on 27/05/2024.

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

Board Order as follows:-

WHEREAS a question has arisen as to whether the removal of top soil and sub soil from one area and spreading it on lands for agricultural use is or is not development or is or is not exempted development.

AND WHEREAS John & Marie Sinnott, requested a declaration on this question from Wexford Council, and the Council issued a declaration on the 2nd day of June 2023 stating that the matter is development and is exempted development.

AND WHEREAS John & Marie Sinnott referred this declaration for review to An Bord Pleanála, on the 16th day of June 2023.

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

- (a) Section 2(1), 3(1),4(1)(a), 4(1)(l) of the Planning and Development Act, 2000, as amended,
- (b) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Article 8C Part 2 of the Planning and Development Regulations, 2001, as amended,
- (d) Class 6 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (e) Class 11 of Part 3 of the Planning and Development Regulations, 2001, as amended.
- (f) the planning history of the site and adjoining lands,
- (g) the submissions on file
- (h) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

(a) The removal of top soil and sub soil from one area and spreading it on lands within the farm holding for agricultural use for the purpose of raising and recontouring land constitutes works, and is, therefore, **AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The removal of top soil and sub soil from one area and spreading it on lands within the farm holding for agricultural use for the purpose of raising and recontouring land constitutes works, and is, therefore, development as defined in Section 2 and Section 3, respectively, of the Planning and Development Act, 2000, as amended.
- (b) As noted on the documentation on file and onsite the development which is the subject of this Referral, consists of the use of the lands for agriculture and would fall under the scope of exempted development under Section 4(1)(a) of the Planning and Development Act 2000, as amended.
- (c) Land reclamation that would not include fencing or enclosure of land or reclamation of estuarine marsh or callows, comes within the scope of works

referred to in the Land Reclamation Act, 1949, and would be exempted development as set out in Section 4(1)(l) of the Planning and Development Act 2000, as amended.

- (d) The works for the purposes of agriculture are not within the curtilage of a house and therefore would not fall within the scope or limitations of Class 6 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.
- (e) The works for the purposes of agriculture do not comprise drainage and/or reclamation of wetlands and therefore would not fall within the scope or limitations of Class 11 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.
- (f) The works for the purposes of land reclamation (other than reclamation of wetlands) consisting of the raising and re-contouring of land, including infilling of soil (but not waste material) within the same farm holding, would, fall within the scope of Article 8C of Part 2 of the Planning and Development Regulations, 2001, as amended, and would, therefore, comprise 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 said removal of top soil and sub soil from one area and spreading it on lands for agricultural use is development and is exempted development.

Board Member:



Mary Henchy

Date: 04/06/2024