



Board Direction

Ref: RL05. RL.3489

The submissions on this file and the Inspector's report were further considered at a meeting of all available Board members held on 3rd May 2017.

By a margin of 4:1 the Board decided as follows:

WHEREAS a question has arisen as to whether the installation of 2 underground fuel storage tanks of 40,000l capacity each and the decommissioning of an existing 28,000l tank at an existing filling station at Ballyraine, Letterkenny, County Donegal is or is not development or is or is not exempted development:

AND WHEREAS Emo Oil Ltd. requested a declaration on the said question from Donegal County Council and the said Council issued a declaration on the 31st day of May, 2016 stating that the said matter is development and is not exempted development:

AND WHEREAS the Emo Oil Ltd. referred the declaration for review to An Bord Pleanála on the 17th day of June, 2016:

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, and
- (b) previous determinations under An Bord Pleanála referrals 13.RL3233 and 35. RL2850:, 04.RL 2211, 25.RL.2340, 04.RL 2747, and 04.RL 3069

AND WHEREAS the Board has concluded that the installation of 2 underground fuel storage tanks of 40,000l capacity each and the decommissioning of an existing 28,000l tank could not be considered as being within the scope section 4 (1) (h) of the act as the new tanks are to be located in a different location to the tank which is being de-commissioned and the existing tank is not being replaced but being left in situ albeit that it is being taken out of use, and could not therefore be considered as works for the maintenance, improvement or other alteration of a structure,

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 installation of 2 underground fuel storage tanks of 40,000l capacity each and the decommissioning of an existing 28,000l tank at an existing filling station at Ballyraine, Letterkenny, County Donegal is development and is not exempted development.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

In deciding not to accept the Inspector's recommendation that the development proposed was exempt development, the board considered that the fact that the new tanks were to be located in a different location to the tanks which they were replacing meant that the proposal was fundamentally different from previous determinations of the Board referred to on the file, and that the proposal did not come within the scope of S4(1)(h) of the Act.

Board Member: _____
Michael Leahy

Date: 4th May 2017