



An
Bord
Pleanála

Board Direction
03.RL3572

The submissions on this file and the Inspector's report were considered at a Board meeting held on July 3rd 2018.

The Board decided, as set out in the following Order, that the construction of a fence measuring 1.8 metres high within the quarry complex of Fountain Cross, Ballyneillan, Ennis, Co. Clare is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the construction of a fence measuring 1.8 metres high within the quarry complex of Fountain Cross, Ballyneillan, Ennis, Co. Clare is or is not development or is or is not exempted development.

AND WHEREAS Earth Science Partnership (Ire) Ltd, on behalf of Patrick Gibney of Roadstone Ltd requested a declaration on this question from Clare County Council, and the Council issued a declaration on the 23rd day of March 2017 stating that the matter was development and was not exempted development.

AND WHEREAS Earth Science Partnership (Ire) Ltd, on behalf of Patrick Gibney of Roadstone Ltd referred this declaration for review to An Bord Pleanála, on the 4th day of April 2017.

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 6 and 9, of the Planning and Development Regulations 2001, as amended,
- (c) Class 4 of Part 3 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) The planning history of the subject quarry, and in particular planning permission register reference number 04/1064 (An Bord Pleanála reference number PL03.216138), and
- (e) The submissions on file and the report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The construction of the subject fence would constitute works that come within the scope of Section 3 (1) of the Planning and Development Act, 2000, as amended, and therefore constitutes development;
- (b) The development does not come within the scope of exemption afforded by Section 4 (1)(h) of the Planning and Development Act 2000, as amended;
- (c) The development would come within the scope of the exemption afforded by Class 4 of Part 3 of the Second Schedule to the Planning and Development regulations, 2001, as amended, but;

- (d) The development would not be exempted development as it would contravene a condition of a planning permission, that is, condition number 21 of planning permission register reference number 04/1064 (An Bord Pleanála reference number PL03.216138), in the absence of any evidence of the written agreement of the planning authority pursuant to the terms of this condition (which applies to the entire quarry complex), and therefore the restriction on exemption under Article 9 (1)(a)(i) of the Planning and Development regulations 2001, as amended, applies in this instance.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that the construction of a fence measuring 1.8 metres high within the quarry complex of Fountain Cross, Ballyneillan, Ennis, Co. Clare is development and is not exempted development.

Board Member

Date: 4th July 2018

Philip Jones