



An
Bord
Pleanála

Board Direction
06S.RL3609

The submissions on this file and the Inspector's report were considered at a Board meeting held on 20th June 2018.

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

Board Order as follows:-

WHEREAS a question has arisen as to whether the spreading of clean topsoil and subsoil on lands for agricultural use and the importing of that soil for recontouring of land at Oldcourt Lane, Oldcourt Ballycullen Dublin is or is not development or is or is not exempted development:

AND WHEREAS Michael Whelan care of Fenton Associates of Unit 13, The Seapoint Building, 44-45 Clontarf Road, Dublin requested a declaration on the said question from South Dublin County Council and the said Council issued a declaration on the 11th day of July, 2017 stating that the said matter is development and is not exempted development:

AND WHEREAS the said Michael Whelan referred the declaration for review to An Bord Pleanála on the 27th day of July, 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) section 4(1)(l) and 4(4) of the Planning and Development Act, 2000, as amended,
- (c) articles 5, 6 and 8 of the Planning and Development Regulations, 2001, as amended and Class 11 of Part 3 of Schedule 2 of the Regulations, as amended,
- (d) the restrictions on exempted development under article 9 of the Regulations, as amended,
- (e) the submission on file by the applicant to the planning authority, and
- (f) the location of the development relative to downstream Natura 2000 sites.

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the importation and spreading of soil for the purpose of 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) the proposed works would not comply with Condition and Limitation number 1 of Class 11 of Part 3 of Schedule 2 (Land Reclamation) and with the provisions set out within Article 6(3) of the Planning and Development Regulations, 2001, as amended. The proposed works would not, therefore, comprise exempted development under Article 6(3),
- (c) having regard to the nature of the proposed development, which entails the importation of material to the site which the Board is not satisfied is not waste material, the development does not come within the scope of the provisions of Article 8C of the Planning and Development Regulations, 2001, as amended, in

respect of Land Reclamation, and does not, therefore, comprise exempted development under Article 8C, and

- (d) 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 infilling of land, by imported material which the Board is not satisfied is not waste material, do 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.

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 spreading of clean topsoil and subsoil on lands for agricultural use and the importing of that soil for recontouring of land at Oldcourt Lane, Oldcourt Ballycullen Dublin is development and is not exempted development.

Board Member

Date: 21st June 2018

John Connolly