



An
Bord
Pleanála

Board Order
ABP-300489-17

Planning and Development Acts 2000 to 2018

Planning Authority: Offaly County Council.

Planning Register Reference Number: DEC 17/11

WHEREAS a question has arisen as to whether the importation of soil for the purposes of site restoration and restoration works using imported inert soil in relation to authorised quarry lands at Cartron, Durrow, County Offaly is or is not development or is or is not exempted development:

AND WHEREAS the question was referred to An Bord Pleanála by Offaly County Council on the 20th day of December, 2017:

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

- (a) sections 2(1), 3(1), 4 and 177O of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) the planning history of the site and, in particular, the grant of substitute consent for the quarry in question, under An Bord Pleanála reference number 19.SU.0095 dated the 29th day of June, 2015, and
- (d) the submissions on file and the nature of the proposal:

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the importation of soil for the purposes of site restoration and restoration works using imported inert soil on lands constitutes 'works' as defined in section 2(1) of the Planning and Development Act, 2000, as amended and is, therefore, development,
- (b) the subject works involve the importation and deposition on land of inert soil (whether or not it is deemed to comprise a waste or a by-product) and, therefore, pursuant to section 3 (2)(b)(iii) of the Planning and Development Act, 2000, as amended, the use of the land has materially changed and, therefore, is development,

- (c) the grant of substitute consent under An Bord Pleanála reference number 19.SU.0095 required, under condition number 2, that the developer was to submit to, and agree in writing with, the planning authority, within three months of the date of the Order (that is, within three months of the 29th day of June, 2015), an implementation programme for the progressive restoration of the site in accordance with section 9.4 of the submitted remedial Environmental Impact Statement and drawing number CD014/02, and also required that restoration works were to be implemented in accordance with the agreed programme,
- (d) no evidence has been submitted that the developer had submitted this implementation programme, as required by this condition, and that such an implementation programme had been agreed in writing with the planning authority, nor that any restoration works that have taken place on the subject site, including the importation of soil and its use on the site for restoration, has been carried out in accordance with such an agreed programme,
- (e) if it could be established that the soil that has been infilled was not waste, then the development in question would be classified as land reclamation, and potentially, if the lands in question were to be restored as part of a farm holding, and not used as a quarry at any time in the future, would come within the scope of Article 8C of the Planning and Development Regulations, 2001, as amended, but,

- (f) having regard to the lack of evidence of compliance with condition number 2 of the grant of substitute consent under An Bord Pleanála reference number 19.SU.0095, any exemption that would, otherwise, apply is restricted pursuant to Article 9 (1)(a)(i) of the Planning and Development Regulations, 2001, as amended, as such restoration would, in the absence of the agreed programme, contravene this condition and, therefore, the development in question is not exempted development:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the importation of soil for the purposes of site restoration and restoration works using imported inert soil in relation to authorised quarry lands at Carton, Durrow, County Offaly 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.

Philip Jones

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2018.