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**Planning and Development Acts 2000 to 2019**

**Planning Authority: Donegal County Council**

**Planning Register Reference Number: S5 19/16**

**WHEREAS** a question has arisen as to whether the construction of earthen embankments for the purpose of drainage improvements at Speenogue, Burt, Lifford, County Donegal is or is not development or is or is not exempted development:

**AND WHEREAS** Gerard McLaughlin care of MTW Architectural Services of Shandrum, Drumfries, Clomany, County Donegal requested a declaration on this question from Donegal County Council and the Council issued a declaration on the 1<sup>st</sup> day of August, 2019 stating that the matter was development and was not exempted development:

**AND WHEREAS** Gerard McLaughlin care of Joe Bonner Town Planning Consultants Limited of The Airport Hub, Unit 1, Furry Park, Old Swords Road, Santry, Dublin referred this declaration for review to An Bord Pleanála on the 28<sup>th</sup> day of August, 2019:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) Section 177(U)(9) of the Planning and Development Act, 2000, as amended,
- (e) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Class 3 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- (g) the pattern of development in the area including the topography and watercourses:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the earthen embankment is adjacent to a drainage ditch, which would convey large volumes of water in the event of extreme rainfall,

- (b) the earthen embankment would not serve any function related to the diversion of surface water or the protection of lands in times of normal weather patterns as it would be sited above the water level, and
- (c) the purpose of the earthen berm and its function in times of extreme rainfall events is not evidently connected with the function of the drainage ditch and it was considered that it would not assist in the protection of lands in such extreme circumstances and as such could not be considered to be a structure which is connected with the drainage ditch:

**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 construction of earthen embankments for the purpose of drainage improvements at Speenogue, Burt, Lifford, 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.

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**Terry Ó Niadh**

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

**Dated this            day of            2019.**