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**Planning and Development Acts 2000 to 2020**

**Planning Authority: Fingal County Council**

**Planning Register Reference Number: FS5/031/20**

**WHEREAS** a question has arisen as to whether the (i) erection of fencing which blocks habitually open access points, (ii) erection of a large vehicular access gate across a public footpath and (iii) deep trenching and mounding on lands which are / have been habitually open to the public along the boundary of Old Tramway and Howth Castle Estate, Howth, County Dublin is or is not development or is or is not exempted development:

**AND WHEREAS** Friends of the Irish Environment care of Brian Hewson of 54 Church Street, Howth, Dublin requested a declaration on the said question from Fingal County Council and the said Council issued a declaration on the 27<sup>th</sup> day of August, 2020 stating that (i) the erection of fencing which blocks habitually open access points, (ii) the erection of a large vehicular access gate across a public footpath is not exempted development and (iii) trenching/earthworks is exempted development:

**AND WHEREAS** Tetrarch Capital Limited care of Tom Philips and Associates of 80 Harcourt Street, Dublin referred the declaration for review to An Bord Pleanála on the 23<sup>rd</sup> day of September, 2020:

**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, as amended,
- (c) Section 4(1) of the Planning and Development Act, 2000, as amended,
- (d) Section 177U(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) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (g) the planning history of the site,
- (h) the pattern of development in the area,
- (i) the submissions on file, and
- (j) the report of the Inspector:



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

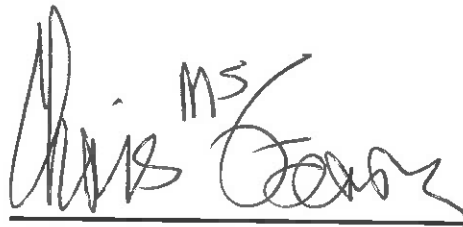
- (a) the erection of fencing constitutes works which is development and which comes within the scope of Class 11 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, but is de-exempted by reason of exceeding the height limitation set out in Item 1 of Column 2, Conditions and Limitations of Class 11;
- (b) the erection of a gate constitutes works which is development and which comes within the scope of Class 9 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, but is de-exempted by reason of exceeding the height limitation set out in Column 2, Conditions and Limitations of Class 9;
- (c) deep trenching and mounding constitutes works which is development and which does not come within the scope of Class 3 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, as these works are not deemed to fall within the exempted development category of rural and no other exemption for these works is provided for in legislation:

**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 (i) the erection of fencing which blocks habitually open access points, (ii) the erection of a large vehicular access gate across a public footpath and (iii) deep trenching and mounding on lands which are / have been habitually open to the public along the boundary of Old Tramway and Howth Castle Estate, Howth, County Dublin are development and are not exempted development.



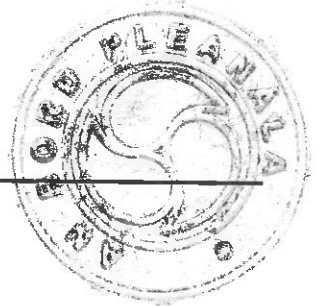
## Matters Considered

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.



**Chris McGarry**

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



Dated this 5<sup>th</sup> day of July 2021