

An
Bord
Pleanála

Board Order
ABP-313086-22

Planning and Development Acts 2000 to 2021

Planning Authority: Kerry County Council

Planning Register Reference Number: EX967

WHEREAS a question has arisen as to whether an existing 'dam-type structure' constructed on an open watercourse close to where it connects to the sea at Drimna Beg, Sneem, County Kerry is or is not development or is or is not exempted development:

AND WHEREAS Chris Fitzgibbon care of Teicniúil-Priory Consulting Engineers Limited of The Courtyard, Fairhill, Killarney, County Kerry requested a declaration on this question from Kerry County Council and the Council issued a declaration on the 22nd day of February, 2022 stating that the proposed works would constitute development which is exempted development:

AND WHEREAS Chris Fitzgibbon care of Teicniúil-Priory Consulting Engineers referred this declaration for review to An Bord Pleanála, on the 16th day of March, 2022:

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

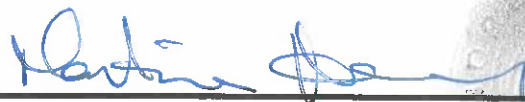
- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) articles 8B, 8G and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 13 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) Class 3 of Part 3 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (e) the location of the subject site in proximity to Kenmare River SAC (Site Code: 002158), and
- (f) the nature of land use and the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the 'dam-type structure' constructed on an open watercourse close to where it connects to the sea by culverting of the open channel and the construction of the farm track/passage, involved the carrying out of works, and would, therefore, constitute development;
- (b) the culverting of the open watercourse was not for the purposes of field drainage for agriculture, but rather for the provision of the link farm track/passage and does not, therefore, come within the scope of the exemption provided for under article 8B of the Planning and Development Regulations 2001, as amended, or the exemption provided for under Class 3 of Part 3 of the Second Schedule to the Planning and Development Regulations, 2001, as amended;

- (c) the provision of the farm track/passage to link two folios of land, does not come within the scope of article 8G of the Planning and Development Regulations, 2001, as amended, as there is no evidence of forests or woodland that are served by this passage, and the development does not come within the scope of Class 3 of Part 1 of the Second Schedule to the Regulations, because the subject passage that has been laid is a new road for the use of vehicles and the works involved do not, therefore, constitute the repair or improvement of an existing street, road or way, nor the construction of any private footpath or paving and is, therefore, not exempted development,
- (d) the restriction on exemption set out in Section 4(4) applies in this instance, as the competent authority has determined that the works, which are in the vicinity of Kenmare River Special Area of Conservation (Site Code: 002158), would have required appropriate assessment and are not, therefore, exempted development.

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 carrying out of the works, namely the construction of a 'dam-type structure' on an open watercourse close to where it connects to the sea at Drimna Beg, Sneem, County Kerry, is development and is not exempted development.



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

Dated this ¹²18 day of August 2023