



Planning and Development Acts 2000 to 2022

Planning Authority: Kildare County Council

Planning Register Reference Number: ED/989

WHEREAS a question has arisen as to whether:

- (a) the importation and deposit of soil and/or subsoil from off-site into a number of heaps on the land,
 - (b) the parking of an industrial vehicle bearing a large arm (or a type which can be used to distribute/move soil and/or subsoil) on this land and parking of commercial trucks on site,
 - (c) the use of this property for non-agricultural external storage,
 - (d) the erection of a circa 3.0-metre-tall timber fence on the land,
 - (e) the sorting of soil and subsoil, the placing the sorted matter into bags and the transportation of these bags off the site, and
 - (f) the use of a large barrel-vaulted structure which has been erected on the site for the sorting, bagging and dispatch of soil and subsoil,
- all at Painestown, Kill, County Kildare is or is not development or is or is not exempted development,

H.

AND WHEREAS Tom Kelliher, Pat O'Reilly and others care of Adamson Law Solicitors of 13 Herbert Street, Dublin requested a declaration on the said question from Kildare County Council and the Council issued a declaration on the 1st day of March, 2023 stating that:

- (a) the importation and deposit of soil and/or subsoil from off-site into a number of heaps on the land is development and is not exempted development,
- (b) the parking of an industrial vehicle bearing a large arm (or a type which can be used to distribute/move soil and/or subsoil) on this land and parking of commercial trucks on site is development and is not exempted development,
- (c) the use of this property for non-agricultural external storage is development and is not exempted development,
- (d) the erection of a circa 3.0-metre-tall timber fence on the land is development and is not exempted development,
- (e) the sorting of soil and subsoil, the placing the sorted matter into bags and the transportation of these bags off the site is development and is not exempted development, and
- (f) the use of a large barrel-vaulted structure which has been erected on the site for the sorting, bagging and dispatch of soil and subsoil is development and is not exempted development,

AND WHEREAS Tom Kelliher, Pat O'Reilly and others care of Farry Town Planning Limited of Suite 180, 28 South Frederick Street, Dublin referred the declaration for review to An Bord Pleanála on the 1st day of March, 2023,

AND WHEREAS An Bord Pleanála, in considering the referral, decided, in the interest of clarity, to modify the question as follows:

whether the importation of and deposit of soil and/or subsoil, the use of the shed and activities on site for sorting, bagging of soil and/or subsoil and transportation off site, the parking of commercial vehicles, and the erection of a three-metre-high timber fence is or is not development or is or is not exempted development,

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

- (a) Section 2, 3 and 4 of the Planning and Development Act 2000, as amended,
- (b) Section 4(1)(l) of the Planning and Development Act 2000, as amended,
- (c) Article 6(1) and Article 9(1) of the Planning and Development Regulations 2001, as amended,
- (d) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations 2001, as amended,
- (e) the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended by SI No. 86 of 2008),
- (f) the submission on file by the referrer and by the owner to the planning authority,
- (g) the planning history of the site, and



(h) the pattern of development in the area,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the importation of soil for the purpose of sorting, bagging and transport off site constitutes 'works', and 'development' as defined in Section 2 and Section 3, respectively, of the Planning and Development Act 2000, as amended,
- (b) the recovery of excavated inert soil, for the purpose of the improvement or development of land, is identified in the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended) as a waste activity that requires a certificate of waste registration from the planning authority,
- (c) '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 imported 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, and
- (d) the erection of a three-metre-high fence is in excess of the limitation under Class 4 of Part 3, of Schedule 2,



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 importation of and deposit of soil and/or subsoil, the use of the shed and activities on site for sorting, bagging of soil and/or subsoil and transportation off site, the parking of commercial vehicles, and the erection of a three-metre-high timber fence is development and is not exempted development.



Stewart Logan

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**

Dated this *25th* day of *April* 2024.