



An  
Bord  
Pleanála

## Board Order 01.RL.3479

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**Planning and Development Acts 2000 to 2017**

**Planning Authority: Carlow County Council**

**Planning Register Reference Number: SEC5/16/03**

**WHEREAS** a question has arisen as to whether the importation of inert soil for the purposes of site restoration, and restoration works using imported inert soil, in respect of a quarry at Powerstown, County Carlow is or is not development or is or is not exempted development:

**AND WHEREAS** Tom McDonald of Kilcarrig Quarries Limited, Kilcarrig Heights, Bagenalstown, County Carlow requested a declaration on the said question from Carlow County Council and the Council issued a declaration on the 12<sup>th</sup> day of April, 2016 stating that the said matter is development and is not exempted development:

**AND WHEREAS** Tom McDonald of Kilcarrig Quarries Limited, Kilcarrig Heights, Bagenalstown, County Carlow referred the declaration for review to An Bord Pleanála on the 9<sup>th</sup> day of May, 2016:

**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)(a) and Section 4(4) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- (f) the planning history of the site:

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

- (a) the works the subject of this referral are development within the meaning of Sections 2 and 3 of the Planning and Development Act 2000, as amended,
- (b) the subject works involves 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), the use of the land has materially changed and this constitutes development,
- (c) the permission granted under An Bord Pleanála appeal reference number PL 01.129838 has expired and the conditions of that permission were not complied with to the satisfaction of the planning authority, and
- (d) the works are not directly connected with or necessary to the management of a European Site in accordance with article 6(3) of the Habitats Directive. It has not been established, to the satisfaction of the Board, that there is not a hydrological relationship between the site and the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) and, therefore, it cannot be established, beyond reasonable scientific doubt, that the subject works would not have significant effects on this European Site and, in the absence of a Natura impact statement, that the subject works would not have adverse effects on the integrity of the European Site. Therefore, the works are not exempted development in accordance with Section 4(4) of the Planning and Development Act 2000, as amended:

**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 importation of inert soil for the purposes of site restoration, and restoration works using imported inert soil, in respect of a quarry at Powerstown, County Carlow 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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**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.**

**Dated this          day of                                  2018**