

## Board Order 03.RL.3572

Planning and Development Acts 2000 to 2017 Planning Authority: Clare County Council Planning Register Reference Number: R17-11

**WHEREAS** a question has arisen as to whether the construction of a fence measuring 1.8 metres high within the quarry complex of Fountain Cross, Ballyneillan, Ennis, County Clare is or is not development or is or is not exempted development:

**AND WHEREAS** Patrick Gibney care of Earth Science Partnership (Ireland) Limited of Tonranny, Westport, County Mayo requested a declaration on this question from Mayo County Council and the Council issued a declaration on the 23<sup>rd</sup> day of March, 2017 stating that the matter was development and was not exempted development:

**AND WHEREAS** Patrick Gibney referred this declaration for review to An Bord Pleanála on the 12<sup>th</sup> day of April, 2017:

**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 6 and 9 of the Planning and Development Regulations 2001, as amended,

- (c) Class 4 of Part 3 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the subject quarry, and in particular the planning permission granted under planning register reference number 04/1064 (An Bord Pleanála reference number PL 03.216138), and
- (e) the submissions on file and the report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the construction of the subject fence would constitute works that come within the scope of Section 3(1) of the Planning and Development Act, 2000, and, therefore, constitutes development,
- (b) the development does not come within the scope of exemption afforded by Section 4(1)(h) of the Planning and Development Act 2000, as amended;
- (c) the development would come within the scope of the exemption afforded by Class 4 of Part 3 of the Second Schedule to the Planning and Development regulations, 2001, as amended, but;
- (d) the development would not be exempted development as it would contravene a condition of a planning permission, that is, condition number 21 of planning permission granted under planning register reference number 04/1064 (An Bord Pleanála reference number PL 03.216138), in the absence of any evidence of the written agreement of the planning authority pursuant to the terms of this condition (which applies to the entire quarry complex), and, therefore, the restriction on exemption under Article 9(1)(a)(i) of the Planning and Development regulations 2001, as amended, applies in this instance.

**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 construction of a fence measuring 1.8 metres high within the quarry complex of Fountain Cross, Ballyneillan, Ennis, County Clare 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.

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

Dated this day of 2018