



An
Bord
Pleanála

Inspector's Report ABP – 306103 – 19.

Question

Whether land reclamation through recontouring of lands within farm holdings is or is not development or is or is not exempted development.

Location

Binnion, Clonmany, Co. Donegal.

Declaration

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

S5 19/26.

Applicant for Declaration

William Doherty and Patrick Doherty.

Planning Authority Decision

Is development land is not exempted development.

Referral

Referred by

William Doherty and Patrick Doherty.

Owner/ Occupier

William Doherty and Patrick Doherty.

Observer

None.

Date of Site Inspection

29th November 2019.

Inspector

Mairead Kenny.

1.0 Introduction

In the assessment of this referral I have had regard to submissions raised on the related case ABP – 305482 – 19. Concurrent consideration of these two referrals would be appropriate.

2.0 Site Location and Description

- 2.1. The site is located in a rural area at the north end of the Inishowen peninsula in County Donegal. The land is stated in legal terms to be in two ownerships and to be registered under 3 no. folios. The subject site is of stated area of 5.17 ha in total. It is bounded to the east by a rocky outcrop, which encroaches onto the site. This is the edge of a small hill known as Tanderagee Hill / Binnion Hill. At the eastern end of the site also there is a dwelling house. The site is severed by a county road and for the purposes of this referral is divided into 6 no. distinct plots, which are numbered 1 to 6 (or A, B, C, D, E and F on the concurrent case). Plots 2, 4 and 6 are to the east of the county road adjacent or including the base of the hill.
- 2.2. At its eastern side of the site within plots 2/B and 4/D significant excavation involving the breaking of rock has taken place at the edge of the hill / rocky outcrop. Plot 2/B is the location of most of the stored rock. Plot 4/D is largely in use as a dwelling house and it has also has been subject of rock breaking at its easternmost side. The extent of rock excavation within plots 2/B and 4/D is shown on a map presented in the referral, which I consider appears to be reasonably accurate. Plot 6/E is vacant.
- 2.3. To the west of the county road plot A has been infilled/restored. Within plot 3/C there is stored rock and a small shed. The original condition of the land at both sides of the county road is waterlogged.

3.0 The Question

A declaration was received by Donegal County Council on the 15th of October 2019 on behalf of Mr William Doherty and Mr Patrick Doherty.

The question is 'whether land reclamation work, through the recontouring of lands within their landholdings, is or is not development or is or is not exempted development'.

4.0 Planning Authority Declaration

4.1. Declaration

The planning authority declared that the land reclamation through the re-contouring of lands within farm holdings is development and is not exempted development.

The basis for the declaration was that the development does not constitute re-contouring of lands and the filling requires an Appropriate Assessment and cannot therefore be considered exempt.

The planning authority had regard to section 2, 4 and 177U of the Planning and Development Act 2000 as amended and Article 8C of the Planning and Development Regulations (as amended).

4.2. Planning Authority Reports

4.2.1. Planning Reports

The main points of the report dated 11th of November 2019 include:

- The excavation of rock to provide the fill material must be considered on its own merits and the question is if these excavation can be considered in connection with land reclamation or if that excavation constitutes a quarry development in their own right.
- There is a material difference between the terms soil and rock and Article 8C refers to recontouring including infilling of soil. The use of excavated rock is materially different to soil. One requires a quarrying process to extract it and the other does not. The extraction of rock, the rock breaking and grading all come within the definition of quarry, particularly in light of the definition of quarry under the Act.
- In the definition of quarrying which is presented in the report the words 'breaking minerals' are emphasised in bold.
- The extraction of material within the subject site constitutes quarrying activity. These works constitute development and do not come within any class of exempt development and are therefore not exempt.

- The matter of filling of the lands must be considered separately.
- Assuming that the fill material could be considered within Article 8C, the site lies within 130 m of North Inishowen Coast SAC (Site Code 002012). The attached screening report prepared by the planning authority confirms that significant effects on the SAC cannot be excluded and that an Appropriate Assessment is required. Having regard to section 4(4) the development is therefore not exempt.
- The question asked does not specifically refer to a single landholding. The subject lands form three separate land folios. Therefore the development cannot be considered under the Article 8C exemption provisions.
- An application is currently being considered within the subject lands for retention of ground works to reduce the site level for an agricultural shed and for permission for an agricultural shed for cattle. The reduced site levels refer to the quarried lands.
- The question relates to development which is not exempted development.

The Appropriate Assessment Screening Report prepared by the planning authority, which is dated 8th of November 2019 addresses the potential for significant impact on North Inishowen Coast SAC. In the assessment of likely significant effects impacts on water resources and water quality cannot be ruled out. The planning authority therefore concluded that an Appropriate Assessment of the proposed development is required as it cannot be excluded on the basis of objective scientific information that the proposed development individually or in combination with other plans/projects will have a significant effect on a European site – North Inishowen Coast Special Area of Conservation (site code 002012).

5.0 Planning History

Reg. ref. 03/4044 relates to erection of a dwelling house by Patrick Doherty. The subject site outlined on the planning registry map includes part of the area subject of the current referral. A copy of the registry map is on file UD17187.

Reg. ref. 19/50142 relates to an application by Patrick Doherty for retention of partial removal of rock outcrop to the rear of a dwelling house and use of said material in

recontouring of adjoining lands and for the completion of said works. The 1.18 ha site outlined comprises part of field 4/D (east of the timber fence which marks the defined end of the garden of the dwelling house) and all of field 3/C as described on this referral case documents. This application was withdrawn on 20 March 2019.

Reg. ref. 19/51608 relates to an application by William Doherty for ground works to reduce the site level foreign agricultural shed and permission for construction of an agricultural shed. Subject lands identified comprise a site location of 0.57 ha and a further field within the land holding to the west of the public road, respectively fields 2/B and 1/A is identified in the current referral case documents. The Donegal County Council website indicates that a decision is due by 25 June 2020.

The lands and the subject development are subject of un-authorized development proceedings taken by Donegal County Council – case reference UD17187. On the 10th of October 2018 a decision was made to prosecute for non-compliance with the enforcement notice. A court summons issued to developers on the 17th of January 2019 refers. The matter now stands adjourned before the District Court.

6.0 Policy Context

6.1. Development Plan

The site is not subject of any objectives for roads or any protected landscapes or views.

6.2. Natural Heritage Designations

The nearest European site is North Inishowen Coast Special Area of Conservation.

7.0 The Referral

7.1. Referrer's Case

The request to review the declaration includes the following points:

- William and Patrick Doherty are cousins who own adjoining farm holdings and decided to reclaim parts of each of the farm holdings by taking material from

high ground to raise the level of lower ground within their respective farm holdings. The material from the elevated area to the east of the farm holdings is considered to be suitable to underlay the topsoil and reclaim the remaining fields. This was considered to be exempted development under article 8C.

- Work commenced on the excavation of the higher ground which consisted mainly of rock overlain with dry heath. Patrick Doherty had started to backfill a small part of one of his fields when the work was halted by the planning authority and no further recontouring has occurred since.
- The planning authority has not provided a rationale to support its view that the works do not constitute recontouring of lands or the filling of lands requires an Appropriate Assessment.
- Various definitions of recontouring which are provided refer to reshape/remodel/reshape the contour or change the shape of something/contour something again in a different way. It would be reasonable to conclude that the works involving removal of elevated ground to underlay lower ground on the farm holdings follows the above definitions.
- Article 8C specifically excludes waste but does not otherwise restrict the nature of the material that can be used to re-contour lands within a farm holding. Recontouring can include infilling of soil and does not exclude rock.
- The planning authority may have decided that the works is in the first instance quarrying. My clients are not involved in any quarry business and no materials have been removed from their lands and no processing of the excavated materials has taken place. The rock was easily removed with the bucket of a plant machine. There is no plant or machinery normally associated with a quarry operation on the lands.
- It is unreasonable to interpret that the works to achieve reclamation of land through recontouring, is first and foremost quarrying and cannot avail of the exemption under Article 8C. The excavation works are a necessary subsidiary activity to achieving the recontouring and the main objective of the works is to achieve the reclamation of fields within the farm holdings.

- There is no restriction on the amounts of material to be used as land reclamation and no basis for stating that the works do not constitute recontouring having regard to the scale and extent of the recontouring works.
- A copy of a screening report relating to the reclamation works is attached. This concluded that the existing and proposed land reclamation works either individually or in combination with other plans are projects, have not and are not likely to have a significant effect on any European site. Due to the scale, nature and location of the existing and proposed land reclamation works there would be no significant negative effects on any of the qualifying interests.
- In accordance with section 177U(9) the Board as the competent authority is requested to conduct a screening for Appropriate Assessment. It is respectfully considered that the screening should find that this project, either individually or in combination with other plans and projects, is not likely to have a significant effect on any European site.

The Screening Report included as part of the referral submission contains the following information:

- Field 1/A contains a large amount of topsoil which has been naturally re-colonised. The eastern side of Field 3/C contains a significant amount of re-colonised scattered rock and overburden.
- Map 2 shows habitats in and around the site. The Natura 2000 sites within 10 km of the subject site are
 - North Inishowen Coast SAC Site Code 002012 (300m to NW from the bottom of field 3/C)
 - Trawbreaga Bay SPA Site Code 004034 (4.62km to NE)
 - Malin Head SPA Site Code 004146 (9.58 km to NE).
- North Inishowen Coast SAC has been screened in for further studies.
- Due to the nature and absence of any avenue of connectivity all other named Natura 2000 sites have been screened out of any further studies.
- The location of North Inishowen Coast SAC including the map of qualifying interests relative to the site is shown on map 3.

- The qualifying interests are:
 - Narrow-mouthed Whorl Snail
 - Mudflats and sand flats not covered by sea water at low tide
 - Perennial vegetation of stony banks
 - Vegetated sea cliffs of the Atlantic and Baltic coasts
 - Otter
 - Fixed coastal dunes with herbaceous vegetation (grey dunes)
 - Machairs
 - European dry heaths.
- There is no qualifying interest habitat adjoining the subject site. The dry heath habitat that lies to the east of the subject site is not part of the SAC and is not a qualifying interest.
- The Clonmany River is located 260 m west from the bottom of Field 3 and flows for 1.73 km north before it enters Tullagh Strand at the location marked as mudflats and sand flats which is a qualifying interest. The subject site is buffered from this avenue of connectivity by an area of wet grassland, scrub and marsh which measures approximately 3.9 ha. All run-off from Fields 1, 3 and 5 will flow into this area which acts as a natural buffer. A local access road to Tullagh strand lies to the west of this area with more grassland habitat to the west of the road. Clonmany River then runs to the west of this area.
- Table 6.1 provides information on the SAC including the qualifying interests/habitats, site sensitivity and vulnerability, conservation status, general threats and specific threats from the proposed development.
- All qualifying interests can be screened out of any further studies.

In the declaration application submitted to the planning authority the following information is provided:

- The eastern side of the land consists of a high rocky outcrop, which my clients recently reduced to use this material to underlay low-lying fields to the west.

- The works consist of recontouring of land within a farm holding to facilitate land reclamation by utilising the excavated material from the higher lands to the east of the farm holdings to raise the level of lower lands to the west. There is no import or export of materials from the farm holding to another farm holding or to another end-user.
- There is no wetland involved.
- Under Article 8C there is no restriction on the nature of the material that can be used to re-contour lands within a farm holding. Rock is not excluded from benefiting from the exemption afforded under Article 8C. There is no restriction on the extent or amounts of material to be used as part of land reclamation under Article 8C.
- Article 9 does not apply. None of the Article 9 limitations apply to the reclamation works.
- Land reclamation has largely been completed in Field 1 and works were ongoing in field 3 where topsoil removal and rock disposal can be seen. It is hoped to reclaim the remaining 4 no. wet and low-lying lands, while the remaining field is the curtilage and garden associated with the dwelling house.

7.2. Planning Authority Response

The response of the planning authority notes as follows:

- The section 5 referral report was released by way of further information on 11 December 2019.
- The planning authority is considering an application under Reg. Ref 19/51608 for 'ground works to reduce the site level for agricultural shed and permission for an agricultural shed for wintering cattle' on that part of the landholding on which the rockface has been excavated to provide rock for filling of lands.
- In considering the excavation of the rockface for the purposes of providing fill material, the planning authority has concluded that the process required to provide the material constitutes quarrying as defined in the Act. It is the position of the planning authority that it is necessary to consider the works at the eastern end of the site as a separate activity which is quarrying.

- There is no question but that quarrying is currently taking place on the site. For the rock to be available in its current state, plant and machinery normally associated with quarrying would have to have been present. Therefore the determination that part of the works constituted quarrying rather than recontouring is considered justified.
- Filling of lands is considered as part of a recontouring of lands project.
- The screening report for Appropriate Assessment was not submitted with the original application. It appears to be missing pages 5 and 6. Therefore significant information including a description of the development and methodology are not available.
- Nevertheless given the intricate arrangement of streams and drains both abutting and within the lands where infilling is proposed which discharge directly to the North Inishowen Coast SAC (Site Code 002012) the planning authority does not concur with the screening report submitted. The planning authority continues to deem a Stage 2 Appropriate Assessment to be necessary.

7.3. Further Responses

None.

8.0 Statutory Provisions

8.1. Planning and Development Act, 2000 (as amended)

Section 2(1)

“**quarry**” means an excavation or system of excavations made for the purpose of, or connection with, the getting of materials (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or borehole or a well and borehole combined, and shall be deemed to include

- (i) any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the

breaking, crushing, grinding, screening, washing or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on....

“**works**” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

Section 3(1)

In this Act “**development**” means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of the structures or other land.

Section 4(2)(a)

The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act...

Section 4 (4)

Notwithstanding paragraphs (a), (i), (ia) and (i) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 177U(9)

In deciding upon a declaration or referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for Appropriate Assessment in accordance with the provisions of this section.

8.2. This Planning and Development Regulations, 2001 (as amended)

Wetlands are “natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water”.

Article 6(1) states:

Subject to article 9, development of the class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the act, provided

that such development complies with the conditions and limitations specified in column 2.

Article 6(3) states:

Subject to Article 9, in areas other than a city, a town or an area specified in section 19 (1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2.

Article 8C:

Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.

Article 9(1):

Development to which Article 6 relates shall not be exempted development for the purposes of the Act in circumstances including these below:

- (a) if the carrying out of such development would –
 - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
 - (iii) endanger public safety by reason of traffic by reason of obstruction of road users,
 - (vi) interfere with the character of the landscape, or review our prospect of special amenity value or special interest...
 - (viiB) comprise development in relation to which a planning authority or ABP is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site
 - (viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

Schedule 2 - Part 1 – Exempted Development – General

Development within the curtilage of the dwelling house

Class 6 (a)

Column 1 – The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.

Column 2 - the level of the ground shall not be altered by more than 1 m above or below the level of the adjoining ground.

Schedule 2 - Part 3 Exempted Development – Rural –

Land Reclamation

Class 11:

Development consisting of the carrying out of drainage and / or reclamation of wetlands. Conditions and limitations refer to the area not exceeding 0.1 ha.

Condition 2 clarifies that where development within a farm holding under this class has been carried out the total area shall not exceed the specified 0.1 ha.

9.0 Assessment

In this case the referral follows the declaration by the planning authority. The referring party has submitted a screening report, which was incomplete when lodged. The completed document was not referred to the planning authority. I am satisfied that the obtaining the opinion of the planning authority on the entire screening report would not add substantive information.

9.1. Issues

I consider this referral raises the following issues:

- Whether the activities are ‘works’ and are ‘development’.
- Whether the removal of rock at the eastern side of the site is quarrying or recontouring.
- Whether the defined site comprises a farm holding.
- Whether Article 8C applies.

- Whether there is any restriction on exempted development.
- Appropriate Assessment.

As a prelude to considering these issues I note the following:

- I am satisfied that the lands affected by the subject development would not be described as a 'wetland' under the definition presented above. As such Class 11 of the PDR 2001 as amended is not relevant.
- There is no importation of materials from outside the site defined. I am also satisfied that there is no proposal to export excavated material and that the volume of excavated rock would all be utilised in the reclamation of the site.
- The development does not involve waste material.
- Fields 1/A, 2/B, 5/F and 6/E are owned by William Doherty and 3/C and 4/D are owned by his cousin Patrick Doherty. All lands are stated to be farmed by William Doherty.
- Field 1/A contains a small animal handling facility.
- Field 2/B has a considerable amount of siliceous scree and loose rock to the east with exposed siliceous rock in situ. An area of dry heath lies to the east.
- Field 3/C contains a small sheep shed.
- Field 4/D contains a dwelling house and is described as being dominated by buildings and artificial surfaces with siliceous scree and loose rock to the east.
- Fields 1/A, 5/F and 6/E are improved agricultural grassland and 2/B and 3/C are wet grassland.

9.2. Is or is not development

This referral case refers to activities involving the breaking up and removal of rock from the eastern portion of the landholdings, clearing of fields of subsoil prior to placing rock in situ and then replacing the subsoil on top. All of these activities are clearly "works" and "development" within the meaning of the Act.

9.3. Is or is not exempted development

A significant element of the dispute between the developers and the planning authority relates to **whether the removal of rock at the eastern side of the site is 'quarrying' or is 'recontouring'**.

The planning authorities firmly of the view that quarrying has taken place. I consider that if the planning authority interpretation is accepted then any significant rock breaking activity involved in the recontouring of land would be excluded from Article 8C. I do not consider that this would be a reasonable interpretation of the legislation. Notwithstanding the fact that the works involving removal of rock have taken place at a very separate part of the site I do not consider that quarrying has taken place. I agree with the submission on behalf of the developers that the works may reasonably described as falling under the description of recontouring. In my opinion nothing in Article 8C precludes movement of material or breaking of rock as part of a recontouring activity. Waste material is specifically excluded. Had the intention been to also exclude stone, in my opinion is that would have been explicitly stated.

Regarding the nature of the working at the eastern side, I am satisfied that this is not quarrying. Not all breaking of rock is quarrying. Some breaking of rock will fall within the activity of recontouring of land. I note and accept the submission on behalf of the developers that the landowners have no involvement in quarrying, that no materials have been removed from their lands and no processing of the excavated material has taken place. Furthermore I accept that the rock may have been easily removed with the bucket of a plant machine as stated.

I now address other aspects of Article 8C. It is clear that land reclamation is taking place or is intended to take place within parts of the site. Article 8C provides for **recontouring of land within a farm holding**. The lands are agricultural in nature and notwithstanding the general absence of farm buildings, would be described as farmland. However, for the following reasons I do not consider that the development has taken place 'within a farm holding'.

- One of the plots (D/4) is described in the submissions on behalf of the owners/occupiers as 'essentially the curtilage and garden' associated with a dwelling house. Excavation has taken place at the eastern end of this plot and the relevant area is separated from the landscaped garden area by a timber

post and rail fence. The planning register map from the website defines the entire 4/D as the relevant lands for the purposes of the permission granted for the house on site. I consider that the planning history, rather than the location of a post and rail fence should be relevant in determining the use of this part of the overall site.

- Article 8C cannot apply to 4/D as it is a dwelling house and the associated curtilage and garden.
- Works involving alteration of ground level within the curtilage of the dwelling house is limited under Class 6(a) to 1 m depth. The excavation which has taken place at the eastern side of the residential plot greatly exceeds that limit. Therefore, the development does not fall under the exempted development provisions conferred by Class 6(a). The removal of rock which has taken place within 4/D is not exempted development under Article 8C as it is not within a farm holding but is within the curtilage of a dwelling house.
- The development is taking place within two holdings, which are in separate ownerships. For the purposes of the referral the two plots are submitted for joint consideration by the Board. There is no distinction made in respect of drawings or details. However, it is not disputed that there are separate land owners. In my opinion, the site defined encompasses more than one farm holding. It is not 'a farm holding'.
- The rock which has been utilised in the land reclamation has been sourced from two different landholdings (the majority of lands of which may be described as farm holdings what part of which relates to a dwelling house site) and is intended to be utilised in the raising of lands within two different farm holdings. This is not a simple case of moving material 'within a farm holding'. There is transfer of material between the holdings.
- As part of its deliberations in relation to whether or not the activity relates to 'a farm holding' the Board may wish to consider the statement that all lands are farmed by William Doherty. Notwithstanding the management of the site (excluding the dwelling house) as a single holding for agricultural purposes at this time, I do not consider that this is sufficient to conclude that the activity relates to a single farm holding. In this regard I note that the statements

indicate that both landowners appear to have been involved in the works. Rock has been taken from both holdings. Furthermore both landowners were directly involved in the making of planning applications relating to parts of the site under reg ref 19/50142 and reg. ref. 19/51608, which shows separate activities by two persons in two holdings. I conclude that this is not a single farm holding.

- Regarding the intention to use part of the lands following recontouring for construction of an agricultural shed I accept that the primary purpose of the activity is related to the recontouring of the overall lands and not directed to the construction of the shed. Obviously, any legislative requirements relating to the shed would have to be adhered to as a separate matter.

Having regard to the above I conclude that the development which has taken place:

- is not quarrying
- falls partly within the curtilage of the dwelling house
- it is not within a farm holding
- does not fall under article 8C or any other exempted development provision under the regulations or act
- the development is not exempted development.

9.4. Restrictions on exempted development

Any development shall not be exempted development if an Appropriate Assessment of the development is required. I am satisfied that there are no other restrictions on exempted development which would be relevant to this case.

Notwithstanding the above conclusion that the development is not exempted development, I propose for completeness and having regard to the submissions of the parties and the conclusion of the planning authority to follow on with the matter of Appropriate Assessment.

9.5. Appropriate Assessment

Article 6(3) of the Habitats Directive requires that any plan or project not directly connected with or necessary to the management of a European site, but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to Appropriate Assessment of its implications for the sites in view of the sites' conservation objectives.

The Board is the competent authority in this regard. The Board must be satisfied that the proposed development would not adversely affect the integrity of the European sites having regard to their conservation objectives.

This section of this report assesses whether in view of best scientific knowledge the project, individually or in combination with other plans or projects, is likely to have a significant effect on any European site, in view of the sites' conservation objectives.

The subject referral relates to a project that is not directly connected with or necessary to the management of a European site.

The submissions on behalf of the developers include a screening report. Map 2 of this document shows habitats in and around the referral site.

The screening report identifies the Natura 2000 sites within 10 km of the subject site as

- North Inishowen Coast SAC Site Code 002012 (300m to NW from the bottom of field 3/C)
- Trawbreaga Bay SPA Site Code 004034 (4.62km to NE)
- Malin Head SPA Site Code 004146 (9.58 km to NE).

Having regard to the nature of the likely significant impacts, which would be related to habitat loss and/or water quality effects and given the absence of hydraulic connections between the site of the proposed development and Trawbreaga Bay SPA and the distance to Malin Head SPA and the absence of any indication that the site is of importance for birds, I agree with the case made on behalf of the developers that these two European sites can be screened out from further consideration.

Furthermore I also agree that due to the proximity and potential hydraulic connections to North Inishowen Coast SAC, further consideration is warranted.

The qualifying interests of North Inishowen Coast SAC are

- Narrow-mouthed Whorl Snail
- Mudflats and sand flats not covered by sea water at low tide
- Perennial vegetation of stony banks
- Vegetated sea cliffs of the Atlantic and Baltic coasts
- Otter
- Fixed coastal dunes with herbaceous vegetation (grey dunes)
- Machairs
- European dry heaths.

There is no qualifying interest habitat adjoining the subject site. The dry heath habitat that lies to the east of the subject site and which is contiguous to the same habitat within the European site is not part of the SAC. The removal as part of the quarrying/recontouring of an area of European dry heath outside of the SAC is not relevant to Appropriate Assessment.

Narrow-mouthed Whorl Snail (*Vertigo angustior*)

The screening report indicates that this species is threatened by loss of habitat through intensive agricultural practices and that the proposed development will not have any negative effect on this qualifying interest as there is no avenue of connectivity. No further information is provided and no specific surveys have been undertaken. Any such surveys would be a specialised matter to be undertaken only by licensed experts. The site synopsis presented in Appendix 1 notes the presence of this species in the SAC but does not indicate its location.

I have examined the information available on the NPWS website which shows that *Vertigo angustior* has two different habitat requirements, a dune phase and a marsh phase. Sites have been lost due to habitat modification following drainage of wetlands and result in changes in vegetation. The site-specific Conservation Objectives indicate that the species is present in 3 no. grids which are shown on

Map 7, one of which is nearby Tullagh Strand. The other two locations (about 5km to the north-east) appear to be of more importance.

I am satisfied that the lands in the vicinity of the subject site are not relevant to the qualifying interest *V. angustior*. There is no potential for significant effects on the habitats supporting the species at Tullagh Strand and therefore no potential for significant effect on the qualifying interest.

Mudflats and sand flats not covered by sea water at low tide.

Map 4 of the Conservation Objectives presented in the screening report shows that this habitat is almost 600 m north of the subject site. The habitat would be sensitive to surface and marine water quality changes. There is stated to be no direct avenue of conductivity between the referral site and this habitat.

The referral site is connected by way of land drains to the lands to the west of the county road and ultimately to the Clonmany River which flows northwards to the SAC. There is a separation distance of 250 m between the edge of the referral site and the river. The activity at the referral site would not be likely to give rise to significant releases of sedimentation and no pollution affects would be anticipated. Any water flow would be impeded by the natural buffer of almost 4 ha of wetlands/marsh/scrub.

Having regard to all of these factors I accept the submission in the screening report presented. I conclude that this qualifying interest can be screened out from further studies and that the Board can be satisfied that there would not be a significant effect on the qualifying interest.

Perennial vegetation of stony banks

Vegetated sea cliffs of the Atlantic and Baltic coasts

Fixed coastal dunes with herbaceous vegetation (grey dunes)

Machairs

European dry heaths

The above habitats can be considered as a group. I consider that the sensitivity of these habitats to sedimentation effects would not be high with the exception of Machairs.

The referral site is connected by way of land drains to the lands to the west of the county road and ultimately to the Clonmany River which flows northwards to the SAC. There is a separation distance of 250 m between the edge of the referral site and the river. The activity at the referral site would not be likely to give rise to significant releases of sedimentation and no pollution affects would be anticipated. Any water flow would be impeded by the natural buffer of almost 4 ha of wetlands/marsh/scrub.

None of these qualifying interests are located in the immediate vicinity of the river. All of the habitats in addition would be situated at a level above the river level and would not therefore be exposed to any sedimentation.

Having regard to all of these factors I accept the submission in the screening report presented. I conclude that this qualifying interest can be screened out from further studies and that the Board can be satisfied that there would not be a significant effect on the qualifying interest.

Otter

Map 8 of the Conservation Objectives indicates an Otter commuting route along the coast. The Otter survey which is reported in the screening report and undertaken for the purposes of this referral did not find any evidence of direct use of lands in the environs of the site. Having regard to my conclusions above in relation to the very limited effect of sedimentation release, I do not consider that there would be any likelihood of significant effect on prey. I am satisfied therefore that direct and indirect effects on Otter can be ruled out.

I conclude that this qualifying interest can be screened out from further studies and that the Board can be satisfied that there would not be a significant effect on the qualifying interest.

I consider it reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the North Inishowen Coast SAC or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

10.0 Recommendation

10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether land reclamation through re-contouring of lands within farm holdings at Binnion, Clonmany, Co. Donegal or is not development or is or is not exempted development:

AND WHEREAS William Doherty and Patrick Doherty requested a declaration on this question from Donegal County Council and the Council issued a declaration on the 11th day of November, 2019 stating that the matter was development and was not exempted development:

AND WHEREAS William Doherty and Patrick Doherty referred this declaration for review to An Bord Pleanála on the 6th day of December, 2019:

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,
- (c) Section 4(1)(a) 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), article 6(3) 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.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The development does not fall within the definition of quarrying.
- (b) The removal of excavation of rock within field 4 / plot D does not fall under article 8C as it is within the curtilage of a dwelling house.
- (c) The removal of rock which has taken place within field 4 / plot D is not exempted development under Class 6(c) as it is in excess of 1 m depth.
- (d) The development site is not a single farm holding.
- (e) The development does not fall under article 8C or any other exempted development provision under the Regulations or Act.
- (f) The development would not be likely to have a significant effect on North Inishowen Coast SAC or any other European site.

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 development is not exempted development.

Mairead Kenny
Senior Planning Inspector

22nd June 2020