



An
Bord
Pleanála

Inspector's Report ABP 311192-21

Question

Whether the stripping back and removal of all of the topsoil and trees to create an extension of 2.75 hectare to an existing quarry for storage in the existing quarry is or is not development and is or is not exempted development.

Location

Lands at Reenagappul, Kenmare, Co. Kerry.

Declaration

Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	EX931
Applicant for Declaration	Martin Arthur
Planning Authority Decision	None

Referral

Referred by	Martin Arthur
Owner/ Occupier	Brain Gallivan
Observers	None

Date of Site Inspection

20/1/2022

Inspector

Siobhan Carroll

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1.0 Site Location and Description

- 1.1. The subject lands are located in the townland of Reenagappul, Kenmare, Co. Kerry. It is situated circa 650m to the south-west of the Main Street in Kenmare. The Kenmare Wastewater treatment plant is located circa 200m to the north-west. There is an existing quarry immediately to the south-west of the Wastewater treatment plant compound. Extracted stone is stockpiled at this location. The subject lands are located circa 70m to the south-west of the existing quarry. On lands to the south of the quarry there is soil containing stones and rocks also stockpiled.
- 1.2. The Kenmare stone circle, a National Monument, is situated circa 330m to the north-west of the site.
- 1.3. The subject lands comprises a grassed field. There is a small shed and stables to the south-eastern corner of the field where a group of horses were located on inspection of the lands. This area is gravelled and fenced. There is an agricultural gate into this area and another gate inside which provides access to the grassed field. The subject lands are accessed from a private road which is gated and accessed from Market Street.

2.0 The Question

- 2.1. Whether the stripping back and removal of all of the topsoil and trees on lands at Reenagappul, Kenmare, Co. Kerry, adjacent to an SAC (Kenmare River SAC), to create an alleged unauthorized extension of 2.75 hectare to the existing unauthorized quarry at Reenagappul, Kenmare, and the importation of broken stone from the alleged unauthorized 2.75 hectare quarry extension for storage in the existing unauthorized quarry at Reenagappul, Kenmare, development or is it exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

A declaration in respect of the Section 5 referral was not issued to Kerry County to the referrer Mr. Martin Arthur. In accordance with Section 5(3)(b) of the Planning and Development Act 2000, (as amended) Mr. Martin Arthur then referred to the matter to An Bord Pleanála.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planning Authority issued a further information to the owner/occupier Mr. Gallivan on the 7th of July 2021. It stated;
 - (1) Please outline the type, extent and location of the work taking place on your lands at Reenagappul, Kenmare.
 - (2) The Planning Authority has received a report from a third party concerning the removal of material from your lands at Reenagappul, Kenmare. You are kindly asked to confirm to the Planning Authority if material has left the site, if so please outline the quantum and type of material that has left the site and the destination of this material.

3.2.2. Other Technical Reports

- None

4.0 Planning History

- 4.1. EX 918 - Section 5 referral case – Whether stripping and removal of topsoil and trees and alleged unauthorised activity on land constitutes development or is exempted development. The decision of the Planning Authority, concluded that (a) the works carried out on the site constitute works that would come within the scope of Section 2(1) of the Planning and Development Act 2000-2020, (b) The said works would constitute development that comes within the scope of Section 3(1) of the Planning and Development Act 2000-2020 (c) The nature and extent of the said

works would come within the scope provided at Article 8(c) of the Planning and Development Regulations, 2001-2021.

4.2. Adjacent site

- 4.2.1. ABP 302796 (17/1050) – Permission was refused by Board in February 2019, to the referring party, Mr. Arthur, for a proposed motorhome park, following a third party appeal. The reasons for refusal were based on premature development due to the deficiencies in the Kenmare WWTP (at capacity) which would result in a public health hazard and in the absence of a NIS, the board could not be satisfied that the proposal would not have a significant effect on Kenmare River SAC.
- 4.2.2. ABP 307488-21 (EX833) – Section 5 referral case – Whether the alleged unauthorised quarrying activity constitutes development or is or is not exempted development. Decision Is development and is not exempted development.

4.3. **Relevant Referrals**

- 4.3.1. There are a number of previous Board decisions which are relevant.
- 4.3.2. ABP Ref. RL05E.305482 – Whether the quarrying of lands at Binnion, Clonmany, Co. Donegal, is or is not exempted development.

Decision: Split decision in relation to where quarrying has taken place within field B insofar as the material removed is used/to be used solely for land reclamation works within the remainder of the farmholding, and is development and is not exempted development where it has taken place with field D as this field does not form part of the farmholding. (2020)

- 4.3.3. ABP Ref. RL26.303109 – Whether the removal of trees and vegetation from the site and infilling of the existing hole with unknown infill material and top soil at Crosstown, Ardavan, Co. Wexford Kiltel, is or is not development and is or is not exempted development.

Decision: Split decision. (a) the said removal of trees and other vegetation from the site is not development, and (b) the said infilling of the existing hole with unknown infill material and top soiling of the filled hole and the carrying out of works to allow water held in the in the hole to discharge to natural drainage network, is development and is not exempted development. (2019)

4.3.4. ABP Ref. RL06S.RL3609: Whether the spreading of clean topsoil and subsoil on lands for agricultural use at Oldcourt Lane, Oldcourt, Ballycullen, Dublin 24., is or is not exempted development or is or is not exempted development.

Decision: Is development and is not exempted development. (2018)

4.3.5. ABP Ref. RL06S.RL3540: Whether the recovery of surplus excavated inert soil and the importing of that soil for infilling low lying area at Dunancory, Virginia, Co. Cavan., is or is not exempted development or is or is not exempted development.

Decision: Is development and is not exempted development. (2018)

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Kerry County Development Plan 2015 – 2021.

- Section 4.8.1 refers to Agriculture
- Chapter 8 refers to Natural Resources
- The site is located in a rural area outside of the defined town boundary of Kenmare as indicated on the Map 2a – Land Zoning Map of the Kenmare Functional Area Local Area Plan 2010-2016 (As extended).

5.2. Natural Heritage Designations

- Kenmare SAC (site code 002158) is located to the south and west of the site is situated c. 65m at the closest point.

6.0 The Referral

6.1. Referrer's Case

- The referrer is seeking a declaration under Section 5 of the Planning and Development Act 2000 (as amended) in relation to whether the stripping back

and removal of all of the topsoil and trees to create an extension of 2.75 hectare to an existing quarry for storage in the existing quarry is or is not development and is or is not exempted development.

- Kerry County Council did not provide a decision within the statutory time period. The referrer Mr. Arthur has referred the matter to An Bord Pleanála.
- Kerry County Council issued a letter to the owner of the subject lands on the 7th of July 2021. The letter sought further information. The owner did not respond to further information request and Mr. Arthur decided to refer the matter to An Bord Pleanála for a decision.
- It is stated that the lands which are adjacent to an SAC are currently being investigated as an unauthorised development by Kerry County Council.
- The referrer states that the owner of the subject lands is involved in a quarrying business and that excavated stone has been removed from their lands and processing has taken place. The referrer states that there is plant and machinery associated with a quarrying operation on the lands.
- The referrer states that stone removed for the alleged unauthorised quarry was used in a Kerry County Council local housing project.
- It is stated that quarrying activity commenced in December 2019 and has continued on the subject lands to the present day.
- It is stated that the stone has been processed and removed by the owner.

6.2. Planning Authority Response

6.2.1. None received.

6.3. Owner/ occupier's response

- The topsoil that was stripped from the lands in question was stored whilst some rock was removed levelling out of the field was carried out. The topsoil was replaced, raked, seeded and set.
- The owner of the subject lands Mr. Gallivan states that the subject field has been finished for months.

- It is stated that a similar Section 5 referral was submitted to Kerry County Council by Mr. Arthur under Reference EX918 which essentially was the same as the current Section 5 referral. Kerry County Council issued a decision on that referral on the 21st of May 2021.
- Mr. Arthur sought a further Section 5 declaration under Reference EX931. Mr. Gallivan was issued a letter on the 21st of June 2021 in relation to the referral. He replied to that letter on the 28th of June 2021. A second letter was issued by Kerry County Council to Mr. Gallivan on the 7th of July 2021.
- Mr. Gallivan states that he replied to that letter on the 27th of July 2021 and that he was awaiting a decision from Kerry County Council.
- It is stated by the referrer that the 'development adjacent to an SAC is currently being investigated as an unauthorised development by Kerry County Council enforcement case number 8097 dated the 17th of May 2020'. Mr. Gallivan states that this is not correct.
- Enforcement case No. 8097 was opened by Kerry County Council in February 2020 when the quarrying issue was first reported by Mr. Arthur. Mr. Gallivan states that he stopped works on site and that several letters were issued between him and Kerry County Council. In a letter issued by Kerry County Council they stated that no stone was to be removed unless it was treated as waste and removed by a licenced contractor. The stone was left on the site of the disused quarry. Mr. Gallivan states that he received a letter from Kerry County Council on the 19/4/2021 which stated that an excavator was seen on the quarry and to explain its presence. Mr. Gallivan responded by letter to Kerry County Council and stated that it was parked there and awaiting removal by low loader and that it was used in the works in the new field.
- Mr. Gallivan states that he received a further letter from the Enforcement section of Kerry County Council which queried the stockpiling of the stone at the disused quarry and the removal of a few loads of stone. Mr. Gallivan states that he responded to the letter and explained that the stone being stockpiled was from the forming of the new field on his lands and that he intended to use the stone on his farm. He confirmed that a few loads had

been removed which were by licenced waste collector and that they were transported to a Licenced Waste Facility.

- Mr Gallivan states that it is not correct for the referrer to consider that the development of his new field is being investigated as an enforcement case under reference no. 8097. Reference no. 8097 concerns the disused quarry only.
- The referral discusses the previous complaint concerning quarrying at the disused quarry which has been subject of the enforcement case reference no. 8097. The Section 5 referral reference no. EX833 relates to this, and it was also issued to the Board for a declaration under the reference no. 307488-21.
- The subject referral made reference to stone being sold to Kerry County Council. In response Mr. Gallivan states that some stone was removed off site and was used in a Kerry County Council housing project which Mr. Gallivan states that he was working on and that the stone was used for temporary haul roads. Mr Gallivan confirms that the use of the stone was halted once he received the letter from the Planning Authority which required him to stop its use.
- The field in question which the referrer states is an extension to an unauthorised quarry is now fully finished. Mr Gallivan states that he will be cutting silage from the field.

6.4. Further Responses

6.4.1. None sought.

7.0 Statutory Provisions

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

7.1.1. Section 2(1)

7.1.2. “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...

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

7.1.4. Section 3(1)

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

7.1.5. Section 4(1)

Section 4(1) of the 2000 Act states that certain developments shall be “exempted development” for the purposes of the Act including (a) development consisting of the use of any land for the purposes of agriculture and development consisting of the use for that purpose of any building occupied together with land so used; (l) development consisting of the carrying out of works referred to in the Land Reclamation Act, 1949, not being works comprised in the fencing or enclosure of land which has been open to or used by the public within the ten years preceding the date on which the works are commenced I note that the “works” in the Land Reclamation Act 1949 refers to the following:—

(a) field drainage;

(b) land reclamation;

(c) the construction and improvement of watercourses;

(d) the removal of unnecessary fences;

(e) the construction of new fences and the improvement of existing ones;

(f) improvement of hill grazing;

(g) reclamation of estuarine marsh land and of callows;

(h) any operations ancillary to the foregoing.

7.1.6. Section 4(4) – Notwithstanding paragraphs (a), (i), (ia) and (l) 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.

7.2. **Planning and Development Regulations, 2001**

7.2.1. Article 6(1)

'Subject to article 9, development of a 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 of the said Part 1 opposite the mention of that class in the said column 1'.

7.2.2. Article 8

Relates to exemptions for field drainage

- Article 8B relates to field drainage for agriculture, other than reclamation of wetlands.
- Article 8C relates to land reclamation works, other than reclamation of wetlands, consisting of recontouring of land, including infilling of soil (but not waste material), within a farm holding shall be exempted development.

7.2.3. Class 11 of Part 3, of Schedule 2 refers to 'development consisting of the carrying out of drainage and/or reclamation of wetlands'.

7.2.4. The following conditions apply.

1. The area to be affected shall not exceed 0.1ha.
2. Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in 1 above.

7.2.5. Article 9(1)(a)

Development to which article 6 relates shall not be exempted development for the purpose of the Act-

- (a) if the carrying out of such development would'

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road, the surfaced carriageway of which exceeds 4metres in width.

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála 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 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.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The question relates to the stripping back and removal of all of the topsoil and trees on lands at Reenagappul, Kenmare, Co. Kerry, adjacent to an SAC (Kenmare River SAC), to create an alleged unauthorized extension of 2.75 hectare to the existing unauthorized quarry at Reenagappul, Kenmare, and the importation of broken stone from the alleged unauthorized 2.75 hectare quarry extension for storage in the existing unauthorized quarry at Reenagppul, Kenmare, development or is it exempted development.
- 8.1.2. Works is defined under Section 2(1) of the Planning and Development Act, 2000 (as amended) "...includes any or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other materials to or from the surfaces of the interior of exterior of a structure."
- 8.1.3. The owner Mr. Gallivan has confirmed in his response to the Section 5 referral that the subject lands which now comprise a grassed field were previously stripped of the

topsoil and vegetation and that stone was removed from the field and that the stone was then stored in the existing quarry on his lands at Reenagappul, Kenmare, Co. Kerry. Therefore, these activities on the lands which include the excavation of topsoil and stone constitute works in accordance with Section 2(1) of the Planning and Development Act, 2000 (as amended).

8.1.4. Development is defined under Section 3(1) of the Planning and Development Act, 2000 (as amended) 'means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.'

8.1.5. Therefore, having regard to Sections 2(1) and 3(1) of the Planning and Development Act 2000 (as amended) it is considered that the removal of all of the topsoil and the removal of stone from the subject lands would constitute development under the above provisions of the Act.

8.2. Is or is not exempted development

8.2.1. Class 11, Part 3, Schedule 2 Planning and Development Regulations, 2001 (as amended) refers to Land consisting of the carrying out of drainage and/or reclamation of wetlands. This provision sets out that such development is exempted, subject to the area affected not exceeding 0.1ha (including any such previous development). I note that the subject lands does not comprise wetlands and that area of the lands at 2.75 hectare exceeds the 0.1 hectares, therefore, Class 11 Part 3 of Schedule II of the Regulations does not apply in this case.

8.2.2. The Planning Authority in their determination of the previous Section 5 referral reference EX 918 on the subject lands which referred the question as to whether the stripping and removal of topsoil and trees and alleged unauthorised activity on the land constitutes development or is exempted development. The decision of the Planning Authority concluded that the nature and extent of the said works would come within the scope provided at Article 8(c) of the Planning and Development Regulations, 2001-2021.

8.2.3. Article 8(c) of the Planning and Development Regulations, 2001-2021 relates to land reclamation works, other than reclamation of wetlands, consisting of recontouring of

land, including infilling of soil (but not waste material), within a farm holding shall be exempted development.

- 8.2.4. The report of the Planning Officer in respect of the Section 5 referral reference EX 918 stated that it was noted that extensive excavation had been carried out which appeared to comprise the stripping of topsoil from the field and stockpiling this material inside the field boundary fences and the breaking of limestone rock and levelling of the site. Accordingly, it is clear that the Planning Authority considered that the works carried out constituted recontouring of the land. They determined that the subject works came within the scope of exemption provided by Article 8(c) of the Planning and Development Regulations, 2001-2021.
- 8.2.5. In response to the subject Section 5 referral the owner of the lands Mr. Gallivan confirmed that stone was removed from the subject lands and that it was stockpiled on his lands. This removal of stone from the existing field constitutes the extraction of this material. From the photographs attached on file it is clear that the removal of the limestone on the subject lands involved the breaking and removal of the stone using machinery and an articulated dumper truck. The works which were carried out, involved the removal of all topsoil and vegetation within the field and then the extraction and removal of limestone below the soil layer.
- 8.2.6. Quarry is defined in the Planning and Development Act 2000, (as Amended) as “means an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or bore-hole or a well and bore-hole combined”. Accordingly, I would consider that the excavation and removal of the limestone rock within the subject lands constitutes development and falls within the definition of quarrying.
- 8.2.7. The owner has confirmed that the rock extract from the subject lands was moved and stored within his landholding and that some of this rock was removed off site and was used in a Kerry County Council housing project which Mr. Gallivan states that he was working on and that the stone was used for temporary haul roads.
- 8.2.8. Accordingly, it is clear that some of the limestone rock which was extracted from the subject lands, was not used for land reclamation works within the farm holding.

Therefore, it can be concluded that not all the rock removed from the subject lands was used solely for land reclamation works within the farm holding of Mr Gallivan.

- 8.2.9. I note the decision of the Board in respect of the Section 5 referral ABP RL05E.305482 where a question was raised as to whether the quarrying of lands at Binnion, Clonmany, Co. Donegal is or is not development or is or is not exempted development. The Senior Inspector in their report on the case referred to Article 8C of the Planning and Development Regulations, 2001 (as amended) and assessed whether Article 8C applied. They concluded that the development did not fall under article 8C on the basis that they did not consider that the development had taken place 'within a farm holding'. The Board in their determination of the case considered in relation to field B of that landholding that the excavation and removal of rock from field B, where such rock is used solely for land reclamation works within the farmholding that includes this field comes within the scope of article 8C.
- 8.2.10. The Board in their determination of the case considered in relation to the excavation and removal of rock from field D as identified on the mapping submitted by the landowners/occupiers does not form part of the land reclamation works carried out in part and proposed within fields A, B, C, E and F as identified on the mapping submitted by the landowners/occupiers and therefore did not constitute exempted development. I would infer from this that the provisions of article 8C in respect of an exemption on development in respect of land reclamation works are only applicable whereby the excavation and removal of rock from such lands is used solely for land reclamation works within the land holding. Accordingly, I would conclude based on the documentation provided on file that having regard to the nature of the subject development including the excavation and removal of rock from the field, where some of the rock was removed offsite and used in construction, the development would not benefit from the provisions of Article 8C of the Planning and Development Regulations, 2001, in respect of Land Reclamation, and would not, therefore, comprise exempted development.

8.3. **Conclusion**

- 8.3.1. Having regard to the foregoing, I consider that the stripping back and removal of all of the topsoil and trees to create an extension of 2.75 hectare to an existing quarry for storage in the existing quarry is development and is not exempt development.

9.0 Appropriate Assessment

- 9.1.1. The lands which are the subject of the Section 5 referral at Reenagappul, Kenmare, Co. Kerry, are located to the south and west of Kenmare Special Area of Conservation (Site Code 002158) it is situated c. 65m at the closest point. Kenmare River SAC is designated for 12 habitats listed on Annex I and for four species listed as qualifying interests. The habitats and species could be impacted by a decrease in water quality downstream.
- 9.1.2. Section 4(4) of the Planning and Development Act, 2000, as amended, states –
“Notwithstanding paragraphs (a), (i), (ia) and (l) 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.”
- 9.1.3. Article 9(1)(a) of the Planning and Development Regulations states that development to which article 6 relates shall not be exempted development for the purposes of the Act if such development would under part (viiB) comprise development in relation to which a planning authority or An Bord Pleanála 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.
- 9.1.4. The subject referral does not include a screening report for Appropriate Assessment and the Planning Authority did not seek a screening report for Appropriate Assessment from the owner of the subject lands Mr. Gallivan in the further information request which they issued to him.
- 9.1.5. Furthermore, the Planning Authority does not appear to have carried out a Screening for Appropriate Assessment. The information on file is limited in respect of the nature and volume of rock/stone removed (i.e., quarrying) which occurred on the subject lands and in relation to the potential impacts likely to occur including noise and vibration, dust emissions, pollution/contamination of water quality. Having regard to the close proximity of the Kenmare Special Area of Conservation at circa 65m from the subject lands and in the absence of quantifiable information it is not possible to determine the potential impacts specifically in respect of habitat loss, fragmentation or disruption or to water quality impacts. Therefore, I would consider that in the

absence of detailed information, the likelihood of impacts from 'quarrying activities' on the subject lands on the habitats and species for which the Kenmare River SAC is designated cannot be ruled out.

- 9.1.6. In conclusion, in relation to the subject development, I would conclude that in the absence of an Appropriate Assessment screening report there is inadequate information on file to issue a screening determination. Accordingly, it cannot be determined that the subject development would be exempted development with reference to Section 4(4) of the Planning and Development Act 2000 (as amended) and/or to Article 9(1)(a) (viiB) of the Planning and Development Regulations 2001 (as amended).

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 the stripping back and removal of all of the topsoil and trees on lands at Reenagappul, Kenmare, Co. Kerry, adjacent to an SAC (Kenmare River SAC), to create an alleged unauthorized extension of 2.75 hectare to the existing unauthorized quarry at Reenagappul, Kenmare, and the importation of broken stone from the alleged unauthorized 2.75 hectare quarry extension for storage in the existing unauthorized quarry at Reenagappul, Kenmare is or is not development or is or is not exempted development:

AND WHEREAS Mr. Martin Arthur requested a declaration on this question from Kerry County Council on the 21st day of April, 2021. Kerry County Council sought further information from the owner of the subject lands Mr. Brain Gallivan on the 7th of July 2021. The section 5 referral was then submitted to the Board by Martin Arthur for a declaration.

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 4th day of August, 2021:

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) and 4(4) of the Planning and Development Act, 2000, as amended, and Class 11 of Part 3 of Schedule 2 of the said Regulations, as amended,
- (c) Articles 6(1), 6(3) 8 and 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) The planning history of the site.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the removal of topsoil constitutes ‘works’ and ‘development’ as defined in Section 2 and Section 3, respectively, of the Planning and Development Act, 2000, as amended.
- (b) the excavation and removal of rock within the subject site constitutes development and falls within the definition of quarrying,
- (c) having regard to the nature of the subject development including the excavation and removal of rock from field, where some of the rock was removed offsite and used in construction, the development would not benefit from the provisions of Article 8C of the Planning and Development Regulations, 2001, in respect of Land Reclamation, and would not, therefore, comprise exempted development.
- (d) the information before the Board is not sufficient to enable a determination as to whether the development would require an Appropriate Assessment which would exclude it from any exemption by reference to Section 4(4) of the Planning and Development Act

2000, as amended, and/or Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001, 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 stripping back and removal of all of the topsoil and trees on lands at Reenagappul, Kenmare, Co. Kerry, adjacent to an SAC (Kenmare River SAC), to create an alleged unauthorized extension of 2.75 hectare to the existing unauthorized quarry at Reenagappul, Kenmare, and the importation of broken stone from the alleged unauthorized 2.75 hectare quarry extension for storage in the existing unauthorized quarry at Reenagappul, Kenmare is development and is not exempted development.

Siobhan Carroll
Planning Inspector

25th of July 2022