



An  
Bord  
Pleanála

## Inspector's Report RL05E.RL3816

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### Question

Whether the means of closure of the entrance to the start of the pathway leading to Pollaid Great Arch is or is not development and is or is not exempted development.

### Location

Pollaid Great Arch, Fanad, Co.  
Donegal

### Declaration

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

S5 17/35

Applicant for Declaration

The Great Arch Action Committee

Planning Authority Decision

Is not development

### Referral

Referred by

The Great Arch Action Committee

Owner/ Occupier

Friel Family

Observer(s)

None

Date of Site Inspection

25/01/18

Inspector

Gillian Kane

## **1.0 Site Location and Description**

- 1.1.1. The subject referral relates to a gate & pedestrian entry way in Pollaid, north-eastern Donegal. The gate is located at the eastern end of a narrow winding laneway that serves a number of dwellings and some agricultural lands.
- 1.1.2. On the date of my site visit, the gate was closed with a sign advising that beyond the gate was private property. The pedestrian entry / turnstile was blocked with what appeared to be large concrete blocks. Further signage advised that farmland was beyond the entry point and entry was prohibited.

## **2.0 The Question**

- 2.1.1. Whether the means of closure of the entrance to the start of the pathway leading to Pollaid Great Arch is or is not development and is or is not excepted development.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

The proposal is not development within the meaning of the Planning and Development Act 2000 (as amended).

### **3.2. Planning Authority Reports**

- 3.2.1. Planning Report: The Planning Authority is satisfied that the removal of the revolving turnstile mechanism which has been replaced with a number of large mass concrete blocks which have been placed and stacked within the walled turnstile enclosure, effectively blocking the use of the turnstile does not comprise 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and therefore does not come within the definition of works and does not constitute development within the meaning of the Planning and Development Act 2000 as amended.

## **4.0 Planning History**

- 4.1.1. None on file.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The subject site is located in an unzoned rural area of the County, designated as being an Area of Especially High Scenic Amenity (see map 8). Map 8 is not particularly clear but it would appear that there are no views and prospects marked in the immediate area. The site is located in the 'Fanad Coast and Lakes' are of the Landscape Character Assessment of the development plan (LCA 21).

5.1.2. **Policy NH-O-8** is "To protect the character of the landscape where and to the extent that, the proper planning and development of the area requires it, including the preservation of views and prospects and the amenities of places and features of natural beauty or interest".

**NH-P-10** It is a policy of the Council to protect landscapes of Especially High Scenic Amenity (EHSA) and views and prospects and to preserve the character of distinctive regional, local and cultural landscapes in the County.

**NH-P-14** It is a policy of the Council to seek to preserve the views and prospects of special amenity value and interest, in particular, views between public roads and the sea, lakes and rivers. In this regard, development proposals situate on lands between the road and the sea, lakes or rivers shall be considered on the basis of the following criteria:

- Importance value of the view in question.
- Whether the integrity of the view has been affected to date by existing development.
- Whether the development would intrude significantly on the view.
- Whether the development would materially alter the view.

In operating the policy, a reasonable and balanced approach shall be implemented so as to ensure that the policy does not act as a blanket ban on developments between the road and the sea, lakes and rivers.

5.1.3. **Map 10** of the development plan shows the location of Public Rights of Way. Section **10.13** of the development plan lists the public rights of way corresponding to Map 10. None of the listed routes refer to the subject site.

## 5.2. Natural Heritage Designations

- 5.2.1. The subject site is located within the Horn Head to Fanad Head SPA and 100m from the Ballhoorisky Point to Fanad Head SAC.

## 6.0 The Referral

### 6.1. Referrer's Case

- The Board is requested to decide whether the physical means of blockage of access to the start of the habitually used pathway to Pollaid Great Arch on the western shore of Lough Swilly, is or is not development and is or is not exempted development.
- We fundamentally disagree with the Planning Authority's decision that the recently installed blockage is not development.
- The gated entrance has notices of "No admittance" and "Private Property", with barbed wire woven around the top and fixed to the sides. Large heavy pre-formed caisson type concrete blocks have been stacked to close the gate. This makes further access impossible.
- The concrete elements could only have been delivered and placed in-situ by heavy transport and lifting machinery. This constitutes 'works' and is development within the meaning of sections 2 and 3 of the Planning and Development Act 2000, as amended.
- The Boards attention is drawn to PL16.RL3153 wherein heavy boulders constituted works and was not exempted development.
- There is a long history of habitual access and usage for recreational purposes by members of the public of this entry point and the 800-900m path. It is submitted that the development is in breach of article 9(1)(a)(x) of the Planning and Development Regulations 2001.
- Submitted with the referral – History & background of the Great Arch, photographs, map & directions to the Arch, copies of correspondence with Donegal County Council, petition with 605 no. signatures requesting access to be restored.

## 6.2. Planning Authority Response

- The content of the referral has been noted. All of the matters raised have been addressed in the Planners Report. The Planning Authority requests that the Board uphold the declaration of the Planning Authority that the proposal is not development within the meaning of the Planning and Development Act 2000 as amended.

## 6.3. Owner response

- None received.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

7.1.1. The following statutory provisions are relevant in this instance.

7.1.2. Section 2(1): In this Act, except where the context otherwise requires

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

"**structure**" means any building, structure, excavation or other thing constructed or made on, in or under any land, or any part of a structure so defined and

(a) Where this context so admits, includes the land on, in or under which the structure is situated".

7.1.3. Section 3(1): in this Act, "**development**" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

7.1.4. Section 4(1): sets out developments that shall be exempted development for the purposes of this Act.

7.1.5. Section 5(1): If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

(4): Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

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

- 7.2.1. Article 6(1) of the Planning and Development Regulations, 2001 states that “Subject to Article 9 development of a class specified in Column 1 and Part 1 of Schedule 2 shall be exempted development for the purposes of the Act”.

Those relevant to the subject referral include:

(vi) interfere with the character of the landscape or a view of prospect of special amenity value or special interest, the preservation of which is an objective of the Development Plan for the area in which the development is proposed or pending the variation of a Development Plan or the making of a new Development Plan in a draft variation of the Development Plan or draft Development Plan.

(x) Consist of the fencing or enclosure of any public land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility.

(xi) Obstruct any public right-of-way.

## **8.0 Assessment**

### **8.1. Is or is not development**

- 8.1.1. The Board has been requested to determine if the act of closing a turnstile which formerly permitted access to a pathway leading to the Great Arch is or is not development and is or is not exempted development.
- 8.1.2. The first question is whether the closure amounts to development. Donegal County Council has determined that it is not development on the grounds that it “does not comprise ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and therefore does not comes within the definition of

works and does not constitute development within the meaning of the Planning and Development Act 2000 as amended”.

- 8.1.3. The submission of the referrer is that as heavy machinery and transport was required to facilitate the placing of the blocks within the turnstile, it therefore is ‘works’.
- 8.1.4. In Section 2 of the Planning and Development Act 2000, as amended, the definition of "works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. The insertion of an object or objects - such as the concrete blocks in question- within a turnstile which prevents the mechanism of the turnstile from operating – i.e. preventing a person entering and turning the apparatus – is an act of alteration. The fundamental nature of the turnstile – from an object that turns to an object that cannot turn - has been altered beyond recognition and use. The Boards attention is drawn to the photo submitted by the referrer which clearly shows a metal turning element within the concrete block gate pier. This contrast with the photo taken on the date of my site visit which shows the blockage of the gate pier. I am satisfied that the removing the ability of the turnstile to turn is an act of alteration and therefore constitutes works in accordance with section 2 of the Planning and Development Act 2000- 2016.
- 8.1.5. The placing of the concrete blocks and the accompanying notices advising of private lands could also be viewed as an “alteration” of the use of the lands as a pathway to the Great Arch. Access to the lands is no longer (legally) possible and therefore the path has been altered. It is my opinion that it could also be argued, as was the case in RL3153, that the placing of the large concrete blocks was an act of construction and therefore constituted works.
- 8.1.6. As per section 3(1) of the Act, "development" is the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land. The gate pier is considered a structure, also under section 2 of the Act, it being a “thing constructed or made on, in or under any land”. I am satisfied that the alteration of the turnstile is works, and that such works were carried out on land and therefore constitute “development” as per section 3(1) of the Planning and Development Act 2000, as amended.

## 8.2. Is or is not exempted development

- 8.2.1. The works do not fall within the scope of any of the provisions of Section 4, Planning and Development Act 2000, which specifies certain categories of development as exempted development for the purposes of the Act.
- 8.2.2. The Board will note that neither the Council nor the landowner have addressed the matter of use of the lands as a pathway to the Great Arch. The referrer makes the case that the pathway is habitually used for such. Without any evidence to support, or for that matter, refute that claim, it is considered that the use of the pathway by the public and the length of time for such use cannot be definitely declared. I do not intend therefore to assess the subject development against article 9(1)(a)(x). Should the Board consider that there may be merit in this claim, further information could be requested from either the referring party and/ or the Planning Authority.
- 8.2.3. Likewise, no evidence has been forthcoming that the pathway to the Great Arch is a public right of way, the obstruction of which would be de-exempted by Article 9(1)(a)(xi). The route is not marked as a public right of way on Map 10 or the accompanying table 10.13 of the development plan.
- 8.2.4. With regard to the provisions of Article 6 of the Planning and Development regulations, 2001 as amended there are no specific classes which de-exempt the laying of concrete blocks within structures or the closure of a pathway. Class 4 of Part 3 (rural development) exempts the construction, erection or maintenance of any wall or fence other than a fence of sheet metal or a wall or fence within the bounding of the curtilage of a house. The subject gate is an agricultural gate pier and does not bound or is not within the curtilage of a house, as far as could be ascertained on the date of my site visit.
- 8.2.5. Arising from my assessment above therefore I consider that the laying of concrete blocks within the concrete gate pier in such a manner as to obstruct the use of the pier as a pedestrian turnstile constitutes works and therefore constitutes development in accordance with the provisions of the Act. I further conclude that there appear to be no classes set out under Article 6 of the Planning and Development Regulations, 2001 as amended, which would result in the works carried out as being classed as exempt from the requirement of obtaining planning permission. I therefore conclude that the closure of the gate pier in question by



means of concrete blocks in question constitutes development which is not exempted development and I recommend that the Board issue a Declaration on the referral under the provision of Section 5 as follows

## 9.0 Recommendation

9.1. 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 means of closure of the entrance to the start of the pathway leading to Pollaid Great Arch is or is not development or is or is not exempted development:

**AND WHEREAS** The Great Arch Action Committee requested a declaration on this question from Donegal Council and the Council issued a declaration on the 14th day of September, 2017 stating that the matter was not development

**AND WHEREAS** the Great Arch Action Committee referred this declaration for review to An Bord Pleanála on the 10th day of October, 2017:

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

- (a) the alteration of the turnstile by the placing of concrete blocks within the concrete gate pier is both an alteration of the structure and an act of construction and therefore constitutes works as defined in section 2 of the Act as amended,
- (b) said works constitute development as defined in section 3 of the Act as amended
- (c) the said works do not come within the scope of any of the classes of exempted development set out pursuant to the provisions of the Planning and Development Acts or Planning and Development Regulations made thereunder, and

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5(4) of the 2000 Act, hereby decides that the closure of the entrance to the start of the pathway leading to the Pollaid Great Arch is development and is not exempted development.

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Gillian Kane  
Planning Inspector

06 February 2018