

**Our Case Number:** ABP-318892-24

**Your Reference:** Seamus O'Sullivan and others

An  
Bord  
Pleanála

Leahy Planning Limited  
Mill Road House  
Mill Road  
Ennis  
Co. Clare  
V95 FH5N

**Date:** 23 February 2024

**Re:** Request to enter into pre-application consultation pursuant to Section 177E(1A) of the Planning and Development Act 2000, as amended.  
Fenit Within, Fenit, Co. Kerry.

Dear Sir / Madam,

I have been asked by An Bord Pleanála to refer further to the above-mentioned pre-application consultation request.

Please find enclosed a copy of the written record of the first meeting of the 13th February 2024.

If you have any queries in relation to the matter, please contact the undersigned officer of the Board.

Please quote the above-mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

Yours faithfully,



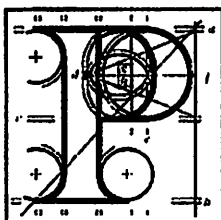
Derek Kelly  
Executive Officer  
Direct Line:

SI Record

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**An  
Bord  
Pleanála**

## **Record of Meeting ABP-318892-24 1<sup>st</sup> meeting**

<b>Case Reference / Description</b>	ABP-318892-24 Provision of fencing for land enclosure		
<b>Case Type</b>	Pre-application Consultation		
<b>1st / 2nd / 3<sup>rd</sup> Meeting</b>	1 <sup>st</sup> Meeting		
<b>Date</b>	13/02/2024	<b>Start Time</b>	10:42am
<b>Location</b>	Virtually by Microsoft Teams	<b>End Time</b>	11:14am
<b>Representing An Bord Pleanála</b>			
Conor McGrath – Assistant Director of Planning (Chair)			
Lorraine Dockery – Senior Planning Inspector			
Barry Devine – Senior Administrative Officer			
Sorcha Skelly – Senior Executive Officer			
Derek Kelly – Executive Officer			

<b>Representing the Prospective Applicant</b>
Michael Leahy – Leahy Planning
Noel O'Sullivan – Landowner

### **Introduction:**

The representatives of An Bord Pleanála (ABP) welcomed the prospective applicant and introductions were made. The procedural matters relating to the meeting were outlined as follows:

- The Board will keep a record of this meeting and any other meetings, if held. The record of the meeting will not be amended by the Board once finalised, but the prospective applicant may submit comments on the record which will form part of the case file.

- A further meeting or meetings may be held in respect of the proposed development.
- The holding of consultations does not prejudice the Board in any way and cannot be relied upon in the formal planning process or in any legal proceedings.

The ABP representatives acknowledged the request on the 15<sup>th</sup> January 2024 from Leahy Planning Ltd. on behalf of Mr. Seamus O'Sullivan and Others, to enter into pre-application consultations under section 177E(1A) of the Planning and Development Act, 2000, as amended.

A broad agenda had previously been circulated as follows:

### **Agenda**

- Introductions
- Description of development and relevant background.
- Procedural Advice / Queries arising with regard to any subsequent application for Substitute Consent.

### **1. Description of development and relevant background.**

#### **Prospective Applicant Comments**

- Planning history noted. An application for Substitute Consent appears to be the only option open to them. The Appropriate Assessment (AA) Screening Report can be updated to a Stage Two Appropriate Assessment and an application will be made in order to bring matters to a close
- Asked if ABP Board have any discretion as to whether they accept, or not, the proposed application, given both previous history on the lands, both An Bord Pleanála decision in RL3219 and Kerry County Council decision.

#### **ABP Comments**

- ABP representatives stated that any subsequent application should be lodged in accordance with the requirements of the legislation.
- It is understood that where a Stage Two AA report is submitted, the provisions of section 177(E)(1E) would apply.

- Cannot give specific information regarding planning matters on any subsequent application nor is any assessment being undertaken within the pre-application meeting but can advise on procedural matters for making an application.

## **2. Procedural Advice / Queries arising with regard to any subsequent application for Substitute Consent.**

### **Prospective Applicant Comments**

- Queried the nature/extent of information to be submitted with any subsequent application and queried if the drawings previously submitted provided sufficient information.
- Stated that there has always been a fence at this location, but it was upgraded in 2008. The fence is of wooden and wire construction. The land cannot be farmed if it is not fenced and could pose a public danger without the fencing. They also state that a 2012 injunction precludes any public access.
- Confirmed that the fence at no point encroaches on public land or the foreshore and encloses private, dry land only. They assert that a public right of way to the private lands never existed, and this was enforced by court proceedings on foot of local opposition which sought public access to the lands.
- Queried if new legislation outlines the procedures for lodging such an application.
- Expressed concerns that the required public notices could be removed or damaged by other parties
- Queried an estimated timeline for a decision on any subsequent application.

### **ABP Comments**

- ABP representatives advised that in any subsequent application, the full scope of the application should be detailed to include as much information as possible, including the background, history, delineation of ownership of the parcels of lands, the nature, size / length and materials of the fencing, any entrances / gates, and if have there been any changes to same through erosion etc. requiring replacement or repair and details of such changes if any. The construction methodologies utilised should be described.
- Sought clarity as to whether the fence encroaches on any public area including the foreshore.

- Advised the prospective applicant that they must satisfy the requirements of the legislation in terms of 'exceptional circumstances' (Section 177K(1J) of Planning and Development Act, 2000, as amended).
- Part 19 of the Planning and Development Regulations, 2001, as amended addresses procedures for the making of an application, including requirements for public notices / advertisement etc.
- Article 228 of above Regulations contains provision to deal with such matters regarding removal/damage to public notices.
- ABP representatives stated they were unable to give timelines for decision and that they were still dealing with a backlog of cases and that delays in issuing decisions is anticipated to be a factor for the foreseeable future.

**Conclusion:**

The record of the meeting will issue in due course. No further pre-application consultation deemed necessary.

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**Conor McGrath**

**Assistant Director of Planning**