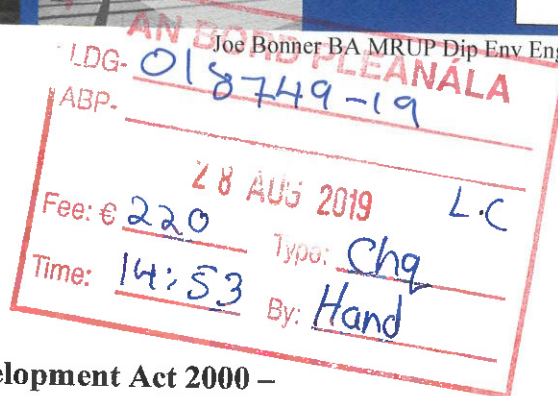




The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1.

28th August 2019



**Re: Section 5 - Planning and Development Act 2000 –
Request for Review of Declaration of Donegal County Council Reg. Ref. S5.19/16**

Dear Secretary,

On behalf of Gerard McLaughlin, Speenogue PO, An Grianan Road, Burt, Lifford, Co Donegal (the referrer) we wish to refer to the Board for review, a Section 5 declaration (Ref. S5.19/16) issued by Donegal County Council on 1st August 2019. The final date for submission of this review to the Board is 28th August 2019, so it has been submitted with the statutory timeframe. Please also find enclosed a cheque for the appropriate fee in the sum of €220.00 made payable to An Bord Pleanála. The grounds of the Referral are set out below.

1.0 Site Location

Mr McLaughlin is the owner of an area of land located south of the N13 and An Grianan Hotel at Speenogue, Burt, Co Donegal, the general location of which is shown on image 1.1 below.

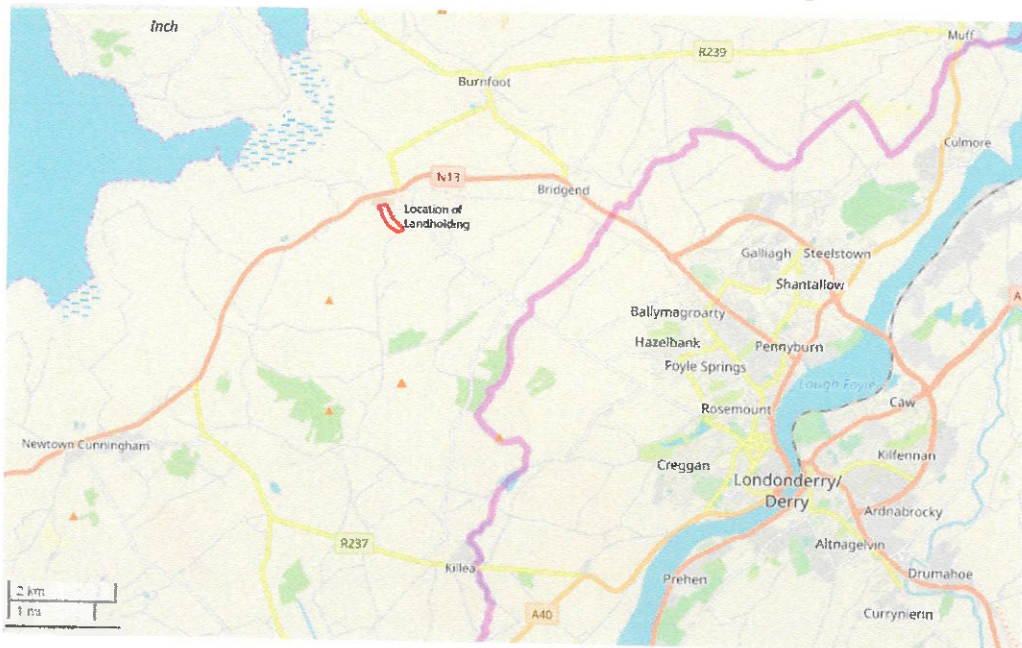


Image 1.1

Site Location from www.openstreetmap.org

Mr Laughlin's overall landholding which slopes downhill from southeast to northwest extends to 10.55ha and is shown in more detail in image 1.2 below. He purchased the southern section in June 2017.

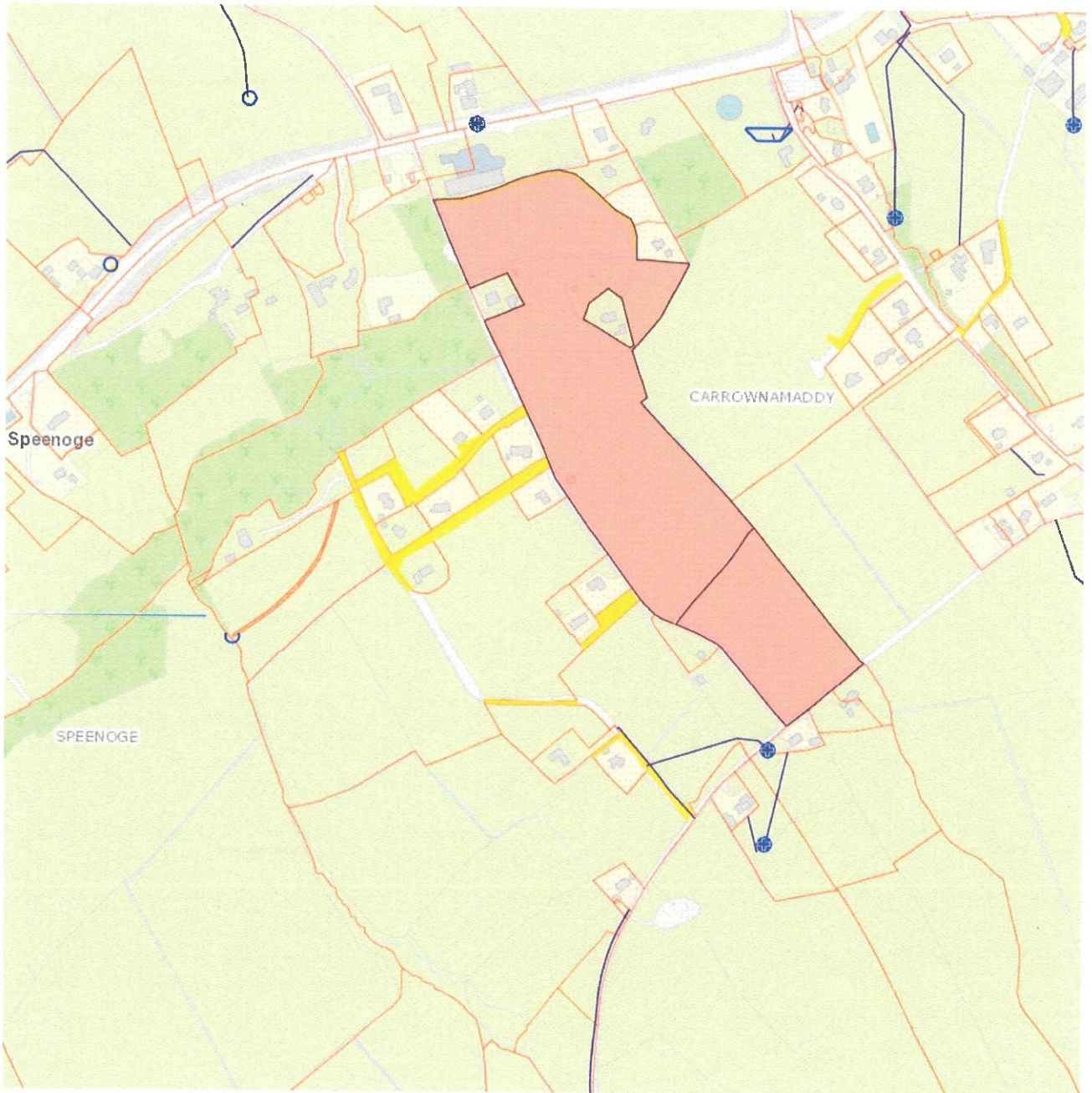


Image 1.2

Landholding of Gerard McLaughlin from www.landdirect.ie

2.0 Flooding in area in 2017 and 2018

In August 2017 there was a significant and unprecedented rainfall event in North Donegal including at Burt which caused widespread flooding of land and buildings while significant damage was caused to roads and bridges in the area. This flooding was widely reported in both written and broadcast media.

The following extracts from an Irish Times¹ article on Wednesday 23rd August 2017 reflects the impact of the flooding, while the met office stated that 63% of normal August rainfall fell in a single 8 hour period.

¹ <https://www.irishtimes.com/news/environment/>

AN BORD PLEANÁLA

28 AUG 2019 Page 2 of 20

LTR DATED _____ FROM _____

LDG- _____

ARD. _____

Senior Engineer with Donegal County Council Brendan O'Donnell said it was impossible to plan for the kind of weather pattern which struck the area.

"It was simply unprecedented. I have never seen anything like it before. Its' not something we could have planned for. Sheer volumes of water could simply not get away, with many roads acting as rivers or water conduits".

At least two bridges were destroyed, while other bridges, including Cockhill Bridge on the outskirts of Bunrana town, were damaged and had to be temporarily closed.

Livestock was also lost in the flood, with one witness saying how he saw two donkeys being washed down a country road on the outskirts of Carndonagh.

Huge volumes of crops were lost, includes (including) fields of corn at Grianan Estate Burt.

The An Grianan Hotel that is located immediately north of Mr McLaughlin's property, was also flooded at that time and had to close for a short period to carry out repairs. More details of same can be found on <https://www.angriananhotel.com/our-hotel/Latest-News/>.

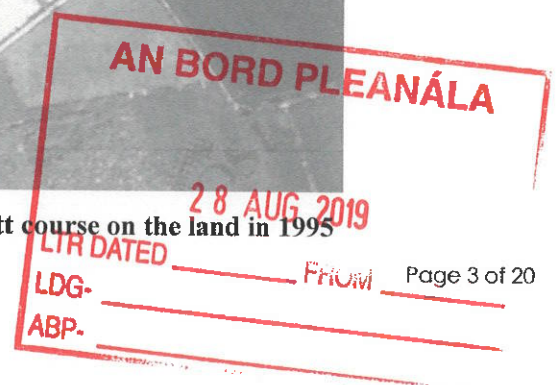
2.2 Post Flooding works carries out by Mr McLaughlin

Following the flooding of August 2017 and January 2018 and having only purchased the land in June 2017, Mr McLaughlin decided to carry out improvements to the land drainage network on what had previously been a pitch and putt course that had ceased operating in 2000. The pitch and putt is visible on the 1995 OSI Aerial Photography in image 2.1.



Image 2.1

Pitch and Putt course on the land in 1995



Following the flooding of 2017 and 2018, in order to alleviate the potential impact of any future flooding that may occur as well as to control the potential discharge of surface water and effluent from private properties flowing onto and over his lands, Mr McLaughlin took steps in December 2018 to control same by clearing out shallow and overgrown drainage channels running inside the roadside boundaries and constructing new drainage channels as well as an embankment on the southern and western boundaries of the southern part of his landholding that is that was later identified in the Warning Letter (see Image 4.1 in Section 4.0 below)

Images 2.2 and 2.3 (from google earth) show the lands prior to the construction of the embankment while images 2.4 and 2.5 show it after construction form inside the field. Image 2.6 and 2.7 were taken in August 2019 and provide an image of the embankment as of August 2019.

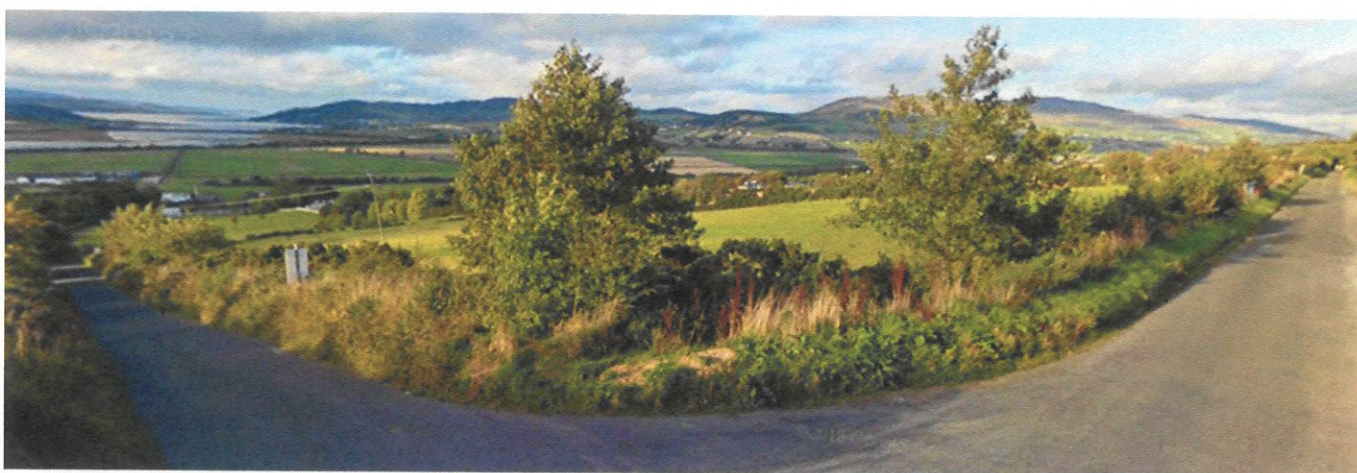


Image 2.2 2009 image from road junction at S-W corner of landholding from www.googlemaps.com



Image 2.3 2009 image from southern boundary of landholding from www.googlemaps.com

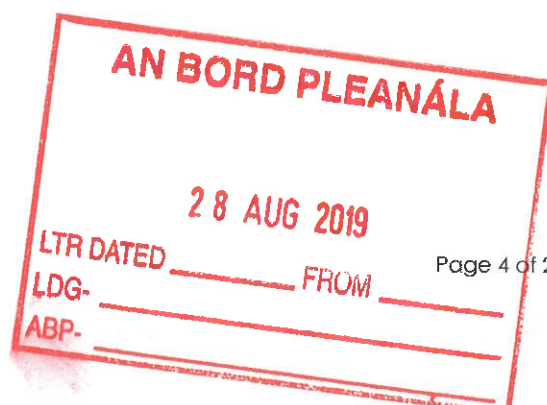




Image 2.4 Embankment, along southern boundary from road junction at S-W corner of landholding



Image 2.5 Embankment viewed from inside field towards Southwestern corner of landholding

AN BORD PLEANALA
 13 AUG 2019
 LDG- _____ FROM _____
 ABP- _____



Image 2.6 Embankment viewed from junction at Southwestern corner of landholding

Image 2.6 clearly shows that the embankment built as part of the improvements to drainage of the land has no effect on the landscape or views. If necessary the trees that have been planted that have formed part of the planning refusal reason cited in Section 2.0 below may be removed if necessary, but at the same time Mr McLaughlin may plant the same trees anywhere on his land as planning permission is not needed for planting trees.

Similarly, in Image 2.7, the embankment is barely visible above the normal roadside grasses that grow and has no impact on the views available from the road. We will return to views later.



Image 2.7

View from driver's seat of a car over embankment towards north

AN NOU PLEASUA
 28 AUG 2019
 LTR DATED _____ FROM _____
 LDG- _____
 ABP- _____

3.0 Planning Application – 11th April 2019 (Reg. Ref. 19/50514)

On 11th April 2019 Mr McLaughlin applied to Donegal County Council for permission for the: -

Erection of a single storey bungalow type dwelling, treatment plant and associated site works

The site is located on the south eastern corner of the landholding shown in image 2.1 above.



Image 3.1

Site of planning application reg. ref. 19/50514

On 5th June 2019 Donegal County Council decided to refuse permission for three reasons including reason No. 1 which is relevant to this Section 5 Referral. It stated: -

1. Having regard to the fact that: (i) the earthen berms installed on site have been so-installed so as to assist in the screening of the proposed dwelling and (ii) permission has not been sought to regularise the existing unauthorised earthen berms and planting, it is considered that the subject application is premature, pending regularization of unauthorised development at the subject site. Furthermore, it is considered to permit the proposed development may be prejudicial to the protection of views and landscape at the site location. Accordingly it is considered that to permit the proposed development would be contrary to the proper planning and sustainable development of the area.

In order to support, this reason the Planning Officer stated in their report that: -

Works, which are unauthorised have been carried out on site and on adjoining lands. Earthen berms over 2m in height with dense hedge planting over same have been provided along the southeastern and southwestern boundaries. These works, both in their current state and when more mature, will affect the view as detailed on map 7.1.1.

The Planning Officers report includes a number of photographs which are shown below:

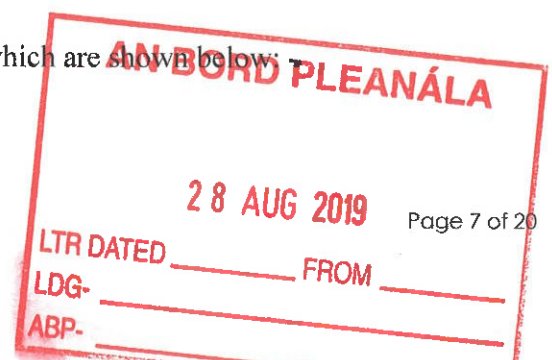




Image 3.2

Photo taken from Planning Officers Report on application reg. ref. 19/50514



Image 3.3

View of embankment along western boundary - Planning Officers Report (19/50514)

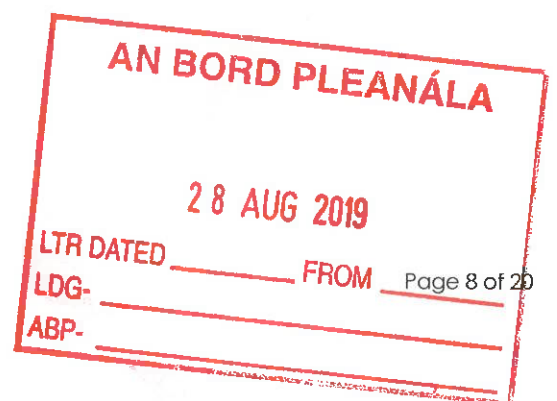




Image 3.4 View of embankment along southern boundary - Planning Officers Report (19/50514)

It is evident from the images in the Planning Officers Report that the embankment has no impact on views for pedestrian or passing motorists or on the landscape and is not consistent with their statement that: -

Scarring of the field has taken place by the installation of artificial secondary berms which detract from the mature hedging currently defining the field. Said berms, which constitute unauthorised development have clearly been installed to support an argument that the proposed dwelling will not be conspicuous in the landscape. This renders the proposal of the dwelling itself contingent upon the unauthorised berms for which retention is not sought. It would therefore be premature to consider the dwelling as a standalone development without concurrent assessment of the berms for which retention permission is not sought. Refusal recommended as development pre-mature.

It should be noted that the Planning Officers for the proposed house, which is very different development to the embankment that is subject to this referral is now covered with grass, is low lying relative to the adjacent public road and does not interfere with any views or prospects. Any future potential application for permission is not a consideration for this referral.

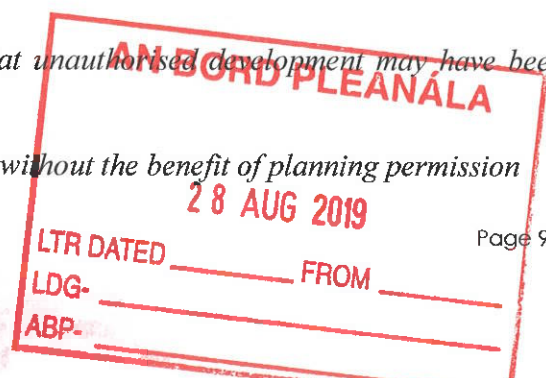
4.0 Warning Letter – 21st June 2019

Just two weeks after refusing permission for application reg. ref. 19/50514, on 21st June 2019, Donegal County Council issued a Warning Letter (**Appendix 1**) to Mr McLaughlin under Section 152 of the Planning and Development Act 2000 (as amended) referring to: -

lands/premises situated at Speenogue, Burt, Co Donegal. All on lands outlined in red on the site location map annexed hereto and

(a) it has come to the attention of this Council that unauthorised development may have been, is being of may be carried out thereon being: -

1 The construction of earthen embankments without the benefit of planning permission



The map accompanying the Warning Letter is set out below as image 4.1.

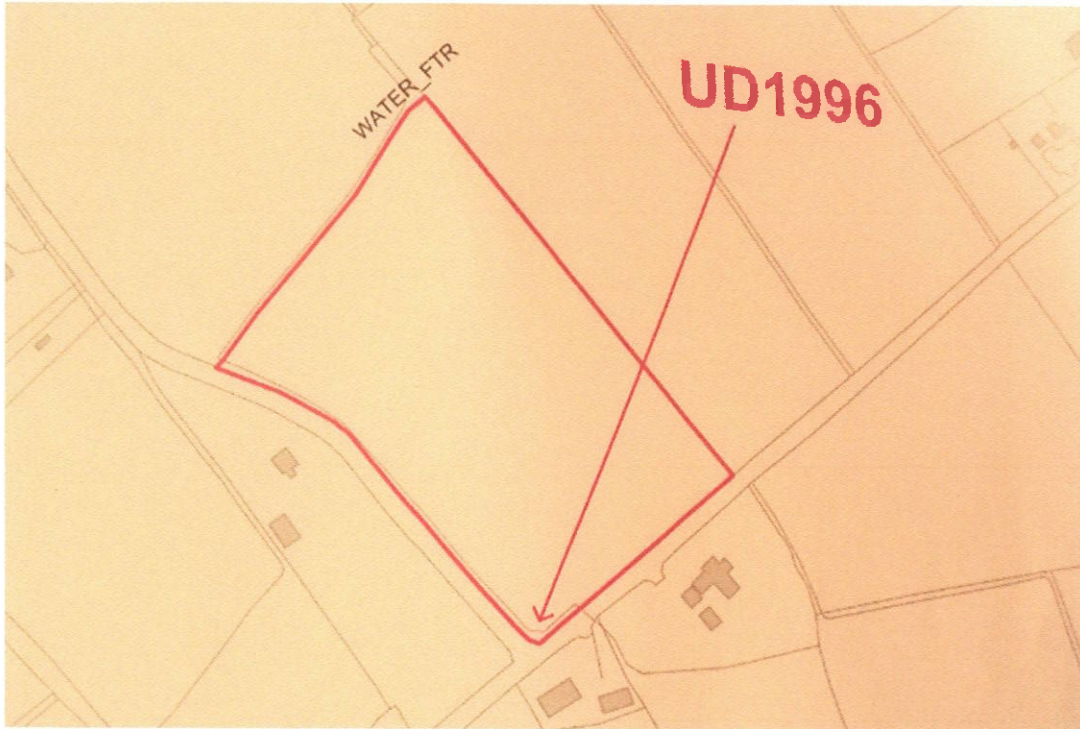


Image 4.1 Map accompanying Section 152 Warning Letter from Donegal County Council

5.0 Section 5 Declaration

Following from the Warning Letter, in a submission dated 9th July June 2019 (**Appendix 2**), Mr McLaughlin's agent asked the following question of Donegal County Council by way of Section 5 Declaration, whether the following is or is not exempted development: -

The construction of earthen embankment

Mr McLaughlin's case as to why he considers that the embankment is exempted development is that the development carried out is exempted development by virtue of Class 3 of Part 3 of Schedule 2 to the Planning and Development Regulations 2001 (as amended) and this is backed up by Article 6(3) of the same Regulations.

We will cite both below and address them in further detail later in this submission, including Article 9 'Restrictions on Exemption'.

Article 6 (3) *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 of the said Part 3 opposite the mention of that class in the said column 1.*

AN BORD PLEANÁLA
28 AUG 2019
LTR DATED _____ FROM _____
LDG- _____
ABP- _____
Page 10 of 20

Exempted Development — Rural

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Minor works and structures</i></p> <p>CLASS 3 Works relating to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, the widening or deepening of watercourses, the removal of obstructions from watercourses and the making or repairing of embankments in connection with any of the foregoing works.</p>	

There are no conditions or limitations for this class of development subject to Article 9.

6.0 Planning Officers Report on Section 5 Declaration (and comments thereon)

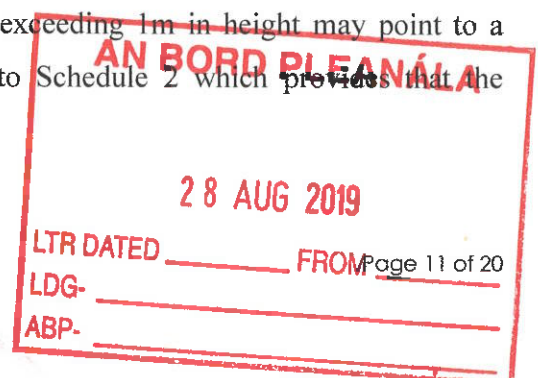
The Planning Officer's Assessment of the Section 5 Declaration (**Appendix 3**) states that: -

The subject site is located in an rural environment and is not within an EHSA. There is no recorded monument or archaeology within the vicinity of the site. The site is located approx. 630m south of the Lough Swilly SPA (004075) however it is not considered that the development would have any effect on the conservation objectives of the SPA (refer to attached screening report) and does not therefore require Appropriate Assessment.

Accordingly, no policy issues arise. It is not considered that any potential for de-exemption on amenity, ecology or other such grounds arises.

The Planning Authority is satisfied that the provision of earthen embankments which exceed 1m in height constitutes "works" and therefore constitutes "development" within the meaning of the Planning and Development Act, 2000 (as amended).

In the context of this particular development, there is no dispute that the embankment constitutes 'development' and 'works' but the reference to the embankment exceeding 1m in height may point to a misinterpretation by the Planning Officer of Class 6 of Part 1 to Schedule 2 which provides that the following may be exempted development.



CLASS 6

(a) The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.

The level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground.

A there is no house on the land, this Class does not apply to this particular referral.

The Planning Officer went on to state that: -

The Planning Authority is not satisfied that the development comes within the scope of Class 3, Part 3, Schedule 2, Article 6 of the Planning and Development Regulations, 2001 (as amended).

This class of exemption refers to works relating to the construction or maintenance of any gully, drain, pond, trough, pit or culvert or the widening or deepening of watercourses. No watercourse exists at the location of the earthen embankments. Neither have the embankments been made in connection with the widening or deepening of any watercourse. The purpose of the embankments is not in relation to drainage.

It can only be assume that in light of planning application reg. ref. 19/50514 that the planning authority has determined that the embankment has been put in place to facilitate the development of a house for Mr McLaughlin. Before we go any further and as it will be obvious to the Bord Inspector who visits the site of this referral, the embankment that has been constructed along the road will have no effect in hiding any buildings that would be erected in the claimant's landholding.

The Planning Officer only addressed one part of the Class 3 exemption and failed to break down the Class into its constituent parts. Class 3 does not just refer to a watercourse. Mr McLaughlin has previously stated that his lands have flooded and there is ample evidence available in the media to confirm same, especially in respect of An Grianan Hotel which is located directly downhill of the lands. Mr McLaughlin has also stated that the drainage that ran along the roadside boundary was overgrown when he purchased it and image 6.1 shows the level of growth that existed along the public road when he purchased the land.



Image 6.1

Google image of heavy growth along western boundary of landholding

AN BORD PLEANÁLA
28 AUG 2019
LTR DATED _____ FROM _____
LDG- _____
ABP- _____

Class 3 falls under the heading of Minor works and structures. Structure is defined in the Planning and Development Act as: -

“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—

Class 3 provides that the following may be exempted development: -

Works relating to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, the widening or deepening of watercourses, the removal of obstructions from watercourses and the making or repairing of embankments in connection with any of the foregoing works.

Class 3 can be broken down as follows: -

- Works relating to
 - the construction or maintenance of any gully, drain, pond, trough, pit or culvert,
 - the widening or deepening of watercourses,
 - the removal of obstructions from watercourses and
 - the making or repairing of embankments in connection with any of the foregoing works.

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

Following from the above, we must remember that the Planning Officer stated that (emphasis added): -

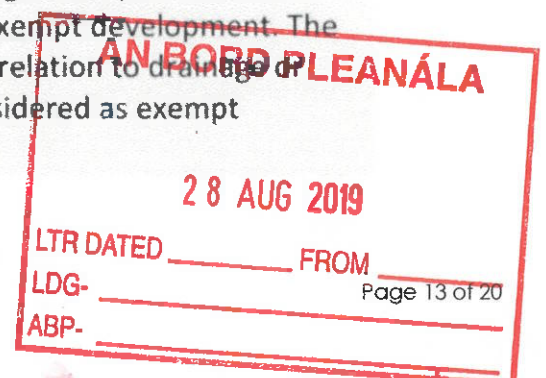
The Planning Authority is not satisfied that the development comes within the scope of Class 3, Part 3, Schedule 2, Article 6 of the Planning and Development Regulations, 2001 (as amended).

This class of exemption refers to works relating to the construction or maintenance of any gully, drain, pond, trough, pit or culvert or the widening or deepening of watercourses. No watercourse exists at the location of the earthen embankments. Neither have the embankments been made in connection with the widening or deepening of any watercourse. The purpose of the embankments is not in relation to drainage.

Therefore, the provision of earthen embankments in this instance cannot be considered a Class 3, Part 3, Schedule 2, Article 6, exemption.

Article 8 of Planning and Development Regulations 2001 (as amended) provides for works specified in a drainage scheme and/or reclamation of land “consisting of re-contouring of land including infilling of soil (but not waste material) within a farm holding” to be considered exempt development. The earthen embankments do not have any function in relation to drainage or land reclamation, therefore, they cannot be so considered as exempt development.

The reference to re-contouring of land is not relevant to this referral.



Class 3 provides that the following (bold) is exempted development and that was never considered by the Planning Officer: -

- **Works relating to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, the widening or deepening of watercourses, the removal of obstructions from watercourses and the making or repairing of embankments in connection with any of the foregoing works.**

We will leave it to the Board to determine based on its inspectors site visit whether or not a gully or drain exists but whether it existed in the first instance or has only now been created by Mr McLaughlin is a moot point as the following is exempted development: -

- **Works relating to the construction or maintenance of any drain... and the making ...of embankments in connection with any of the foregoing works.**

It is considered that the works carried out are consistent with Class 3 as Mr McLaughlin has constructed a drain/gully and constructed an embankment for which there is no restriction in height. There is no stipulation in planning legislation as to how deep a gully or drain has to be. Simply because there may have been no water in the drain or gully on the occasion of the site visit by the Planning Officer does not mean that a drain/gully has not been constructed or maintained. It will prove its effectiveness and worth when rain falls as it often does in Donegal.

In conclusion the Planning Officer stated that: -

It is considered that:

- (1) The construction of earthen embankments constitutes "works" and therefore is "development" within the meaning of the Act,

We agree with the above statement.

- (2) The subject development does not come within the scope of Class 3, Part 3, Schedule 2, Article 6 of the Planning and Development Regulations, 2001 (as amended) and is therefore not exempted development in this class, and

We disagree with the above conclusion for the evidenced reasons set out in this referral.

- (3) The subject development does not come within the scope of Article 8 of the Planning and Development Regulations, 2001 (as amended) and is therefore not exempted development in this class, and

We agree with the above statement.

- (4) It should also be noted that in determining the subject Section 5 referral regard was had to recent Section 5 referrals to An Bord Pleanála for determination.

No evidence has been produced in the Planning Officers report to support this conclusion and it should be treated as hearsay.

AN BORD PLEANÁLA
28 AUG 2019
LTR DATED _____ Page 14 of 20
LDG- _____
ABP- _____

7.0 Decision of Donegal County Council on Section 5 Declaration

The decision of Donegal County Council (**Appendix 4**) stated: -

Location of Development:

Speenogue, Burt, Lifford, Co Donegal

IT IS HEREBY DECLARED THAT THE SUBJECT MATTER OF THE REQUEST AS ABOVE

IS Development

IS NOT Exempted Development

WITHIN THE MEANING OF THE ABOVE ACT

The Planning Authority in considering this referral, had regard particularly to:

- (c) Section 2, 3 and 177U of the Planning and Development Act, 2000 (as amended), and
- (d) Class 3, Part 3, Schedule 2, Article 6 and Articles 6, 8 and 9 of the Planning & Development Regulations 2001 (as amended) and Section 177U of the Planning and Development Act, 2000 (as amended).

And concluded that:

The proposal is Development within the meaning of the Planning & Development Act, 2000 (as amended) and is Not Exempted Development.

DATED THIS 1st DAY OF AUGUST, 2019

8.0 Article 9 – Restrictions of Exemptions

Article 9 of the Planning and Development Regulations 2001 (as amended) sets out a list of scenarios where an otherwise exempted development may lose that exemption. We will now address those restrictions.

Article 9	Comment
(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,	Not Applicable
(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 4 metres in width,	Not Applicable
(iii) endanger public safety by reason of traffic hazard or obstruction of road users,	Not Applicable
(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan	Not Applicable

AN BORD PLEANÁLA
28 AUG 2019
LDG- _____ FROM _____
ABP- _____

or the draft development plan,	
(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies	Not Applicable
(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a 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 the draft variation of the development plan or the draft development plan,	Please see below
(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,	Not Applicable
(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,	Not Applicable
(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,	Please see below
(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	Not Applicable
(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.	Not Applicable
(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other	Not Applicable

AN BORD PLEANÁLA

28 AUG 2019

Page 16 of 20

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,	
(x) consist of the fencing or enclosure of any 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	Not Applicable
(xi) obstruct any public right of way,	Not Applicable
(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,	Not Applicable

8.1 Issues for further consideration

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a 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 the draft variation of the development plan or the draft development plan,

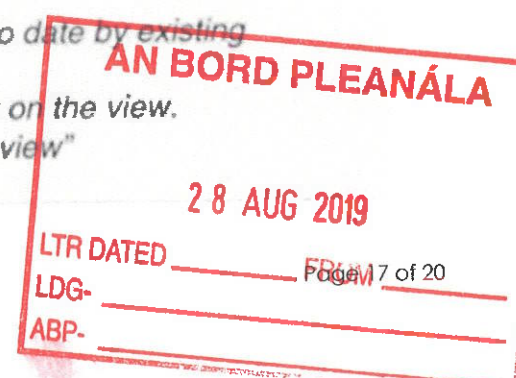
There was reference in the Planning Officers report on planning reg. ref. 19/50514 to views and prospects, and to the opinion of the planning authority that the embankment would interfere with a view along the road that leads to Grianan an Aileach despite this fact. The Planning Officer stated: -

In addition to this, CDDP 2018-2024, at policy NH-P-17 confirms that

"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 situated 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"*
-

The image they show is set out below as image 8.1.



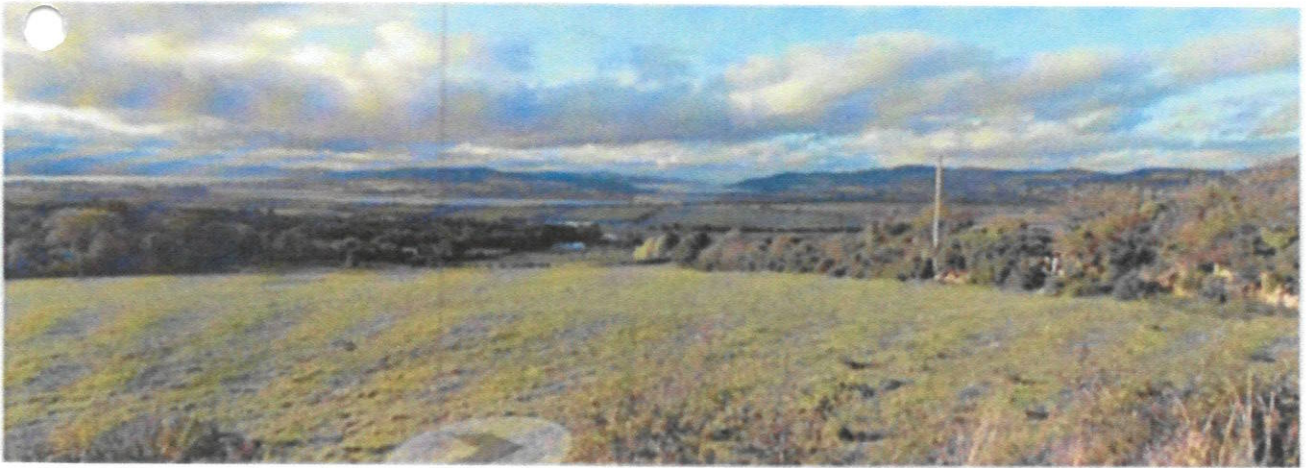


Image 8.1

Image shown Planning Officers report on planning reg. ref. 19/50514

The Planning Officer then goes on to state that: -

The view in question, affect the view and will continue to affect this view. The view is of Inch Island and Lough Swilly towards Fahan and Buncrana. It is viewed along this busy road which is used by visitors of Grianan Na Aileach which in 2016 attracted 104,000 visitors, therefore it's importance is considerable. Above image is from the public road in front of the site, without the unauthorised berms and planting.

Map 7.1.1 of the Donegal County Development Plan provides details of protected views and a copy is attached as **Appendix 5** as the online interactive map does not show the views that are protected. Views from Grianan An Aileach are protected looking north over the valley but a small embankment that is barely visible from the adjoining public road certainly does not interfere with any protected view or prospect an it is more important to note that the site subject to this Section 5 referral lies outside the area that is protected. The landholding is denoted by a red dot on image 8.2 below.

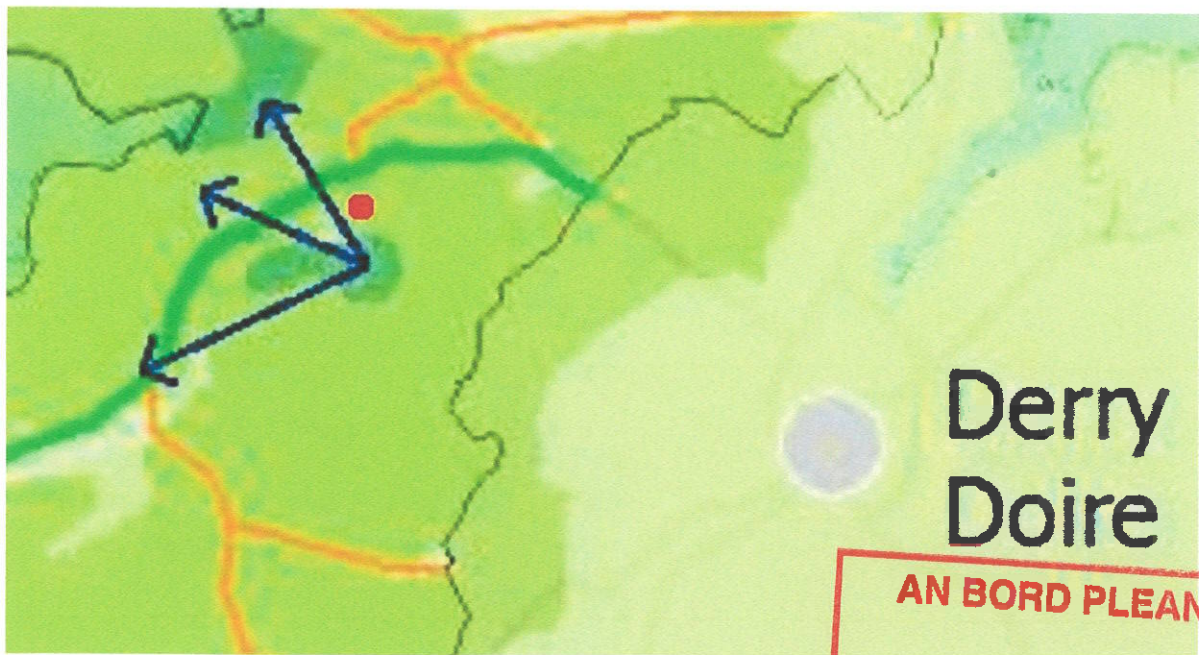


Image 8.2

Extract from image 8.2 of Map 7.1.1 of Donegal County Development Plan

Derry Doire

AN BORD PLEANÁLA

28 AUG 2019

Page 18 of 20

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

It is evident that the images in Section 2 above that the embankment will not interfere with any view as described by the Planning Officer as it is so low relative to the road and Mr McLaughlin is entitled to plant trees or hedging along the roadside boundary or inside his property if he chooses to do so without interfering with any view or prospect that may be protected in the County Development Plan.

(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,

The maintenance or construction of a drain/gully and associated embankment will not *be likely to have a significant effect on the integrity of a European site* and any impact that it may have will likely be positive as it will slow down the rate of water entering any watercourses in future.

It is considered that none of the restrictions on exemption set out in Article 9 of the Planning and Development Regulation 2001 (as amended) restrict the development of an embankment as has been carried out by Mr McLaughlin on his lands at Speenoge, Burt, Co Donegal.

9.0 Conclusion and Request for Permission

The information contained in the referral comprehensively addresses the issues set out in the Section 5 Declaration issued by Donegal County Council. It is considered that it has been demonstrated that: -

- The Planning Authority has misinterpreted the nature of the development and had failed to consider the development in the context of all constituent parts of Class 3 of Part 3 to Schedule 2 to the Planning and Development Regulations 2001 (as amended)
- Donegal County Council has linked this development to the proposed house that was refused permission rather than as a stand-alone development, that Mr McLaughlin has carried out independent to the planning application (Reg. Ref. 19/50514) and must be assessed on the evidence submitted in this referral, not in respect of any planning applicant, of which there is none before either Donegal County Council or An Bord Pleanála at this time.
- The works were carried out shortly after the purchase of the land by Mr McLaughlin that coincided with significant flooding in the area, including on Mr McLaughlin's landholding and any future uses of the land are a separate matter that should not be taken into consideration in this review.
- None of the restrictions on exemption as set out Article 9 of the Planning and Development Regulations 2001 (as amended) apply to this case.

Sufficient information has been submitted in the review to demonstrate that the rationale behind the decision of Donegal County Council that the construction of earthen embankments is development and is not exempted development is incorrect.

AN BORD PLEANÁLA
28 AUG 2019
LTR DATED _____ FROM _____ Page 19 of 20
LDG- _____
ABP- _____

It is requested that the Board overturns the determination of Donegal County Council and finds that in this particular case, the construction of earth embankments for the purpose of drainage improvements is development that is exempted development.

Yours Sincerely

Joe Bonner
Joe Bonner

AN BORD PLEANÁLA

28 AUG 2019

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

Page 20 of 20

Appendix 1

Warning Letter issued by Donegal County Council

on

21st June 2019

AN BORD PLEANÁL

28 AUG 2019

LTR DATED _____ FROM _____

LDG- _____

ABP- _____



**Comhairle Contae
Dhún na nGall**
Donegal County Council

www.ccdhunnangall.ie www.donegalcoco.ie

21st June 2019

Our Ref: UD1996

Gerard McLaughlin
Speenogue
Burt
Co. Donegal

Re: Unauthorised development @ Speenogue, Burt, Co. Donegal

A Chara,

I refer to the above and enclose Warning Letter for your attention.

Mise le meas,

**For Senior Executive Planner
Planning Enforcement Unit**

AN BORD PLEANÁLA

Cuir freagra chuig: Áras an Chontae, Leifear, Contae Dhún na nGall, Éire F93 Y622
Please reply to: County House, Lifford, Co. Donegal, Ireland F93 Y622

Guthán/Tel: 074 9153900 | Facs/Fax: 074 9172812 | Ríomhphost: info@donegalcoco.ie **28 AUG 2019** **FrU/iv**

LIB DATED

LDG-

ABP-



Ref: UD1996

21st June 2019

Gerard McLaughlin
(Address as detailed on cover letter)

**PLANNING AND DEVELOPMENT ACT 2000 (as amended) ("the Act")
SECTION 152 WARNING LETTER**

A Chara,

I refer to lands/premises situated at Speenogue, Burt, Co. Donegal. All on lands outlined in red on the site location map annexed hereto, and:

- (a) It has come to the attention of this Council that unauthorised development *may have been, is being or may be carried out* thereon being –
 - 1. **The construction of earthen embankments without the benefit of planning permission**
- (b) You may make submissions or observations in writing to the Council regarding the purported offence not later than **FOUR WEEKS** from the date of service of this warning letter.
- (c) If the Council considers that unauthorised development *has been, is being or may be carried out*, an Enforcement Notice may be issued.
- (d) Officials of the Council may at all reasonable times enter on the land/premises for the purposes of inspection.
- (e) On conviction for an offence in relation to the unauthorised development concerned you may be liable on prosecution on indictment to a fine not exceeding €12.697 million or to imprisonment for a term not exceeding two years or both and on summary of prosecution to a fine not exceeding €5,000 or to imprisonment for a term not exceeding six months or both.

AN BORD PLEANÁLA

2-8 AUG 2019

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

Cuir freagra chuig: Áras an Chontae, Leifear, Contae Dhún na nGall, Éire F93 Y622
Please reply to: County House, Lifford, Co. Donegal, Ireland F93 Y622

(f) Any costs reasonably incurred by the Council in relation to Enforcement Proceedings may be recovered from you or any person on whom an Enforcement Notice is served or where Court Action is taken.

NOTE: This letter is issued without prejudice to the Council's powers under Section 155 and 160 of the Act if at any time it deems it necessary to take urgent action with regard to the unauthorised development.

I look forward to hearing from you.

Mise le meas,

Rinde Mc Nelly

For Senior Executive Planner
Planning Enforcement Unit

AN BORD PLEANÁLA

28 AUG 2019

LTR DATED _____ FROM _____

LDG- _____

ABP- _____



POCK D

WATER FTR

UD1996

Quarry

pring



Comhairle Contae
Dhún na nGall
Donegal County Council

Planning Enforcement - Location Map

© Ordnance Survey Ireland. All Rights Reserved. Licence Number: 2019/02/CCMA Donegal County Council

AN BORD PLEANÁLA

28 AUG 2019

LTR DATED _____ FROM _____
LDG- _____
ADD _____

Appendix 2

Section 5 Declaration Submission

and

Receipt of Payment

AN BORD PLEANÁLA

28 AUG 2019

LTR DATED _____ FROM _____

LDG- _____

ABP- _____



**Comhairle Contae
Dhún na nGall**
Donegal County Council

SECTION 5 APPLICATION

DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

1. Applicant's Name	Mr Gerard McLaughlin	
Contact details must be supplied at the end of this form		
2. Name of Agent - Mr Mark Mc Daid		
Contact details must be supplied at the end of this form		
3. Location of Proposed Development:	SPEENOGUE , BURT , LIFFORD PO , CO. DONEGAL	
4. Description of Proposed Development:	ERECTION OF A SINGLE STOREY BUNGALOW TYPE DWELLING, TREATMENT PLANT AND ASSOCIATED SITE WORKS (1950514 - Planning Application :) Query – The Construction of earthen embankments	
5. Is development a Protected Structure or within the curtilage of a Protected Structure? (Indicate as appropriate)	Yes	
	No	X
6. Applicants Interest in site:	Owner	
7. List of plans, drawings etc. submitted with this application:	My Submission / Full Observations evidence provided to my case - Plans Included with Site Layout Plan – With Covering letter & Email correspondence backing up my case under <u>article 6(3)</u> of the Planning and Development Regulations, 2001, as amended (the 2001 Regulations) exemptions from the requirement for planning permission are provided as per the following:	

AN BORD PLEANÁLA

28 AUG 2019

LTR DATED _____ FROM _____

LDG- _____

"Class 3 - Works relating to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, the widening or deepening of watercourses, the removal of obstructions from watercourses and the making or repairing of embankments in connection with any of the foregoing works."

However - There are no specific conditions or indeed limitations attached to this class of exempted development.

I am entitled to a full explanation why warning letter why this action being taken and have the right to question above would like this to be settled/partial settled ASAP as the above law (under article 6(3) of the Planning and Development Regulations, 2001, as amended (the 2001 Regulations) is very clear and I have provided clear explanation on same.

I have received the required clarity from Planning Customs House In Dublin it is fair to say there are no specific conditions or limitations nor height restrictions attached to this class of exempted development; Schedule 2, Part 3 of the 2001 Regulations, advise, essentially that this is exempted development.

I put forward look at reducing height no one came back to me from Council – The above law having checked same is very clear and should be accepted by Donegal County Council under article 6(3) of the Planning and Development Regulations, 2001, as amended (the 2001 Regulations) exemptions from the requirement for planning permission are provided.

Please Note this is not a planning guideline but in fact Planning Regulation (Planning Law) that is enshrined in law under the Irish statute books and there has been no change of policy in this regard of planning law.

Exceptional Circumstances exemption Request
Lands Speenogue Burt Co.Donegal.

I wish to provide feedback recently about an case Donegal County Council dealt with.

AN BORD PLEANÁLA

28 AUG 2019

LTR DATED _____ FROM _____

LDG- _____

The situation for Mr McLaughlin was quite unusual and the application of Donegal County Council usual policy was creating an issue, which was causing distress to Mr McLaughlin.

Donegal County Council didn't explore whether or not there was anything they could do to help myself Mr McLaughlin resolve the issue as an exception.

In scenarios such as this, particularly where someone is distressed, Donegal County Council need to seek guidance and understand if there is more that can be done, which will sometimes be outside of your normal policies.

This guidance can be from other back office teams, or if necessary, Dept. Head Office Custom House in Dublin whom I had to go directly to seek clarity on planning law regulations when no one at Planning Department could answer my query.

It is important that you fully explain the background to the case and the rationale for the exception so this can be considered which I Gerard McLaughlin have now done and wish to put on record.

Can you please bear this in mind when dealing with complex or sensitive cases in future is my feedback.

Can you please review the above and ensure this is adhered to which is quoted under exempted development. This is also noted in the Stature Books under Exempted development rural.

I would state needs to ensuring that Donegal County Council fully explore ways in which they can help, which may at times involve seeking support from other departments.

There are sometimes exceptional circumstances that need to be considered which may mean that our / Donegal County Council usual policy isn't appropriate. We should always consider what we can do to help the person resolve their query or issue as in this case was related to the flash severe flooding in August 2017 / January 2018.

AN BORD PLEANÁLA

28 AUG 2019

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

I have provided some general feedback recently regarding the referrals and the fact that information included in some referrals to for a decision isn't taking all appropriate circumstances into account as in this case reason I have asked for notes taken from meetings File PP5283 & UD1996 which I have submitted FOI to release full details disclosure on same to myself as information relates to me and should be allowed the opportunity to see same, or at least they are not being detailed on the referral itself, so the full picture isn't presented to the person picking it up.

The completed referrals for this there may be times where we need to provide details to allow them to refer a case, so in those/these instances can we ensure that we give all relevant details and background to ensure that the full picture for a particular case is presented please I don't believe it was in my case actions taken.

As a gesture of goodwill I am willing to work with The Council to resolve outstanding issues which needs to be noted please to move matters forward so I can get on with my life without restrictions and would request the fee for making this under Section 5 of the Planning and Development Act 2000 (as amended) you can request, upon payment of the prescribed fee, a written declaration as to what is or is not exempted development the law I quote there is no conditions/limitations attached to same I would request fully reimbursed fee as I was given misleading information at Pre Planning Meetings and available to meet at any time upon request to settle matters.

I am aware if I am failed to be satisfied by this, I also have recourse to the Ombudsman <https://www.ombudsman.ie/publications/information-leaflets/the-ombudsman-and-local-a/> and An Bord Pleanála <http://www.pleanala.ie/> I hope I do not have to go that far.

AN BORD PLEANÁLA

28 AUG 2019

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

	<p>Please note that these are the Regulations, and are part of a Statutory Instrument in the Statute Books – Screenshot Provided/attached for your information.</p> <p>Ruairi Ferrie Planning Policy & Legislation Section Planning Division Customs House Dublin has provided clarification on my situation query Tuesday 9th July 2019.</p> <p>I am consulting on same with Planning Authority – Planner now asking relevant question in fully addressing refusal reasons plan to make planning application ASAP.</p> <p>See Attached Information to be fully considered.</p>
8. Signature of Applicant (or Agent):	
9. Dated:	9 th July 2019

- NOTES:
- (a) Application must be accompanied by fee of €80.00
 - (b) Application must be accompanied by:
 - (i) site location map, (ii) site layout plan,
 - (iii) elevations (if applicable).

OFFICE USE ONLY

Ref. No.		AN BORD PLEANÁLA 28 AUG 2019 LTR DATED _____ FROM _____ LDG- _____ ABP- _____
Date Received		
Fee Paid		



Donegal County Council
Civic Offices
St Orans Road
Buncrana
Co Donegal
074 91 35900
10/07/2019 13:24 40

Receipt No. : LA02/0/9061

Gerard McLlaughlin
Speenogue
Burt
Donegal

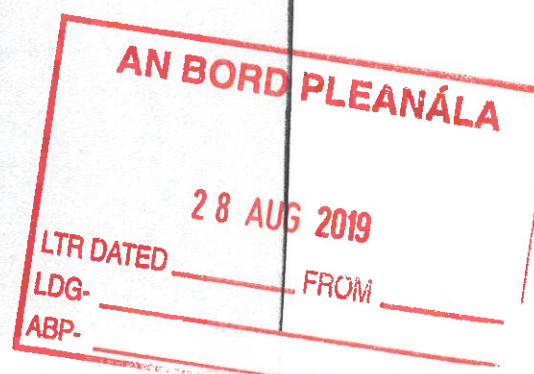
PLANNING FEE - PART V/SECT 5	80.00
GOODS	80.00
VAT Exempt/Non-vatable	

Total : 80.00 EUR
63.01 IEP

Tendered :
Cash 80.00

Change : 0.00

Issued By : Samantha Mahon
From : Buncrana Cash Office
Vat reg No.IE8F28103W



Appendix 3

Section 5

Planning Officers Report

S5.19/16

AN BORD PLEANÁLA

28 AUG 2019

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

SECTION 5 REFERRAL REPORT – Ref. No: S5 19/16

1.0 BACKGROUND

1.1 Location:

1.1 The site is located within the townland of Speenoge, approximately 580m directly south of Burt Chapel.

1.2 Site Description:

The site comprises 0.73 hectares of sloping agricultural lands with sporadic development of one-off houses. The site is abutted by local road L-1991-2 to the southeast and L-7921-2 to the southwest. The site occupies elevated lands relative to Burt chapel and can afford scenic views to visitors of Grianan Of Aileach over Inch Island and Lough Swilly on their decent. The site is in close proximity to views identified at County Donegal development Plan 2018 – 2024 Map 7.1.1.

1.3 Planning History:

19/50514	Planning permission refused for "Erection Of A Single Storey Bungalow Type Dwelling, Treatment Plant And Associated Site Works"
11/70334	Planning permission refused for "Dwelling House, Garage, Foul Effluent Treatment System And Associated Works"
10/70128	Planning application refused for "Erection Of A Dwelling House With Detached Domestic Garage And Septic Tank"
99/3910	Planning application for "Construction Of 6 No Dwelling Houses And Individual Sewage Treatment Plants" still officially on FI (requiring reduction to 1 no. dwelling and other matters)
92/1114	Planning permission granted for "Retention Of Existing Golf Course, Change Of Use From Builders Store To Clubhouse Together With Parking Facilities"

1.4 Proposed Development:

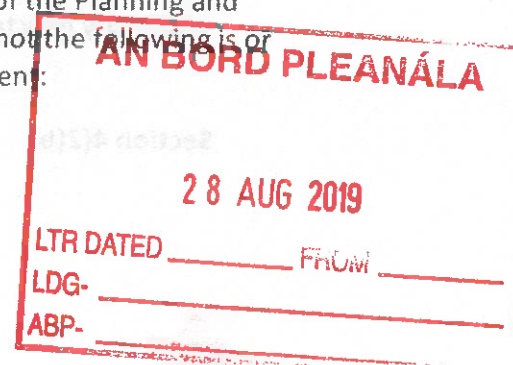
Construction of earthen embankments.

2.0 THE QUESTION

Gerard McLaughlin has made a submission to Donegal County Council requesting that a Declaration be made under Section 5 of the Planning and Development Act, 2000 (as amended) as to whether or not the following is or is not development and is or is not exempted development:

(i) Construction of earthen embankments.

3.0 EVALUATION



"Regulations under paragraph (a) maybe subject to conditions and be of general application or apply to such area or place as may be specified in the regulations."

Section 4(2)(c)

"Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a) provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purposes being exempted development for the purposes of this Act".

Section 177U(9)

"In deciding upon a declaration for the purposes of Section 5 of this Act a planning authority or the Board, as the case maybe, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this Section."

Planning and Development Regulations 20001 - 2018

Class 3, Part 3, Schedule 2, Article 6 of the Planning and Development Regulations 2001(as amended) outlines exempt development of "Works relating to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, the widening or deepening of watercourses, the removal of obstructions from watercourses and the making or repairing of embankments in connection with any of the foregoing works"

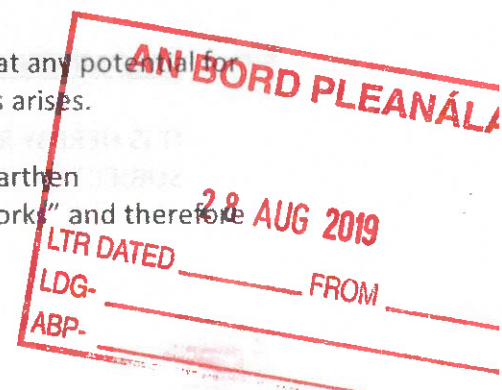
There are no limitations to this class of development.

4.0. ASSESSMENT

The subject site is located in an rural environment and is not within an EHSA. There is no recorded monument or archaeology within the vicinity of the site. The site is located approx. 630m south of the Lough Swilly SPA (004075) however it is not considered that the development would have any effect on the conservation objectives of the SPA (refer to attached screening report) and does not therefore require Appropriate Assessment.

Accordingly, no policy issues arise. It is not considered that any potential for de-exemption on amenity, ecology or other such grounds arises.

The Planning Authority is satisfied that the provision of earthen embankments which exceed 1m in height constitutes "work" and therefore



IS Development

&

IS NOT Exempted Development

WITHIN THE MEANING OF THE ABOVE ACT

The completed works comprising:

(1) The construction of earthen embankments

The Planning Authority in considering this referral, had regard particularly to:

- (a) Section 2, 3 and 177U of the Planning and Development Act, 2000 (as varied), and
- (b) Class 3, Part 3, Schedule 2, Article 6 and Articles 6, 8 and 9 of the Planning & Development Regulations 2001 (as amended) and Section 177U of the Planning and Development Act, 2000 (as amended).

And concluded that:

The proposal is Development within the meaning of the Planning & Development Act, 2000 (as amended) and is Not Exempted Development.

Signed:

J. R. O'Sullivan

Position:

ASSISTANT PLANNER

Date:

30/07/2019

E
1/8/2019

AN BORD PLEANÁLA

28 AUG 2019

LTR DATED _____ FROM _____

LDG- _____

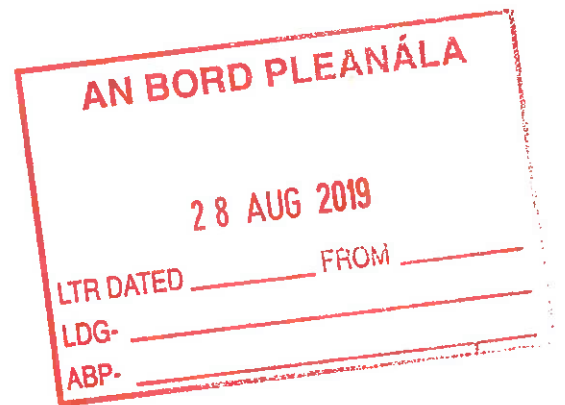
ABP- _____

Appendix 4

Section 5

**Decision of
Donegal County Council**

S5.19/16





Comhairle Contae
Dhún na nGall
Donegal County Council

www.ccdhunnangall.ie www.donregalcoco.ie

Ref. No: S5 19/16

1st August, 2019

Mr Gerard McLaughlin
C/o Mark McDaid
MTW Architectural Services
Shandrum
Drumfires
Clonmany
Co Donegal

AN BORD PLEANÁLA

28 AUG 2019


LTR DATED _____ FROM _____
LDG- _____
ABP- _____

**Re: Section 5 –Construction of earthen embankments at Speenogue, Burt, Lifford,
Co Donegal**

A Chara,

I refer to your request received on 10th July, 2019 as above under Section 5 of the Planning and Development Act, 2000 (as amended). Same has now been decided and I now issue to you herewith the Council's Declaration thereon. You are now advised that, in accordance with Section 5 (3) (a) of the Planning & Development Act, 2000 (as amended) where a Declaration is issued, any person issued with such a Declaration may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a Declaration for review by the Board within 4 weeks of the date of issuing of the Declaration.

Mise, le meas,



for Senior Planner
Planning Services
/mp

Cúlraagra chuig: Áras an Chontae, Leitreach, Contae Dhún na nGall, Éire F83 Y622
Please reply to: County House, Lifford, Co. Donegal, Ireland F83 Y622

Gumair: Tel: 074 8152200 | Facs/Fax: 074 8152512 | Rámhchad/E-mail: info@donregalcoco.ie

*Planning and Development Acts, 2000 – 2018
(Declaration and Referral on Development and Exempted Development)*

DECLARATION

Chief Executive's Order No: 2019PH1556

Reference No: S5 19/16

Name of Requester: Mr Gerard McLaughlin
C/o Mark McDaid
MTW Architectural Services
Shandrum
Drumfires
Clonmany
Co Donegal

Summarised Description of development the subject matter of request:

Construction of earthen embankments

Location of Development:

Speenogue, Burt, Lifford, Co Donegal

IT IS HEREBY DECLARED THAT THE SUBJECT MATTER OF THE REQUEST AS ABOVE

IS Development

IS NOT Exempted Development

WITHIN THE MEANING OF THE ABOVE ACT

The Planning Authority in considering this referral, had regard particularly to:

- (c) Section 2, 3 and 177U of the Planning and Development Act, 2000 (as amended), and
- (d) Class 3, Part 3, Schedule 2, Article 6 and Articles 6, 8 and 9 of the Planning & Development Regulations 2001 (as amended) and Section 177U of the Planning and Development Act, 2000 (as amended).

And concluded that:

The proposal is Development within the meaning of the Planning & Development Act, 2000 (as amended) and is Not Exempted Development.

DATED THIS 1st DAY OF AUGUST, 2019

As McElroy
FOR SENIOR PLANNER
PLANNING SERVICES

AN BORD PLEANÁLA

28 AUG 2019

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

Appendix 5

Map 7.1.1

from

Donegal County Development Plan

2018-2024

