

File With _____

SECTION 131 FORM

Appeal NO: ABP 305482-19.

Defer Re O/H

TO: SEO

Having considered the contents of the submission dated (received) 16-10-19.

from Agent for W+P Doherty.
both Owners.

I recommend that section 131 of the Planning and Development Act, 2000

be not be invoked at this stage for the following reason(s): In the interest of justice

E.O.: Allowed

Date: 1/14/19

To EO: _____

Section 131 not to be invoked at this stage.

Section 131 to be invoked -- allow 2/4 weeks for reply.

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached submission

to: _____

Allow 2/3/4 weeks - BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File With _____

CORRESPONDENCE FORM

Appeal No: ABP 305482-19.

M r. Sutton

Please treat correspondence received on 16-10-19 as follows:

<p>1. Update database with new agent for Applicant/Appellant _____</p> <p>2. Acknowledge with BP <u>RL20</u></p> <p>3. Keep copy of Board's Letter <input type="checkbox"/></p>	<p>1. RETURN TO SENDER with BP _____</p> <p>2. Keep Envelope: <input type="checkbox"/></p> <p>3. Keep Copy of Board's letter <input type="checkbox"/></p>
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Amendments/Comments

Applicant Request

Response from both owners/occupiers new agent updated.

L/D 23-10-19 ✓ on time.

<p>4. Attach to file</p> <p>(a) R/S <input type="checkbox"/> (d) Screening <input checked="" type="checkbox"/></p> <p>(b) GIS Processing <input type="checkbox"/> (e) Inspectorate <input type="checkbox"/></p> <p>(c) Processing <input type="checkbox"/></p>	<p>RETURN TO EO <input type="checkbox"/></p>
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	<p>Plans Date Stamped <input type="checkbox"/></p> <p>Date Stamped Filled in <input type="checkbox"/></p>
<p>EO: <u>Liz Clellie.</u></p>	<p>AA:</p>
<p>Date: <u>23-10-19.</u></p>	<p>Date:</p>



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An Bord Pleanála
64 Marlborough Street
Dublin 1
DOI V902
14th October 2019

18 OCT 2019

Fee: € 9.45 Type: Post

Your Ref: ABP-305482-19

LPA Ref: UD17187

**RE: Section 5 Referral with regard to quarrying of lands at Binnion, Clonmany, Lifford
PO, County Donegal**

Dear Sir/madam

I refer to your letter of 26th September inst. enclosing a copy of a Section 5 referral from Donegal County Council, as to whether the quarrying of lands is or is not development and is or is not exempted development. Harley Planning Consultants Ltd has been instructed by William and Paidin Doherty to make a submission on their behalf.

In the first instance, it is respectfully considered that the description of the development by Donegal County Council is deliberately worded to state 'quarrying', whereas my clients are re-contouring their lands to improve their viability. The re-contouring of their lands, as part of their land reclamation, involves the reduction of higher ground to the east of their lands, to underlay topsoil on their lower lying lands to the west. My clients' position with respect to land reclamation, through re-contouring their lands has been clearly set out in writing to Donegal County Council.

1. Subject matter of the declaration.

1.1 Under section 5 of the P&D Act 2000 (as amended) if any question arises as to what, in any particular case, is or is not development, or is or is not exempted development any person can submit details of the particular case to the relevant planning authority to

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have a declaration made on the matter. Section 5 also facilitates any planning authority to seek a declaration on any particular case from An Bord Pleanála.

- 1.2 Contrary to the assertion by Donegal County Council, **in this particular case**, my clients are not quarrying rock. They are reclaiming their farm holdings through re-contouring a rocky outcrop at the eastern end of their land holdings and using the excavated rock to underlay the temporarily removed topsoil on their low-lying lands further west. My clients had already commenced the reclamation works on their lands, before Donegal County Council served an enforcement notice, stopping the reclamation works. Land reclamation has been completed in field marked A on the attached map and a portion of field C has also been reclaimed and evidence of the top soil removal and rock disposal is clearly evident. My clients hope to reclaim the remaining wet and low-lying lands identified as fields B, C, E and F. Field D is essentially the curtilage and garden, associated with Paidin Doherty's home.
- 1.3 Section 2 of the P&D Act 2000 (as amended) defines a quarry as *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, and shall be deemed to include—*
- (i) any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on;*
- (ii) any place occupied by the owner of a quarry and used for depositing refuse from it but any place so used in connection with two or more quarries, and occupied by the owner of one of them, or by the owners of any two or more in common, shall be deemed to form part of such one of those quarries as the Minister may direct,*

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AN BORD PLEANÁLA

16 OCT 2019

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

Planning Pack Map



CENTRE COORDINATES:
 ITM 656401947543
PUBLISHED: 19/10/2019
ORDER NO.: 5008696_1
MAP SERIES: 1:2,500
MAP SHEETS: 0031-A

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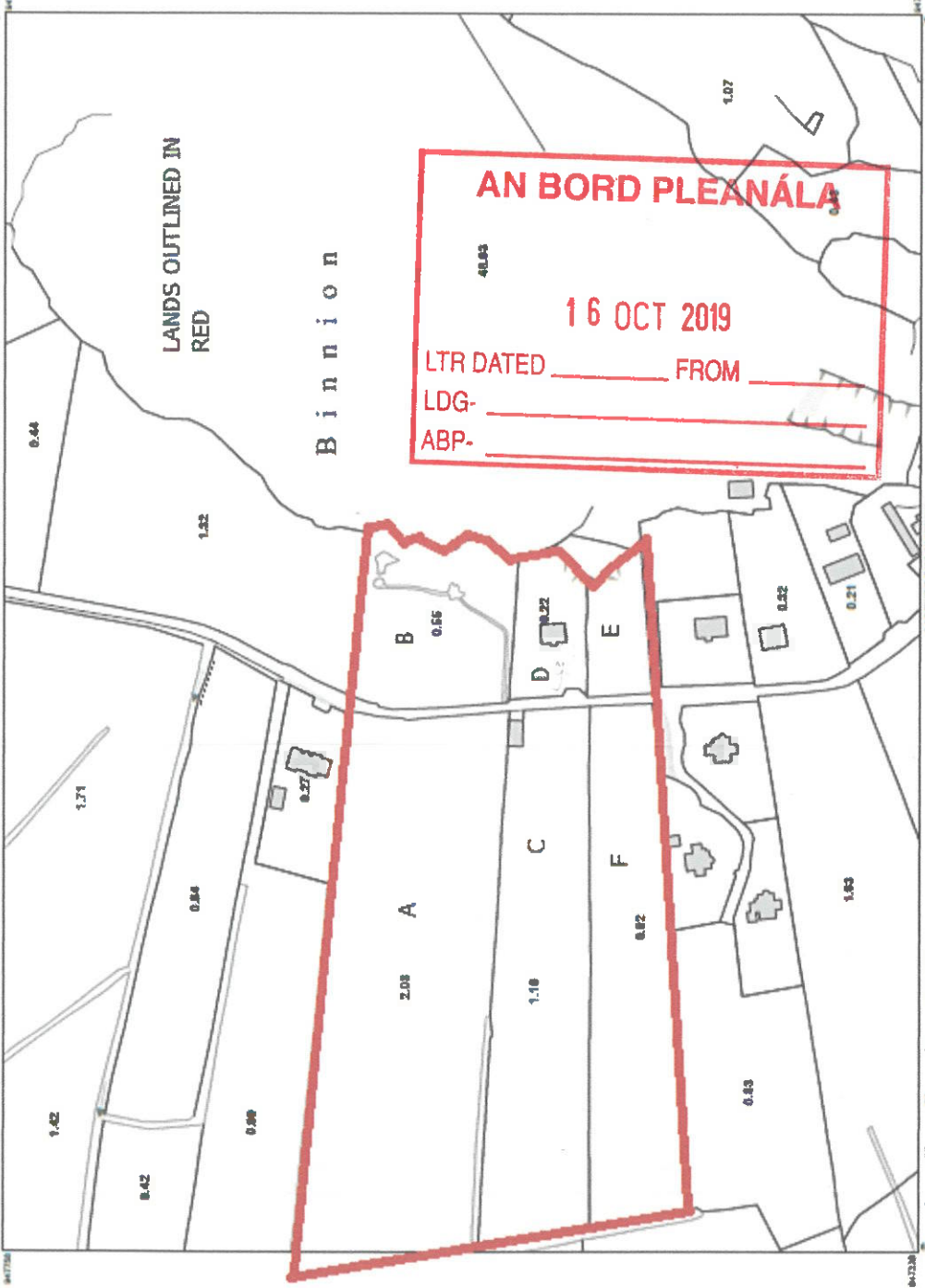
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(iii) any line or siding (not being part of a railway) serving a quarry but, if serving two or more quarries shall be deemed to form part of such one of them as the Minister may direct;

(iv) a conveyor or aerial ropeway provided for the removal from a quarry of minerals or refuse.

- 1.4 Explicit in the definition of quarry is the storage or removal of the minerals for processing, including the breaking, crushing, grinding, screening, washing or dressing of such minerals. My clients are not involved in any quarrying business and no excavated minerals have been removed from their lands and no processing of the excavated minerals has taken place. In addition there are no plant or machinery, normally associated with a quarry operation, on the lands.
- 1.5 As confirmed above, my clients have already used the rock taken from their lands to the east, to re-contour lower-lying lands to the west.
- 1.6 It is my clients' position that the development in **this particular case** involves land reclamation through re-contouring of their lands within their farm holdings. This is set out in section 2 below.

2. Article 8C of the Planning & Development Regulations 2001 (as amended)

2.1 Article 8C of the Planning & Development Regulations 2001 (as amended) confirms that

"Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development".¹

2.2 The works identified in this particular case, consist of re-contouring of land within my clients' land holdings to facilitate land reclamation, by utilising the excavated material from the higher lands to the east of their farms to raise the level of lower lands to the

¹ Amended by article 3(b) of S.I. No. 464/2011 – European Communities (Amendment to Planning and Development Regulations) Regulations 2011

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west.

- 2.3 It is not proposed to import materials from outside the farm holdings nor to export excavated material from the farm holdings to another farm holding or to another end user. It is proposed to excavate top soil from low-lying areas of fields within the farm holdings, deposit excavated material from the higher lands and then replace the top soil over the excavated material.
- 2.4 Furthermore, the land reclamation works proposed do not consist of reclamation of wetlands, which are defined in the Planning & Development Regulations 2001 (as amended) as
*“natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water.”*²
- The lands identified for reclamation are clearly not wetlands.
- 2.5 Article 8C, apart from specifically excluding waste material, does not restrict the nature of the material that can be used to recontour lands within a farm holding. It confirms that recontouring **can include** infilling of soil. While a substantial amount of material to be used in the recontouring of lands within the farm holdings, consists of rock, the use of this material is not excluded from benefiting from the exemption afforded under Article 8C. No waste material will be used in the recontouring of the lands within the farm holdings. Finally, Article 8C does not restrict the extent or amounts of material to be used as part of land reclamation, through re-contouring of land within a farm holding.
- 2.6 Article 9 of the Planning & Development Regulations 2001 (as amended) sets out a range of developments, which would remove exemptions under Article 6. Apart from the fact that Article 9, only applies to developments under Article 6 and does not apply to development works under Article 8C, none of the Article 9 developments apply to

²Article 5 P&D Regulations 2001, as inserted by article 3 of S.I. No. 454/2011 – Planning and Development (Amendment) (No.2) Regulations 2011

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the reclamation works proposed on the farm holdings.

3. Conclusion

- 3.1 It is considered that Donegal County Council is adopting a unreasonable and narrow position, in claiming that the excavation of rock within my clients' landholding must be treated separately from the land reclamation exempted works, through re-contouring of their lands. The removal of the material from part of their landholdings is irrevocably associated with the re-contouring of their lands within another part of the landholdings.
- 3.2 As confirmed above, the scale and extent of re-contouring, is not restricted under Article 8C. The planning authority's position on the development, may be somewhat influenced by the scale of stock-piled rock, awaiting distribution and spreading over the lower lying lands. However, my clients have acknowledged that the amount of excavated material, is just about sufficient to complete their land reclamation programme.

Yours sincerely


Jim Harley

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