

Martin Arthur

Lime Kiln Lodge, Market Street, Kenmare, County Kerry

30th of June 2020

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

AN BORD PLEANÁLA	
LDG-	627569-20
ABP-	
01 JUL 2020	
Fee: €	220 - Type: Cheque
Time:	By: Post

Ref: Kerry County Council Planning Authority Section 5 Decision - PL Ref No: EX833
Re: Lands at Reenagappul, Kenmare, County Kerry

Dear Sir or Madame,

I refer to the abovementioned matter and to the attachment at EXHIBIT 1, of a Section 5 decision determined by the Kerry County Council of the 22nd of June 2020.

In this appeal, I would ask the board to review the determination and decision of the planning authority in this case.

I am concerned that the Kerry County Council has not gone far enough in their decision.

In my Section 5 referral, I asked the question *whether the alleged unauthorised quarrying activity constitutes development or exempted development?*

In a letter to the Kerry County Council, attached at EXHIBIT 2, dated the 15th of June 2020, HRA Planning Chartered Town Planning Consultants from Limerick, on behalf of Brian Gallivan and KPK Properties, stated as follows:

"The quarrying activity refers to a photograph of a hole in the ground filled with water. There is no evidence of any quarrying activity. Therefore, it is submitted to the planning authority that because there is no evidence or information provided of any activity taking place the planning authority cannot make a determination on the section 5 application."

In Kerry Council's determination and decision it is clearly demonstrated that there was 'quarrying activity' on site and that the 'quarrying activity' on the subject site constitutes development which is not exempted development.

I shall ask the Board to agree with me that because "quarrying activity" has taken place on the subject site abutting a Kerry County Council "right of way" through the subject lands, that Brian Gallivan and KPK Properties has now created a public safety hazard, and that the Board should direct that the lands be reinstated and made safe.

Again, I shall ask the board to review the determination and decision of the planning authority in this case.

I trust that this appeal is in order and I shall await the Board's decision in due course.

Please find attached the requisite fee of €220.00

Yours faithfully,

A handwritten signature in cursive script, appearing to read "Martin Arthur", written over a horizontal line.

Martin Arthur

Exhibit 1



COMHAIRLE CONTAE CHIARRAÍ
KERRY COUNTY COUNCIL

Guthán | Tel 066 7183582 Facs | Fax 066 7120328 Rphost | Email plan@kerrycoco.ie Suíomh | Web www.kerrycoco.ie

Application No: EX833
Decision Date: 22nd June 2020 Registration Date: 26th May 2020, 29th May 2020
18th June 2020
Applicant: Martin Arthur, Lime Kiln Lodge, Market Street, Kenmare, Co. Kerry
Development Location: Reennagappul, Kenmare, Co Kerry
Development Description: Whether the alleged unauthorised quarrying activity constitutes development or is exempted development

DECLARATION ISSUED UNDER AND IN ACCORDANCE WITH SECTION 5 OF THE PLANNING AND DEVELOPMENT ACTS, 2000 – 2020

In pursuance of its functions under the Planning & Development Acts 2000 to 2020, Kerry County Council, being the Planning Authority for the County Health District of the County of Kerry, has by order dated 22nd June 2020 authorised the issue of a declaration under the provisions of Section 5 of the Planning & Development Acts, 2000 -2020 in accordance with plans and particulars submitted on 26th May 2020, 29th May 2020 and 18th June 2020.

I hereby certify that, the Planning Authority considers that the works, the subject of the referral under the said Section 5 namely whether the alleged unauthorised quarrying activity constitutes development or is exempted development at Reennagappul, Kenmare, Co Kerry *does not* constitute exempted development under the Planning & Development Acts 2000-2020 having regard to the considerations inserted hereunder:-

Schedule 1

1. Quarrying activity constitutes works that would come within the scope of Section 2(1) of the Planning and Development Act 2000 - 2020,
2. The said works would constitute development that comes within the scope of Section 3(1) of the Planning and Development Act 2000 - 2020,
3. Quarrying activity constitutes development for which there is no exemption provided for under the Planning and Development Act, 2000 - 2020.

Therefore, the quarrying activity at Reennagappul, Kenmare constitutes development which is not exempted development.

An Appeal against the decision of the Planning Authority under Section 5 of the Planning & Development Act 2000 may be made to An Bord Pleanála within four weeks beginning on the date of the issuing of the declaration by the Planning Authority. An Appeal should be addressed to: An Bord Pleanála, 64 Marlborough Street, Dublin and should be accompanied by the appropriate fee.

Signed on behalf of Kerry County Council

Date: 22nd June 2020

Exhibit 2



HRA | PLANNING
chartered town planning consultants

3 Hartstonge Street,
Limerick
Tel: 061 435000
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info@hraplanning.ie
www.hraplanning.ie

Our Ref: 20028/061220/mh

Planning Department,
Kerry County Council,
County Buildings,
Tralee,
Co. Kerry

15th June 2020

Re: Your Ref: EX833

Referral Pursuant to Section 5 of the Planning & Development Act 2000 - 2020

Dear Sir / Madam,

We confirm that we have been retained by Brian Gallivan and KPK Properties to respond to your letter of the 29th May, inviting comments on the Section 5 application received from Martin Arthur.

It is submitted to the planning authority that the Section 5 application is devoid of basic information relating to the alleged activity on site.

The querist poses the specific question – “Does this quarrying activity constitute development or is it exempted development?”. The quarrying activity refers to a photograph of a hole in the ground filled with water. There is no evidence of any quarrying activity. Therefore, it is submitted to the planning authority that because there is no evidence or information provided of any activity taking place, the planning authority cannot make a determination on the Section 5 application.

Under section 2.0 of the Planning & Development Act 2000 – 2020 (the Act) “quarry” 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



RTPI
mediation of space · making of place

Our client has advised that KPK Properties purchased the lands at Reennagappul, Kenmare, almost two years ago. The property when purchased had an established pre 1963 quarry. Our client has further advised that Kerry County Council were the last persons to make an 'excavation' from the quarry and that such excavation was made during the installation of the new Kenmare Waste-Water Treatment Plant.

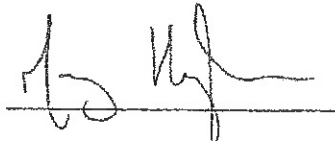
The 'quarry' as we understand was established pre 1963. Therefore, we would submit that the 'quarry' feature itself is not unauthorised. The last excavation from the quarry was made by Kerry County Council some 20 years ago. Whether such excavation constitutes development is a matter for determination by Kerry County Council having regard to the provisions of Section 4 of the Act relating to Exempted Development.

Presently there is no 'quarrying activity' on site.

We acknowledge that the lands in question have not been registered as a quarry under Section 261A of the Planning & Development Act 2000 as amended. This being the case, we acknowledge that if quarrying activity was to recommence, planning permission would be required.

We trust that the above clarifies our client's position at this time. Should you require clarification on any issue please do not hesitate to contact us.

Yours sincerely,



Mary Hughes MIPI

Director HRA | Planning chartered town planning consultants DAC