

## EIA Pre-screening – EIAR Not Submitted

<b>An Bord Pleanála Case Reference</b>	313086-22		
<b>Development Summary</b>	Whether an existing 'dam-type structure' constructed on an open watercourse close to where it connects to the sea is, or is not, development, or is or is not, exempted development.  Drinna Beg, Sneem, Co. Kerry		
<b>Development Address</b>			
<b>1. Does the proposed development constitute an EIA project?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓
		No	
<b>2. If YES, does the proposed development, or any part of it, fall within a class of development set out in Part 1 or Part 2, Schedule 5 of the Planning and Development Regulations?</b>			
Tick	Threshold	Comment (if relevant)	Conclusion
No	N/A		No EIAR or Preliminary Examination required
Yes	If YES, tick one of the following:		
	Exceeds / Is equal to / No Threshold		EIAR required
	Sub threshold		Preliminary Examination required (Issue letter to EPA if IED/ IPC/ Waste licence)
<b>3. If Preliminary Examination is required, has Schedule 7A information been submitted?</b>			Yes  No  N/A

EO/ SEO

Sorcha Kelly

Date:

20/4/2022





# DIARMUID TWOMEY

Planning, Engineering & Architectural Services

Annagloor  
Millstreet  
Co. Cork.

Tel/Fax: 029 71824  
Mobile: 086 3154438  
E-mail: [todiarmuidtwomey@gmail.com](mailto:todiarmuidtwomey@gmail.com)

**The Secretary**  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1.  
D01 V902

**Our Ref:** 122/S/DT

**Your Ref:**

**Date:** 19<sup>th</sup> April 2022

**Appellant:** Chris Fitzgibbon

**Appellant's Address:** Drimna Beg, Sneem, Co. Kerry.

**Development details:**

**Description of Development:** Whether an existing 'dam-type structure' constructed on an open watercourse close to where it connects to the sea is, or is not development or is or is not, exempted development.

**Planning Authority:** Kerry County Council

**Planning Authority Reference number:** EX967.

**Our Reference:** Steve O' Sullivan.

**An Bord Pleanála case number:** ABP-313086-22.

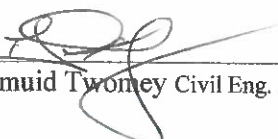
Dear Sir/Madam,

In relation to the above application I wish to state the following on behalf of my client Mr. Stephen O' Sullivan:

- My client has been the registered owner of Folio KY24843 and KY24833 for in excess of 20 years, Folio KY24843 and KY24833 are linked by a farm track/passage as clearly identifiable on the attached aerial map.
- During the period of time which my client has been the registered owner of Folio KY24843 and KY24833 my client has not been aware nor been made aware of any issues concerning the neighbouring lands contained within Folio KY74973F.
- We are of the opinion that the information submitted with the application is not fully reflective of the situation on the ground, in particular the open channel as depicted in blue hatch on the plan drawing and maps is not reflective of the open drain shown outlined by red lines on Photo No. 3.

We trust the above clarifies matters.

Yours Sincerely

  
Diarmuid Twomey Civil Eng. M.I.E.I.

<b>AN BORD PLEANÁLA</b>	
LDG- _____	
ABP- _____	
21 APR 2022	
Fee: € _____	Type: _____
Time: _____	By: <u>POST</u>





Folio KY24833

Farm Passage

Folio KY24843

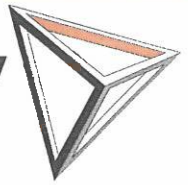






# teicniúil-priory

CONSULTING ENGINEERS



The Secretary

An Bord Pleanála

64 Marlborough Street

Dublin 1

D01 V902

14<sup>th</sup> March 2022

Dear Sir / Madam

Architectural Design   Engineering   Planning   Surveying

**AN BORD PLEANÁLA**

LDG- 050357-22

ABP- \_\_\_\_\_

16 MAR 2022

Fee: € 220 Type: Cheque

Time: \_\_\_\_\_ By: Peg Fisk

**RE: Application for a referral under Section 5 of the Planning and Development Acts 2000-2020.**

**Development Description :** An existing 'dam-type structure' constructed on an open watercourse close to where it connects to the sea.

**Development Location:** Drimna Beg, Sneem, Co. Kerry

**Application Number:** EX967

**Planning Authority:** Kerry County Council

I confirm that this office, Teicniuil-Priory Consulting Engineers Ltd, (TPCE) are acting on behalf of the applicant, Chris Fitzgibbon.

Please find the following enclosed:

- Cheque in the amount of €220 in payment of referral.

**Documents:**

- Copy of Declaration issued from Kerry County Council Dated 22/2/2022
- Copy of Cover letter from TPCE to Kerry County Council, dated 30/11/2021
- Copy of section 5 Application Form
- Copy of report from TPCE entitled 'Dam type structure around foreshore location'
- Copy of Photographic Schedule by TPCE
- Copy of Letter from Kerry County Council requesting Further Information (FI) 19/1/2022
- Response letter from TPCE to Kerry County Council, dated 28/1/2022 relating to FI request
- Copy of Previous Inspectors report ABP-304569-19



The Courtyard | Fair Hill | Killarney | Co.Kerry | Ireland | V93N8XN

tel: 064 66 31847 | email: [info@teicniuil-priory.com](mailto:info@teicniuil-priory.com)





Maps:

- Copy of Land Registry Compliant Map showings applicant's site and adjacent site, outlined in red. (Scale 1:2500)
- Copy of site layout drwg no 100-21-1-101 (Scale 1:500)
- Copy of reproduction SAC map drwg no 100-21-1-102 (Scale 1: 1000)
- Copy of reproduction 25" historic map drwg no 100-21-1-103 (Scale 1:2000)
- Copy of reproduction of extent of folio map drwg no 100-21-1-105 (Scale 1:1000)
- Copy of Plans and Elevation of dam structure drwg no 100-21-1-106 (Scale 1:100 / 1:200)

All of the above documents and maps, with the exception of the previous Inspectors Report ABP-304569-19, were submitted to Kerry County Council, as part of the Section 5 application.

As agents acting on behalf of Chris Fitzgibbon, we have been instructed to refer the enclosed Declaration under Section 5 of the Planning and Development Acts 2000 – 2020, by Kerry County Council, issued on 22/2/2022, for review.

We consider that the Declaration issued by Kerry County Council, stating that that "The proposed works would constitute development which is exempted development" has not taken proper cognisance of the nature of the development, as put forward, such works being described as *"An Existing 'Dam-type structure constructed on an open watercourse close to where it connects to the sea"*, within the Declaration issued.

The extent of the development consists of the infill of a previously open water channel, out-letting to the foreshore, for the provision of a small access road. The most appropriate description of this development is that of a 'dam' or a 'berm', as this is how the structure is functioning in reality, and as described in our original cover letter (22/2/2022) and our accompanying report to the Authority, entitled *"Dam type structure around foreshore area"*, a copy of which is enclosed with this submission.

It was explained within the aforementioned report, and within the content of our response to Further Information requested by the Authority, that originally this was an open channel of water. The subject of our referral consisted of works involving infilling this open water channel, seemingly to provide for a vehicular access route, and the inclusion of a drainage pipe.

The Authority have solely considered a 'culvert' as the subject works of the development, as stated on the foot of the Declaration. This is simply not the case; the 'culvert' to which the Authority is referring is a pipe, and is only one component of the overall development submitted for consideration.

There is no mention, within the Declaration, of the infill of the open water course, nor the provision of a stone hardcore track over same, to facilitate access to the adjacent field.



It was explained within our report that the drainage pipe, described as a 'culvert' within the Authorities Declaration, was severely undersized, and at a diameter of c500mm was substantially less than the open water channel which it replaced.

The reader is referred to the OPW publication, *'Construction , Replacement, or Alteration of Bridges and Culverts – A guide to applying for consent under section 50 of the Arterial Drainage Act, 1945'*, whereby criteria is given for hydraulic design standards. Among these requirements, it is stated that *"A culvert diameter, height and width must not be less than 900mm to facilitate maintenance access and reduce the likelihood of debris blockage."*

We contend that the installed pipe, being not of the proper dimensions, cannot be described as a 'culvert' – albeit as most likely intended to be installed as one. As stated within our report, the pipe is functioning rather as a flow control regulator, due the substantially smaller diameter than required, and the associated consequence of further reduced flow due to blockage of debris. Thus, despite any intention to the contrary, the development is actually functioning as a 'dam type' structure, with an unintended flow control device, with the effect of creating a swale, which attenuates water, within the applicant's land.

In terms of the component of the development consisting as ground and stone infill of a water course, and hardcore surfacing to facilitate access – no mention was made of same, in the Declaration issued by the Authority, and therefore a proper response has not been issued, in our request for a Declaration on Development and Exempted Development.

Notwithstanding, this omission in the Declaration, the reader is referred An Bord Pleanála Inspectors report ABP-304569-19.

The question regarding the subject works of ABP-304569-19, asked was *"Whether the culverting of a stream for the purposes of drainage works to agricultural land, the upgrading of internal access by the laying of hardcore to facilitate access to uplands including agricultural lands and forestry to the south is or is not development or is or is not exempted development"*

The Planning Authority's Decision (Louth County Council) was that this was not exempted development, and this was upheld by the Board. The full content of the inspector's report is enclosed, but the following points are noted within the report:

- Section 4(4) of the Planning and Development Act (as amended) provides that development shall not be exempted development if an appropriate assessment is required. It was noted by the Inspector, that an area designated as a Special Area of Conservation (SAC) was c. 400m from the outfall of the drainage. It is noted that, in our case, a SAC lies immediately adjacent to the outfall of the 'dam structure'. The inspector acknowledges the exemption for minor works and structures including the *"maintenance of any gully, drain, pond, trough, pit or culvert, the widening or deepening of watercourses...."*. However, he goes on to state that *"Any exemption is precluded by Section 4(4) of the Act which provides that development shall not be*





*exempted development if an appropriate assessment of the development is required”.*

- The Inspector notes that Article 8(G) of the Planning and Development Regulations 2001 (as amended) provides *“That Development (other than where the development consists of provision of access to a public road) consisting of the construction, maintenance, or improvement of a road (other than a public road), or works ancillary to such road development, where the road serves forests and woodlands, shall be exempted development”* However, the inspector concludes that as there is no evidence of any substantial forest or woodland, and therefore does not come under the scope of Article 8(G) (ie is not exempted development)
- The inspector notes that Article 6 of the Planning and Development Regulations 2001 (as amended) provides an exemption for *“The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street road or way, and the construction of any private footpath or paving “* However, the inspector concludes that as the subject track is new development and provides access for vehicular traffic, it is not exempted development.

We believe that Kerry County Council Planning Authority are in error in their assessment, as stated in their Declaration that the proposed works would constitute development which is exempted development, for the following reasons,

1. A full assessment of the development, as described in our Section 5 application for a Declaration has not taken place. Only a component of the development, that being described by the Authority as a ‘Culvert’, has been assessed.
2. The ‘Culvert’ referred to by the Authority, was not the subject of the Section 5 application. No mention of a culvert exists in the Development Description of ‘*An existing dam type structure constructed on an open water course close to where it connects to the sea*’
3. The ‘Culvert’ referred to by the Authority, is not functioning as proper, correctly seized ‘Culvert’. The pipe, does not comply with the OPW hydraulic design requirements of a culvert, regarding minimum size. One questions, therefore, whether the description of this component as a ‘culvert’, is appropriate. Unintentionally, this component is functioning as a flow control regulator – not a free flowing culvert. It is the actual use and function of a component that determines whether or not planning permission is required. While a ‘culvert’ may be exempted development, a ‘flow control device’, causing a field to become a swale, is not.
4. By virtue of the precedent set under Report ABP-304569-19, as previously described, and the immediate close proximity to a Special Area of Conservation (SAC), an appropriate assessment of the development is required, thus negating any such ‘exempted development’ status for the installation of a culvert.
5. By virtue of the precedent set under Report ABP-304569-19, as previously described, the infill, hardcore surfacing, and the creation an access track, that does not serve a





for or woodland, and is new development, which provides access for vehicular traffic, is not exempted development

6. It is noted, at the foot of the Declaration issued by Kerry County Council , that it is stated that the works may have required the consent of the Office of Public Works under section 50 of the Arterial Drainage Act. If consent is required, then a comprehensive Flood Risk analysis and assessment must be carried out, under 'appropriate assessments'. This being the case, then Section 4(4) of the Planning and Development Act (as amended), precludes any exemption.

We believe it is probable that the works do require consent of the Office of Public Works under Section 50 of the Arterial Drainage Act, and we would respectfully request guidance and opinion on this from the Board.

We contend that the Declaration by the Authority, is not correct nor appropriate for the reasons as set out within the content of this letter. We therefore respectfully request that the Board determine that the subject of this Section 5 referral constitutes development, which is not exempted development.

If you have any further queries, please do not hesitate to contact me.

Yours faithfully,



Matt Clarke Bsc(hons) Msc MCIOB C.Build E FCABE MIEI

*Chartered Building Engineer*

*Chartered Construction Manager*

*Registered Building Surveyor.*

---



An Roinn Pleanála

Comhairle Contae Chiarraí,  
an Chontae,  
Trá Lí, Co. Chiarraí.



COMHAIRLE CONTAE CHIARRAÍ  
KERRY COUNTY COUNCIL

100-4  
Planning Department

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

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

Application No: EX967

Decision Date: 22<sup>nd</sup> February 2022 Registration Date: 14<sup>th</sup> December 2021 & 2<sup>nd</sup> February 2022

Applicant: Chris Fitzgibbon, Drimna Beg, Sneem, Co Kerry.

Agent: Matt Clarke, Teicniuil-Priory Consulting Engineers Ltd, The Courtyard, Fairhill, Killarney, Co Kerry.

Development Location: Drimna Beg, Sneem, Co Kerry.

Development Description: An existing 'dam-type structure' constructed on an open watercourse close to where it connects to the sea.

**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 22<sup>nd</sup> February 2022 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 14<sup>th</sup> December 2021 & 2<sup>nd</sup> February 2022, I hereby certify that, the Planning Authority considers that the works, the subject of the referral under the said Section 5, namely **An existing 'dam-type structure' constructed on an open watercourse close to where it connects to the sea at Dirmna Beg, Sneem, Co Kerry** does constitute exempted development under the Planning & Development Acts 2000-2020 having regard to the considerations inserted hereunder:-

*Schedule 1*

- (i) The proposed works would constitute works that would come within the scope of Section 2(1) of the Planning and Development Act 2000 (as amended),
- (ii) The said works would constitute development that comes within the scope of Section 3(1) of the said Act and
- (iii) The proposed works would come within the scope of exemption provided at Class 3 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) and would not contravene the restrictions on exemption at Article 9(1) of the said Regulations.

Therefore, the proposed works would constitute development which is exempted development.

**Note:** The above assessment is carried out on the basis that the works subject of the referral comprise the construction of a culvert. While it is the recommendation that the works carried out are exempted development under the provisions of the Planning and Development Act, 2000 (as amended), the works may have required the consent of the Office of Public Works under Section 50 of the Arterial Drainage Act.

Signed on behalf of Kerry County Council

  
Date: 22<sup>nd</sup> February 2022





Planning Dept  
Kerry County Council  
Rathass  
Tralee  
Co. Kerry.

*copy of cover letter  
to Kerry Co. Co.*

30/11/2021

Dear Sirs,

**RE: Request under Section 5 (Planning and Development Act 2000) for determination of development of dam type structure to have exempted development status, or not, at Drimna Beg, Sneem, Co. Kerry.**

I refer to the above, and duly enclose the following:

- *Fee cheque in the amount of €80*
- *2 No copies of Section 5 application from*
- *4 No number copies of the applicant's site and adjacent site, outlined in red.*
- *2 No Copies of the report on the dam structure*
- *2 No copies of a site layout drwg no 100-21-1-101*
- *2 No copies of reproduction SAC map drwg no 100-21-1-102*
- *2 No copies of reproduction 25" historic map drwg no 100-21-1-103*
- *2 no copies of reproduction of extent of folio map drwg no 100-21-1-105*
- *2 No copies of Plans and Elevation of dam structure drwg no 100-21-1-106*

The subject of this application concerns the construction of a 'dam' or a berm type structure, as an infill within a previously open channel of water. This structure, which also provides for a small access road, lies adjacent to our clients site, and immediately adjacent to the foreshore. "

A pipe has been installed within the dam, but has a significantly less cross-sectional area than the previous open natural channel, which conveys water to the foreshore and sea.

Due to the restrictive nature of this structure, the influence of the presence of this infill dam also extends to within our client's site, and the foreshore.

Therefore, while the dam structure has been constructed by others in an adjacent neighbouring site, there has been an obvious effect on the surrounding area, and we would wish to seek a determination from the Planning Authority, whether, or not, this structure requires Planning Permission and any other associated consents.





A fuller description of the development, the associated influence over the immediate environs, and items of requests for clarification, can be found in the attached report, which is to be read in conjunction with the enclosed drawings.

I look forward to your response.

If you have any queries, please do not hesitate to contact me.

Yours faithfully,

Matt Clarke BSc(hons) MSc MCIOB MCIOB C.Build E FCABE MIEI

*Chartered Building Engineer*

*Registered Building Surveyor*





Comhairle Contae Chiarraí  
Kerry County Council

CC-P27  
09-2013\_BG

## FOIRM IARRATAIS ALT 5 SECTION 5 APPLICATION FORM

IARRATAS MAIDIR LE DEARBHÚ AR FHORBAIRT AGUS  
AR DÍOLÚINE FORBARTHA (Alt 5 den Acht um Pleanáil  
agus Forbairt leasaithe)

REQUEST FOR A DECLARATION ON DEVELOPMENT  
AND EXEMPTED DEVELOPMENT (Section 5 of the  
Planning & Development Act 2000 as amended)

**TÁILLE €80 FEE**

All personal data collected is in compliance with the requirements of the General Data Protection Regulation (GDPR) 2016, and Data Protection Acts 1988 to 2003.  
Individual privacy notices for each section/service are available at [www.kerrycoco.ie](http://www.kerrycoco.ie)

Ainm Chris Fitzgibbon Name

Seoladh [Redacted] Address

[Redacted]

Teil. [Redacted] Tel:

R-phost [Redacted] Email

Ainm/Seoladh Gníomhaire Matt Clarke Name/Address of Agent

Teicniúil-Príomh Consulting Engineers Ltd  
The Courtyard, Fairhill, Millersburg

Teil. [Redacted] Tel:

Láthair an Suímh Ábhartha Drimma Beg, Sineen Location of Subject Site  
(as per attached maps)

An Struchtúr Cosanta é nó 'bhfuil sé laistigh de chúirtealáiste Struchtúir Chosanta? No Is this a Protected Structure or within the cartilage of a Protected Structure?

Más é, 'bhfuil Dearbhú faoi Alt 57 den Acht um Pleanáil agus Forbairt 2000 iarrtha nó eisithe don fhorbairt ag an tÚdarás Pleanála? / If yes, has a Declaration under Section 57 of the Planning and Development 2000 been requested or issued for the property by the Planning Authority?





Luaigh leas an iarratasóra sa suíomh le do thoil

Please state applicants interest in this site

Applicant is owner of adjacent site.  
The relevant structure under request has  
influence over applicants land and  
foreshore, as outlined in the attached  
report.

Luaigh ainm agus seoladh an  
úinéara murar é/í an  
t-iarratasóir

Steve O'Sullivan

c/o Mdly Galvins

Bonane, Kenmare, Co. Kerry.

If applicant is not the owner  
please provide owner's name  
and address

Tabhair faoi deara go n-eiseofar cóip den Dearbhú ar  
Fhorbairt agus ar Díolúine Forbartha de réir Alt 5(2a)  
den Acht um Pleanáil agus Forbairt 2000 don úinéir/  
áititheoir.

Please note that in accordance with section 5(2a) of the  
Planning & Development Act 2000 the owner/ occupier  
of the site will be issued with a copy of the Declaration  
on Development and Exempted Development.

Liosta pleananna, líníochtaí srl  
curtha ar fáil leis an iarratas seo.

List of plans, drawings, etc  
submitted with this application

Osi maps, 25" historic map, SAC map,  
Plans, elevations of structure, report, + Photographic  
Schedule

Tabhair tuairisc ar na h-oibreacha (má  
bhaineann) nó ar an bhforbairt beartaithe.

(Tabhair faoi deara: Is iad na h-oibreacha atá liostaithe  
agus sonraithe, agus sin amháin, a dheimhneofar measúnú  
orthu fé Alt 5. Úsáid leathanaigh breise más gá)

Please provide details of works (where  
applicable) or proposed development.

(Note: only works listed and described under this  
section will be assessed under this Section 5  
application. Use additional sheets if required)

The structure under review consists of a  
'clam' type of infill, within an open  
water channel, directly adjacent and  
draining into the foreshore area,  
as explained in the accompanying  
report. (attached).



An eol duit aon imeachtaí  
forfheidhmithe ar an suíomh seo?  
Má tá, tabhair sonraí le do thoil

Are you aware of any enforcement  
proceedings connected to this site?  
If yes, please supply details

No.

An raibh iarrata(i)s pleanála ar an suíomh seo  
cheana? Má bhí, tabhair sonraí led' thoil

Were there previous planning application(s)  
on this site? If yes, please supply details

No.

Sínithe:  
Signed



Dáta:  
Date

24/11/21.

#### NÓTAÍ:

Ní mór 4 chóip de léarscáil den láthair shuímh  
leis an suíomh imlínithe go soiléir i ndearg a  
chur ar fáil agus táille €80 leis. Cuir 2 chóip de  
phleananna/tuairiscí breise srl. a theastaíonn  
uait bheith mar chuid den iarratais.

#### NOTES:

Application shall include 4 copies of the Site  
Location Map with the site clearly outlined in  
red and a fee of €80. Please submit 2 copies  
of any additional plans/reports etc you may  
wish to be included as part of the application.

Seol na h-iarratais líonta go 'n seoladh thíos:

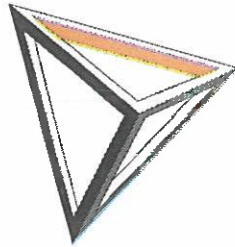
Send your completed applications to:

An Roinn Pleanála,  
Comhairle Contae Chiarraí,  
Ráth Teas, Trá Lí, Co. Chiarraí.

T. (066) 7183582  
F. (066) 7120328  
[www.kerrycoco.ie](http://www.kerrycoco.ie)

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





# **TEICNIUIL-PRIORY CONSULTING ENGINEERS Ltd**

**Report on 'dam' type structure around foreshore location**

**Location: Drimna beg, Sneem, Co. Kerry**

**Clients: Chris and Sue Fitzgibbon**

***ENGINEER: Matt Clarke Bsc(hons) MSc C. Build E FCABE MIEI***

***Chartered Building Engineer***

***Teicniuil-Priory Consulting Engineers Ltd***

***Courtyard House***

***Fairhill***

***Killarney***

***Co. Kerr***





## **Contents**

- 1.0 General Information**
- 2.0 Enclosures**
- 3.0 Description of Development / Structure**
- 4.0 Request for Confirmation of Planning and Consent Status**
- 5.0 Recommendations**

### **1.0 General Information**

Client: Chris and Sue Fitzgibbon

Location of structure : Drimna Beg, Sneem, Co. Kerry, adjacent foreshore.  
(ITM coordinates 469385,565229)  
(GPS coordinates 51°49'26.5"N, -9°53'41.5"W)

Date of inspection: 27.10.2021

Weather Condition: slight precipitation, Cloud cover: 8 Oktas, temperature: 11 degrees Celsius,  
ground: damp.

Folios:

Dam Structure within Folio KY24843  
Adjacent Land effected by tidal flood within Folio KY74973F (Client's land)



## **2.0 Enclosures:**

### **Maps / Drawings**

#### **OSI map – Scale 1:2,500**

Map showing the location of the relevant structure, the extent of foreshore (up to HWM) as per 25” map (see below), outlined in blue.

#### **Historic 1888-1913 25”map**

*“The extent of state owned foreshore is normally defined to landward by the HWM as shown on the OSI Historic 1888-1913 25 Inch mapping and to seaward by the 12 mile limit of the Territorial Seas” - Guidance on the Preparation of Maps for Attaching to Foreshore Consent Applications. (Dept of Housing, local Government and Heritage)*

Map shows base reference for foreshore, corresponding to OSI map.

#### **Site layout map – Scale 1: 500**

Map shows detailed extent of structure and ‘open channels’ to sea.

#### **Plans, elevations of dam structure – Scale 1:50**

Map shows general extent and construction details of same

#### **Special Area of Conservation (SAC) map - NTS**

Map shows extent of SAC in relation to location of structure, and extent of influence of structure on surrounding lands (foreshore and client’s land)

#### **Folio map**

Map shows extent (partial) of respective Folio’s (client’s folio and neighbouring folio) and extent of influence of structure on surrounding lands (foreshore and client’s land)

#### **Photographic Schedule**

Photos of ‘dam’ type structure and environs.





### **3.0 Description of Development/Structure:**

A site inspection of an existing development structure was conducted by this office on 27/10/21, and the following was observed:

A 'dam' type structure had been constructed, the location of which, and associated details, are as shown on the enclosed maps and drawings. Additionally, a photographic schedule is also enclosed.

This relevant development structure is noted to be a 'dam' or partial 'dam' type structure which appears to comprise of the following elements;

- The placement of stone /gravel/ soil between existing land outcrops, adjacent the foreshore, and within a zone of tidal influence has been carried out, forming, effectively, a dam / partial dam type structure,
- The construction and continuation of an access road, over the 'dam' structure, has taken place.
- The installation of a land drainage pipe (c 500mm dia) was observed, which consists of a PVC reinforced, ribbed type pipe, to provide some outlet of tidal flood and flow control of water either side of the dam.

The outlet from the pipe, contained within the dam structure, is far less than that the natural open channel that existed prior to the dam construction by approximately a factor of 5 times less. The volume flow rate from our client's lands at present, is therefore far less than the previous situation, that being via a natural open channel. Whether intended or not, the pipe is therefore acting as a flow control regulator, with the effect of creating a swale, which is attenuating water, within our client's site. As a consequence of this, the lands, behind this dam structure, belonging to our clients, under folio KY7493F, are in a constant state of flood and /or saturated ground and water logging.

### **4.0 Request for Confirmation of Planning and Consent Status**

This type of structure, albeit possibly not intended as a dam or berm, but nonetheless functions as same, is not, in the opinion of the writer, classified as 'exempted development' as per *S.I No 600/2001 Planning and Development Regulations 2001, Schedule 2, Part 1, Exempted Development*. No description of any such structure appears in the aforementioned section of these Planning Regulations.

A definitive response as to whether this structure is exempted development or not should be sought from the Planning Authority.

The structure is located in exceptionally close proximity to the High Water Mark (HWM) line of the foreshore, as defined on the Ordnance Survey 25" maps. (see attached drawings). It is understood that consent to undertake any works, development, or operations, on or within close proximity to the foreshore which may affect same, is required. (*Dept of Housing, local Government and Heritage*)



The structure appears to be located immediately adjacent a Special Area of Conservation (SAC). It is understood that any works or development, including any development that would be usually classified as 'exempted development', requires planning permission within SAC's.

The tolerance of delineation of the extent of the boundary's indicated on the SAC map, within the Kerry County Council Development Plan, is limited. Therefore, clarification is requested, if the coordinates of the dam structure given in the above 'general information' section of this report, are within the boundary of the SAC.

The tolerance of delineation of the extent of the foreshore indicated on the 25" historic map, is limited. Clarification is requested, if the coordinates of the dam structure given in the above 'general information' section of this report, are within the boundary designated as foreshore.

Clarification is required if other statutory bodies are required to be notified and/ or consent given for any development, works, or operations within, adjacent to, or directly affecting or impacting the landscape or environment of the original foreshore and lands adjacent to same.

Developments, works or operations that cause any alteration of the foreshore, are understood to require planning permission as well as foreshore consent. Clarification is sought if the zone of influence of the constructed dam / berm structure, as a result of hydrological changes due to restriction of flow, which is within the both the SAC and foreshore, (see attached drawings) is an action that requires planning permission and a foreshore consent.

## **5.0 Recommendations:**

It is the writer's considered opinion that it is probable that this dam type structure requires both Planning Permission and foreshore consent, due to the direct impact on the topography and the environmental landscape within the area, and it's effect of the hydrology within the foreshore, and our client's land.

However, to ascertain a definitive conclusion as to whether planning permission and other consents are required, it is recommended that a section V application is made to Kerry County Council to request clarifications on the above, and for the Authority to provide either a Declaration on Development and Exempted Development, or a confirmation that planning and other consents are required.

Signed: \_\_\_\_\_

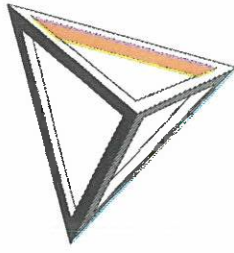
Matt Clarke BSc(hons) MSc MCIQB C.Build E FCABE

*Chartered Building Engineer*

*Registered Building Surveyor*

*Date: 20/11/21*





**TEICNIUIL-PRIORY CONSULTING ENGINEERS Ltd**

## Photographic Schedule

Project: Dam/ berm Constructed adjacent foreshore

Drimna Beg, Sneem, Co. Kerry

Client: Chris and Sue Fitzgibbon

**ENGINEER: Matt Clarke Bsc(hons) MSc C. Build E FCABE MIEI**

**Chartered Building Engineer**

**Teicniuil-Priory Consulting Engineers Ltd**

**Courtyard House**

**Fairhill**

**Killarney**

**Co. Kerry**







Photo No 1:

Extent of dam infill area outlined in red- previously open chanel.





Photo No 2:

Observer standing on infill dam, looking South West towards foreshore.







Photo No 3:

Observer standing adjacent infill dam, looking North East towards open channel







Photo No 4:

Observer standing facing 'inlet' side of infill dam structure. Dam structure highlighted in red







Photo No 5:

'Inlet' side of infill dam structure. Water severely restricted (previously open channel)







Photo No 6:

'Outlet' side of dam infill structure. Greatly reduce aperture to that of original open channel, resulting in reduced volume flow, and much higher velocity of water.







Photo No 7:

View towards client's land. Note flooding and water logging of land. Land effectively turned into a swale.





Photo No 8:

View towards sea. Area is foreshore up to access road and adjacent to infill dam structure, at low tide.







Photo No 9:

foreshore up to access road and adjacent to infill dam structure. Note outlet of water in sea directly from channel from dam infill area, indicated by red arrow. Zone of influence of dam extending to this outlet.







Photo No 10:

foreshore area up to access road. (parked jeep visible on access road).

END





An Roinn Pleanála

Comhairle Contae Chiarraí,  
Oifis an Chontae,  
Trá Lí, Co. Chiarraí.



COMHAIRLE CONTAE CHIARRAÍ  
KERRY COUNTY COUNCIL

100-21  
Planning Department

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

Guthán | Tel 066 7183582 Facs | Fax 066 7120328 Rphost | Email [plan@kerrycoco.ie](mailto:plan@kerrycoco.ie) Suíomh | Web [www.kerrycoco.ie](http://www.kerrycoco.ie)

19<sup>th</sup> January 2022

Matt Clarke  
Teicniúil Priory Consulting Engineers Ltd  
The Courtyard  
Fairhill  
Killarney  
Co Kerry

**VIA Registered Post**

Re: EX967

A Chara,

I refer to the Section 5 application form submitted by you on 14<sup>th</sup> December 2021 on behalf of Chris Fitzgibbon.

**In order to enable the Planning Dept to assess the Section 5 Referral, the following further information must be submitted:**

- (1) Referrer is requested to verify when the works subject of this referral were carried out.
- (2) When the site was inspected by the Planning Dept, it appeared that the works subject of the referral involved the culverting of a short section of an open watercourse in order to provide access from an existing private laneway east of the watercourse to lands west of the watercourse. Referrer is requested to verify if this is the case and to confirm if any bridge-type structure was in place prior to the culverting works.

Upon receipt of this further information, this application will be given further attention.

Yours sincerely,

  
David O'Brien  
A.O. Planning





Planning Dept  
Kerry County Council  
Rathass  
Tralee  
Co. Kerry.

*Copy of F.I  
Cover letter to Kerry Co.Cc.*

28/1/2022

Dear Sirs,

**RE: Request under Section 5 (Planning and Development Act 2000) for determination of development of dam type structure to have exempted development status, or not, at Drimna Beg, Sneem, Co. Kerry.**

**Ref: EX967**

I refer to our above application, and your letter dated 19/1/2022, a copy of which is enclosed.

Request has been made for further information, and we respond as follows:

1. It is unknown exactly when the structure was put in place. Our client purchased a number of fields including the field directly affected by the structure approximately 5 years ago. All of the land required extensive work to clear scrub and rhododendron, and to reinstate old drains. This took time and our client only became aware of the impact of the structure on his land during drainage and clearance work in September 2021. However, from visual observation of the placement of rocks and patchy vegetation growth around the structure, and the use of 'black corrugated PVCu piping', it would appear that this structure was probably placed, sometime within the past 10 to 15 years. We would further wish to state, that while cognisance is taken of the timeframe that these works have been carried out, we do not believe that this affects the determination of whether the works are 'unauthorised development', or not. We would respectfully request confirmation on this matter, from the Planning Authority.
2. The structure subject of our referral did involve providing what the Authority has referred to as a 'culvert', and which we agree does appear to allow to an access from the private lane to the East, to lands to the West. However, as outlined in our initial submission, this drainage pipe is severely undersized, and intentionally or not, it acts as a restrictive flow control device. The structure is therefore more akin to a partial dam or berm, impeding the flow, rather than a fully functioning, correctly sized culvert which would allow free and unrestricted flow to the foreshore, as was previously the case with the 'open channel'.

No such structure previously existed, as evidenced by maps previously submitted. (eg folio map)

Our client's land is in a constant state of being water-logged; a direct result of this structure, and we are endeavouring to find a solution, the most obvious of which would be to restore the open channel.



As previously mentioned within our Section 5 application, it is suspected that doing so may require planning permission, and especially in consideration of potentially relevant foreshore consents due to impact on both environmental and hydrological aspects, on this foreshore and within our client's land. We request confirmation from the Authority, as to whether this structure and any alterations to it to resolve our client's waterlogged land, are considered 'Exempted Development', in the context of the Planning Regulations, given the content of our original report, and consequently from this, if any such planning permission is required to provide betterment of the situation, either by re-routing flow, providing a larger pipe size, or the re-instatement or the original open channel.

I you have any further queries, please do not hesitate to contact me.

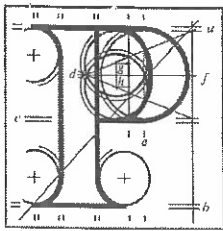
Yours faithfully,

Matt Clarke BSc(hons) MSc MCIOB MCIOB C.Build E FCABE MIEI

*Chartered Building Engineer*

*Registered Building Surveyor*





An  
Bord  
Pleanála

## Inspector's Report ABP-304569-19

### Question

Whether the culverting of a stream for the purposes of drainage works to agricultural land, the upgrading of internal access by the laying of hardcore to facilitate access to uplands including agricultural lands and forestry to the south is or is not development or is or is not exempted development.

### Location

Ballyoonan, Omeath, Co. Louth.

### Declaration

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

S5 2019/14

Applicant for Declaration

Gerard Watters.

Planning Authority Decision

Is not exempted development

### Referral

Referred by

Gerard Watters.

Owner/ Occupier

Gerard Watters.

Observer(s)

None.

Date of Site Inspection

10<sup>th</sup> December 2019.

Inspector

Deirdre MacGabhann





## Contents

Site Location and Description.....	3
2.0 The Question .....	3
3.0 Planning Authority Declaration.....	3
3.1. Declaration .....	3
3.2. Planning Authority Reports .....	4
4.0 Planning History.....	5
5.0 Policy Context.....	5
5.1. Natural Heritage Designations .....	5
6.0 The Referral.....	5
6.1. Referrer's Case .....	5
6.2. Planning Authority Response .....	7
6.3. Further Responses.....	8
7.0 Statutory Provisions.....	8
7.1. Planning and Development Act, 2000 (as amended) .....	8
7.2. Planning and Development Regulations, 2001 .....	8
8.0 Precedents .....	8
9.0 Assessment .....	9
9.1. Is or is not development .....	9
9.2. Is or is not exempted development .....	9
10.0 Recommendation.....	12



## **Site Location and Description**

- 1.1. The subject site is situated c. 2km to the south of Omeath in the townland of Ballyoonan, Co. Louth. It lies to the south of the R173, a regional road that runs along the southern side of Carlingford Lough, on the lower, northern slopes of Carlingford Mountain. The Tain Way, a long-distance walking route, passes through the site.
- 1.2. The large, L-shaped site rises away from the public road and comprises principally rough grazing land. Access to the site is from an existing entrance on the R173. Hard core and fill has been laid to provide a track along the eastern and northern boundary of site and provides access to a ruined house. The track splits just west of the house and two culverts have been provided to allow each section of track to cross a small stream.

## **2.0 The Question**

- 2.1. The question before the Board, is whether or not the following comprise development and exempted development:
  - Maintenance works to a derelict house (removal of ivy and roof). This matter was not addressed by the planning authority in their section 5 report.
  - Culverting of a stream for the purpose of drainage of agricultural land.
  - The upgrading of internal access by the laying of hardcore to facilitate access to uplands including agricultural land and forestry.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

- 3.1.1. On the 3<sup>rd</sup> May 2019 the planning authority decided that the following development referred to the planning authority is development and is not exempted development for the reasons stated:



- Drainage works for agricultural lands does not come within the scope of Article 8B of the Planning and Development Regulations, 2001 (as amended),
- An internal access by laying of hardcore to facilitate access to uplands for forestry and agricultural land does not come within the scope of Article 8G of the Regulations, or Schedule 2, Part 1, Class 13 of the Regulations as there is no evidence of any existing large wooded or forested areas within the location plan submitted, and
- The culverting of a stream does not come within the scope of Schedule 2, Part 3, Class 3 of the Regulations as it cannot be concluded on the basis of the information provided that the culverting of the stream, which leads directly to Carlingford Lough SAC would not have a significant effect on the integrity of the Site under Article 9(1)(a)(viiB) of the Regulations.

### 3.2. Planning Authority Reports

#### Planning Reports

3.2.1. The Planning Report (1<sup>st</sup> May 2019) refers to the planning history of the site and relevant sections of the Planning and Development Act, 2000 (as amended) and the 2001 Regulations (as amended). Having regard to the definition of development in the Planning Act it considers that the works referred to comprise development. However, it was considered that the works did not comprise exempted development for the following reasons:

- There is no evidence to suggest a large wooded or forested area within the location plan submitted. The internal access road/hardcore area would not come within the scope of Article 8G of the Regulations (construction or improvement of road to serve forests and woodland).
- The internal access/hardcore area is a new access and would not come within the scope of Schedule 2, Part 1, Class 13 of the Regulations (repair or improvement of private street, road or way).
- Drainage works for agriculture would come within the scope of Article 8B of the Regulations.





- The culverting of a stream would normally be considered exempted development under Schedule 2, Part 3, Class 3 of the Regulations (maintenance of culvert), but this is subject to Article 9 of the Regulations.
- Article 9(1)(a)(viiB) restricts exempted development where it is likely to have a significant effect on a European site. The culverting of the stream is a source/pathway between the site and two Natura sites, Carlingford Mountain SAC and Carlingford Lough SAC) and it cannot be concluded that the development would not have a significant effect on these sites.

#### 3.2.2. Other Technical Reports

- None.

## 4.0 Planning History

- PA ref. 06/801 – Permission granted to relocate an existing field entrance from the western side of the field to the eastern side of the field, on land adjoining the R173 and now comprising part of the subject site.
- PA ref. 18U217 – Enforcement file in respect of alleged unauthorised access from the public road, provision of laneway, culverting of stream and associated site development works. Correspondence on file also refers to works to a derelict house on the lands and provision of access to these.

## 5.0 Policy Context

### 5.1. Natural Heritage Designations

- 5.1.1. The subject site lies c.50m south of Carlingford Lough pNHA (site code 000452) and Carlingford Shore SAC (site code 002306). It also lies c.25m north of Carlingford Mountain pNHA and SAC (shared site code 000453).

## 6.0 The Referral

### 6.1. Referrer's Case

- 6.1.1. The following grounds are submitted to the Board:



- Works to derelict structure – The works carried out comprise the maintenance and repair of the derelict house (which is not a Protected Structure), namely removing of ivy and dangerous roof which had subsided. The works are exempted development under Section 4(1)(h) of the Act i.e. works for the maintenance, improvement or other alteration of any structure which do not materially affect its external appearance.
- Drainage works – These comprised:
  - a. The installation of two culverts in a stream involved the laying of 4m length of pipe, 24" diameter, and embedding the pipe in stone. Prior to this there had been problems with drainage on the land which resulted in waterlogging of fields making it impossible to carry out any farming. A culvert had been in situ on the land prior to the purchase by the landowner.
  - b. The laying of hardcore in order to prevent significant waterlogging which has occurred along the internal access route as a result of vehicles traversing the land to access the commonage lands to the south (affidavits attached demonstrating that other landowners require access through the site).

Use of land for the purpose of agriculture is exempted development under section 4 of the Planning and Development Act. Under Article 8B works consisting of field drainage for agriculture is exempted development. The drainage works were carried out in the form of field drainage for agriculture and are therefore exempted under Article 8B.

- Laying of hardcore – Comprise part of the maintenance of an internal access to the forest and woodland to rear and would constitute exempted development under Article 8G of the Regulations. There has always been a gate at this entrance and no new access to the public road has been provided. The internal access which only consists of hardcore (<4m wide), does not involve the creation of a new access to the public road, is not a road and only serves to provide for the safe traversing of agricultural vehicles over the land to access commonage and woodland areas to the south. It was carried out as part of drainage works associated with agricultural



development. The Tain Way passes through this field and the applicant receives funding for it. In order to maintain the lands and facilitate access to Tain Way the hardcore was essential and constitutes drainage works for the purpose of agriculture (attaches schedule of work required for maintenance of the route, which includes maintenance of drains, rehabilitation of surface where localised damage occurs). The works were carried out in compliance with the Tain Walks Scheme to facilitate safe access to commonage lands and Tain Way. The internal access was becoming more and more waterlogged and was restricting pedestrian movement within the field. As the works are specifically required by the Department of Environment, Heritage and Local Government, to maintain the Tain Way, they do not constitute development and would be exempted under section 4A and 8B of the Regulations.

- Appropriate Assessment – Refers to an attached Appropriate Assessment Screening Report which concludes that the works have no impact on European sites, alone or in combination with other plans and projects.

## **6.2. Planning Authority Response**

- Works to derelict house – Refers to attached photographs and states that the dwelling has been abandoned for some time. Any maintenance or repair works would be substantial and require a planning application. The referrer's submission refers to the structure as being derelict.
- Laying of hardcore – Article 8G of the Regulations refers to development consisting of the construction, maintenance or improvement of a road where the road serves forests and woodlands. There is no evidence to suggest that there is a large wooded or forested area within the location plan which the internal road/way/access would serve. Google aerial maps from April 2010 indicate that there has never been an internal road/way/hard core area in situ at this location. The works therefore do not come within the scope of Article 8G.
- Restrictions on Exemptions under Article 9(1) of the Regulations are not subject to Article 8G.





- General drainage works to agricultural land do come within the scope of 8G. However, it is considered that culverting a stream did not come within the scope of Schedule 2, Part 3, Class 3 of the Regulations as it could not be concluded that the development would not have an effect on a European site. The planning authority did not have the benefit of the Screening Report at the time of their assessment.
- Request the Board to uphold their decision.

### **6.3. Further Responses**

- None.

## **7.0 Statutory Provisions**

### **7.1. Planning and Development Act, 2000 (as amended)**

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended).

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

- Articles 8B, 8G and Schedule 2, Part 1, Class 13 and Part 3, Class 3 of the Planning and Development Regulations 2001 (as amended).

## **8.0 Precedents**

### **8.1. Previous cases which raise similar issues to the current case, include:**

- RL3352 – The Board decided that works carried to a derelict single storey farmhouse for habitable use at Carrigmartin, Ballyneety, County Limerick was development and was not exempted development.
- RL2587 – The Board decided that the carrying out of works to complete flood relief pipe at Scariff, Middleton, County Cork was development and was not exempted by reason of the nature and extent of work involved.
- RL2485 – The Board decided that the filling of 0.8 hectare area with inert materials and the construction of a forestry road at Cruagh, Rockbrook,



Rathfarnham, Dublin was development and was not exempted development (road had not been constructed to serve forestry).

## 9.0 Assessment

### 9.1. Is or is not development

9.1.1. Three principle works are referred to the Board:

- Maintenance and repair of derelict house.
- Carrying out of drainage works for agriculture (provision of two culverts).
- Laying of hardcore as part of internal access to forest and woodland to rear.

9.1.2. Section 3(1) defines development as *'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'*. And the term 'works' is defined in section 2 as *'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'*.

9.1.3. Having regard to both definitions, I would conclude that all three of the acts referred to the Board comprise development.

### 9.2. Is or is not exempted development

9.2.1. **Maintenance and repair of derelict house.** The building on the appeal site is referred to by the referrer in his submission to the planning authority and the Board as a derelict house and, having inspected the site, I would concur with this description. The use of the building as a house has been abandoned for some time and the roof, windows and walls are not intact. Section 4(1)(h) of the Planning and Development Act 2000 (as amended) provides that *'development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures'* is exempted development. In this instance, the building is derelict and the works which have taken place (removal of ivy and roof) are substantial and materially affect the external appearance of the structure and rendering it



inconsistent with its original character. I do not consider therefore that the maintenance and repair of the derelict house comprise exempted development.

- 9.2.2. **Carrying out of drainage works for agriculture.** The referrer argues that the two culverts have replaced an existing culvert and have been put in place to improve drainage on the site. From my inspection of the site it is evident that a small but fast flowing stream enters the subject site from the north, passes under it in the two culverts (and a short open stretch of water) and re-join the watercourse which discharges into Carlingford Lough. The northern most culvert is laid c.1-2m below ground level.
- 9.2.3. Section 4(1)(a) of the Planning and Development Act provides an exemption for the use of any land for agriculture and Article 8B of the Regulations provides an exemption for *'works consisting of field drainage for agriculture, other than drainage and/or reclamation of wetland'*. There is no information on the state of the previous culvert or how this affected land in the area of the culvert e.g. as a consequence of waterlogging of soils, and I would accept that it is possible that in poor condition the previous culvert may have made it difficult for vehicles to pass through this section of the subject site, to access wider lands for the purpose of farming these lands.
- 9.2.4. Section 4(4) of the Act provides that development shall not be exempted development if an appropriate assessment is required. In this instance, Carlingford Mountain Special Area of Conservation (site code 000453) lies upstream of the site and the stream crossing the appeal site discharges into Carlingford Lough, which is also designated as an SAC, c.400m downstream of the outfall from the most northerly culvert.
- 9.2.5. The referrer includes in his submission to the Board an Appropriate Assessment Screening Report. The report concludes that the development (provision of culverts and laying of hardcore) would not have an adverse effect on any European site, for example, by way of land take or emissions. However, the report provides little information on the methodology that was adopted to protect water quality during construction of the culverts (e.g. timing of works, arrangements for diversion of flows and management of soils). Given my observations on the volume and speed of water flowing in the stream and the depth of the culvert (most notably the northern one), I consider that there is a risk that construction works could have a deleterious





effect on water quality in the Lough, albeit localised to the outfall point. Whilst any such effects are likely to have been both short term and localised, they would have triggered the need for a more detailed screening. Further, appropriate assessment screening requires assessment of likelihood of effects in the absence of mitigation measures. Consequently, I consider that the risk of environmental effects on a European site, would have triggered the need for appropriate assessment screening and, given the proximity of the site to the SAC and depth of culvert, probably a Natura Impact Statement. For this reason, I consider that the carrying out of drainage works (installation of culverts) would not be exempted development.

- 9.2.6. Article 6 of the Planning and Development Regulations 2001 (as amended), subject to Article 9, provides an exemption for minor works and structures, including the *'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'* in Class 3, Part 3 (Exempted Development – Rural) of Schedule 2. However, again this exemption is precluded by Section 4(4) of the Act which provides that development shall not be exempted development if an appropriate assessment of the development is required.
- 9.2.7. **Laying of hardcore as part of internal access to forest and woodland to rear.** Article 8G of the Planning and Development Regulations 2001 (as amended), provides that *'Development (other than where the development consists of provision of access to a public road) consisting of the construction, maintenance or improvement of a road (other than a public road), or works ancillary to such road development, where the road serves forests and woodlands, shall be exempted development'* (my emphasis).
- 9.2.8. It is evident from inspection of the subject site that hardcore track principally serves the referrer's landholding, providing access to agricultural land and to the ruined house on the site. There is little evidence of any substantial forestry or woodland within this holding, or south of it (vegetation is principally upland heath).
- 9.2.9. The affidavit on file indicates that other parties cross the site to access common lands and the applicant also argues that (i) the hardcore track was laid to prevent further degradation of the soils on site by access vehicles, and can be considered to



be field drainage works, and (ii) the works were carried out in compliance with the Tain Walks Scheme to facilitate safe access to commonage lands and to the Tain Way, with the waterlogged field restricting pedestrian movements, and would be exempted in accordance with Section 4a (use of land for agriculture) and Article 8B (field drainage works for agriculture) of the Regulations.

9.2.10. Field drainage works are typically those employed to remove excess soil water to reduce or eliminate waterlogging, with the introduction of drains, provision or clearance of culverts etc. Therefore, in principle, I am not inclined to accept that the construction of an access track comprises field drainage works (regardless of need). Further, the Tain Way is a long-distance walking route. From inspection of the site, there is little evidence that pedestrians have been restricted in their movements along the trail given the terrain over which they would be walking, through the subject field to access the steeper, and rougher slopes of the mountain (see photographs).

9.2.11. Article 6 of the Planning and Development Regulations 2001 (as amended), subject to Article 9, provides an exemption for '*The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving*' in Class 13, Part 1 of Schedule 2. From the information on file, it would appear that the subject hardcore track is a new development and provides access for vehicular traffic. It would not, therefore, fall within this Class of exempted development.

## 10.0 Recommendation

10.1. 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 culverting of a stream for the purposes of drainage works to agricultural land, the upgrading of internal access by laying of hardcore to facilitate access to uplands, including agricultural lands and forestry to the south, is or is not development or is or is not exempted development:



**AND WHEREAS** Gerard Watters, Balregan, Kilcurry, Dundalk, Co. Louth requested a declaration on this question from Louth Council and the Council issued a declaration on the 3<sup>rd</sup> day of May 2019 stating that the matter was development and was not exempted development:

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 30<sup>th</sup> day of May 2019:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 8B and 8G of the Planning and Development Regulations, 2001, as amended,
- (c) Class 13, Part 1, Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) Class 3, Part 3, Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (e) the planning history of the site,
- (f) the location of the subject site in proximity to Carlingford Lough;
- (g) the nature of land uses and pattern of development in the area:

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

- (a) The maintenance and repair of derelict house; carrying out of drainage works for agriculture (provision of two culverts) and laying of hardcore as part of internal access to forest and woodland to rear comprise development.
- (b) The maintenance and repair of derelict house does not come within the scope of section 4(1)(h) of the Planning and Development Act





2000 (as amended) due to the nature and scale of works carried out.

- (c) Carrying out of drainage works for agriculture (provision of two culverts) do not come within the scope of Article 8B or Class 3, Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended), as the works require appropriate assessment and are, therefore, subject to the requirements of Section 4(4) of the Planning and Development Act, 2000 (as amended).
- (d) Laying of hardcore as part of internal access to forest and woodland to rear does not come within the scope of Article 8G of the Planning and Development Regulations, 2001 (as amended) as there is no evidence of any substantial forest or woodland that is served.
- (e) Laying of hardcore as part of internal access to forest and woodland to rear does not come within the scope of Article 6 and Class 3, Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) as the subject track is a new development and provides access for vehicular traffic.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the maintenance and repair of derelict house; carrying out of drainage works for agriculture (provision of two culverts) and laying of hardcore as part of internal access to forest and woodland to rear is development and is not exempted development.

---

**Deirdre MacGabhann**  
**Planning Inspector**

**9<sup>th</sup> January 2020**

