

16/06/2023

An Bord Pleanála
64 Marlborough Street
Dublin 1.

AN BORD PLEANÁLA	
LDG-	064344 - 23
ABP-	0.12
16 JUN 2023	
Fee: €	220
Type:	cheque
Time:	10.45
By:	hand

2 BALALLY HILL
DUNDRUM
DUBLIN 16
D16 AX79

Re:Referral under Section 127 of Planning and Development Act 2000.

Dear Sir/Madam,

- (a) This referral is being made in writing.
- (b) Appellant: John and Marie Sinnott, Windy Ridge, Curraghgraique, Enniscorthy, Co. Wexford.
- (c) The subject matter of this referral is whether works consisting of Removal of top soil and sub soil from one area and spreading it on lands for agricultural use is or is not development or is or is not exempted development.
- (d) This is a referral following a Declaration dated 02/06/2023 (Reg. Ref:EXD01013) made by Wexford County Council following an application dated 08/05/2023 made under Section 5 of Planning and Development Act 2000.

The grounds of appeal are as follows:

The planning authority in making it's decision failed to comply with requirements of Section 5 (2) (a) of Planning and Development Act 2000 where it states that "a planning authority **shall** issue the declaration on the question that has arisen and **reasons and considerations on which its decision is based**". In ignoring this requirement the planning authority has failed to make it's decision in compliance with the Act. Particularly the wording of the act places an obligation, by the use of the word **SHALL**, on the planning authority to give it's reasons and considerations. Why did it not comply with the wording of the act? The planning authority was requested in the application for a declaration as to whether the works (subject of the application) is or is not development or is or is not exempted development. The planning authority also failed to make a decision on the development aspect of the application. It is clear in Section 3 (1) of the Act that "Development" is defined as carrying out of any works in, on, over or under land. Why did the planning authority not so decide when it is so clear in the Act?. Regarding the question of whether the works were or were not exempted development the planning authority failed to make any effort to explain or justify it's decision. Due to the nature and composition of the decision document, the declaration is incomplete. Presumably the application was considered by a Town Planner who would presumably have issued a report explaining the logic of the decision. Should not this report have formed part of the decision?. In most cases, when development is deemed to be exempted it is due to reliance on an article under the Exempted Development Regulations.

The planning authority also failed in this aspect of its decision. It is understandable that where works in rural areas are often variable and of the one off variety it is not possible to cover all forms of works in the regulations. For this reason there have been many cases where the standing of certain works under planning law has been the subject of Section 5 Declaration applications and/or referral appeals. The only reference to change in level of ground, which is a major consideration in this application, is referred to is Class 6 of Part 1 of the Exempted Development Regulations where it stated that the level of ground must not be altered any more than one metre higher or lower. In the absence of inclusion of other heights in the Regulations the height of one metre would seem to be a reasonable standard to apply which, if applied to this case, would fail the one metre test even as the subject case contains alteration in elevation substantially in excess of one metre.

Set out hereunder is a list of referrals which have been determined by the Board. It will be noted that Precedents Numbered 1 to 4 are similar to the works which are subject of this referral. However, it will be noted that in Precedent Number 5 the works are identical to the works described in this referral.

PRECEDENT NUMBER 1

ABP-311284

Found that In accordance with Section 3 (1) of Planning and Development Act 2000 development includes "the making of any material change in use of any structures or other land the proposal is considered to constitute development".

PRECEDENT NUMBER 2

ABP-Reference RL05E 305482

Found that where material was removed and used for land reclamation purposes within the remainder of the farm holding is development and is not exempted development.

PRECEDENT NUMBER 3

ABP-Reference RL26.303109

Found that while removing trees and other vegetation from the site is not development the method and place of disposing it "infilling of existing hole with unknown infill material and top soiling of the filled hole and carrying out of works to allow water held in the hole to discharge to natural drainage network is development and is not exempted development.

PRECEDENT NUMBER 4

ABP- RL06S. RL3540

Found that the recovery of surplus imported inert soil for infilling low lying land " is development and is not exempted development"

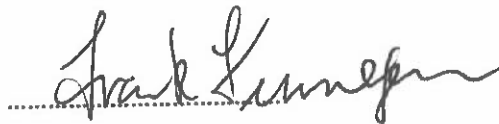
Found that the recovery of surplus imported inert soil for infilling low lying land " is development and is not exempted development"

PRECEDENT NUMBER 5

ABP- RL 06S. RL 3609

Found that the spreading of clean top soil and sub soil on lands of agricultural use is development and is not exempted development.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Frank Finnegan', written over a horizontal dotted line.

Frank Finnegan.

Encl. Prescribed fee of €220.00
Copy of Planning Authorities Decision
Copy of Section 5 Application to Planning Authority

WEXFORD COUNTY COUNCIL PLANNING AUTHORITY
PLANNING AND DEVELOPMENT ACT 2000 (as amended)

NOTIFICATION OF DECISION ON PLANNING APPLICATION

The Decision of Wexford County Council on the application described in the Schedule to this Notice is as shown therein.

Signed on behalf of Wexford County Council

m Long

Date: 2 June 2023

DECLARATION OF EXEMPTED DEVELOPMENT
SCHEDULE

REGISTER NUMBER:	EXD01013
DATE OF APPLICATION:	8 May 2023
APPLICANT:	John & Marie Sinnott
PROPOSED DEVELOPMENT:	Removal of top soil and sub soil from one area and spreading it on lands for agricultural use
LOCATION:	Curraghgraique, Enniscorthy, Co. Wexford
DECISION:	Exempted Development
DATE OF DECISION:	2 June 2023

2 BALALLY HILL
DUNDRUM
DUBLIN 16.

05/05/2023

Director of Planning
Wexford County Council
Carricklawn
Wexford

Re: Application under Section 5 of Planning and Development Act 2000.

Dear Director of Planning,

Section 5 (1) of the above Act enables any person to request in writing from the relevant planning authority what, in any particular case is or is not development or is or is not exempted development within the meaning of the Act referred to above.

This application is being made on behalf of the applicant whose details are contained on attached Application Form. In deciding this application I wish to make the following submission.

The attached map, scale 1/2500 shows the subject site, comprising an area of 1.28 hectares coloured green. On this entire area has been deposited top soil and sub soil to a depth of between 1.5m and 2.00 metres. On a rough calculation it is estimated that the movement of circa 16,000 cubic metres has been made from the area coloured orange on attached map scale 1/10,560.

The attached photographs, taken from the applicants' property, shows the degree and extent to which the subject site has been changed.

Unfortunately, the only way to gauge the exact volume of earth which has been moved would have been to establish the contours of the land before and after development took place.

I set out hereunder five references which have been determined by An Bord Pleanala.

PRECEDENT NUMBER 1

ABP-311284

Found that In accordance with Section 3 (1) of Planning and Development Act 2000 development includes "the making of any material change in use of any structures or other land the proposal is considered to constitute development".

This precedent unambiguously determines that any material change in use of any structures OR OTHER LAND is considered to constitute development. This means that the only issue to be decided is whether or not the removal of top soil and sub soil is or is not exempted development. This also means that not only has a decision on the

development of the spreading of the top soil and sub soil to be made but a separate decision may need to be made on the development on the land from where the top soil and sub soil was moved in the first place.

PRECEDENT NUMBER 2

ABP-Reference RL05E 305482

Found that where material was removed and used for land reclamation purposes within the remainder of the farm holding is development and is not exempted development

PRECEDENT NUMBER 3

ABP-Reference RL26.303109

Found that while removing trees and other vegetation from the site is not development the method and place of disposing it "infilling of existing hole with unknown infill material and top soiling of the filled hole and carrying out of works to allow water held in the hole to discharge to natural drainage network is development and is not exempted development.

PRECEDENT NUMBER 4

ABP- RL06S. RL3540

Found that the recovery of surplus imported inert soil for infilling low lying land " is development and is not exempted development"

The above references under PRECEDENTS Numbered 2, 3 , and 4 , which are similar to the application to be considered, were all determined by An Bord Pleanala to be development and are not exempted development

PRECEDENT NUMBER 5

ABP- RL 06S. RL 3609

Found that the spreading of clean top soil and sub soil on lands of agricultural use is development and is not exempted development.

The above reference in PRECEDENT No. 5 is not only similar but is identical to the application to be considered, was also determined by An Bord Pleanala to be development and is not exempted development.

Yours faithfully

.....
Frank Finnegan

Agent.

Encl. Prescribed fee of €80.00

APPLICATION FOR DECLARATION OF EXEMPTED DEVELOPMENT
SECTION 5 – PLANNING & DEVELOPMENT ACT 2000 (as amended)

Name and address of applicant(s) JOHN + MARIE SINNOTT

WINDY RIDGE CURRAGHGRAIGUE

ENNISCORTHY CO. WEXFORD

Eircode: Y21 R229

If applicant is a company –

Names of Company Directors

N/A

Registered address of company

Companies office registration number

Name and address of person
acting on behalf of applicant

FRANK FINNEGAN

2 BALALLY HILL DUNDREM

DUBLIN 16

Eircode: D16 AX79

Location townland and postal
address of land or structure
concerned

CURRAGHGRAIGUE

ENNISCORTHY CO. WEXFORD
(Please attach site location map)

Nature and extent of development

REMOVAL OF TOP SOIL AND

SUBSOIL FROM ONE AREA AND SPREADING IT ON
LANDS FOR AGRICULTURAL USE

(Please attach drawings in detail to support application)

Section of Exempted Development
Regulations under which exemption
is claimed

DECLARATION IS BEING SOUGHT

ON WHETHER OR NOT IT IS DEVELOPMENT
WHICH REQUIRES PLANNING PERMISSION

SIGNED

Frank Finnegan

DATE 8/5/23

Fee of €80.00 to accompany application

SECTION 3 OF THE PLANNING & DEVELOPMENT ACT 2000 (as amended)

Additional personal information (not for public viewing):

Telephone No. & E-Mail Address (if any) of Applicant:

[REDACTED]
[REDACTED]

Telephone No. & E-Mail Address of Applicant's Agent (if any):

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

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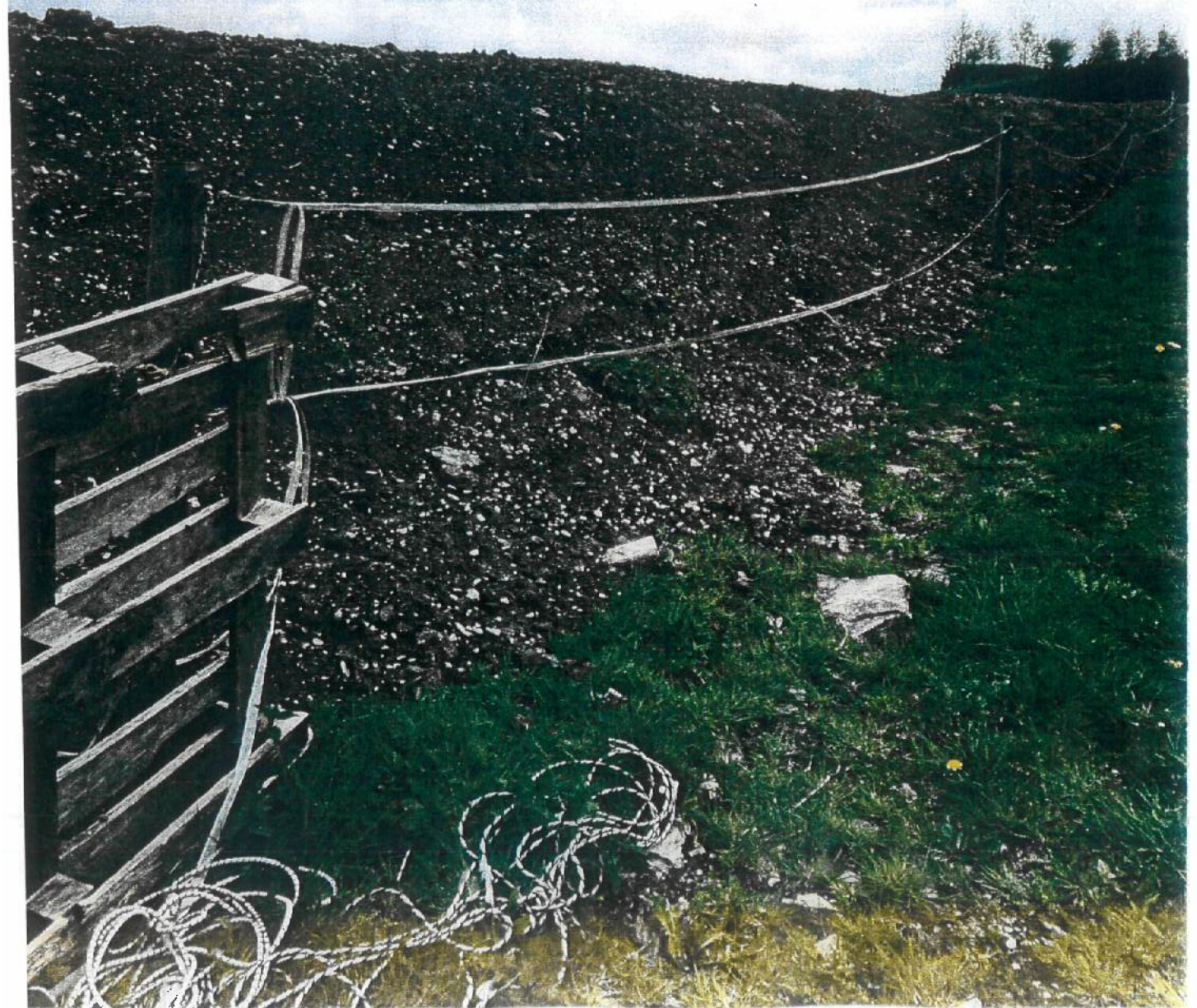


CAPTURE RESOLUTION:

LEGEND:

No 1

24apri2023 03.jpeg



NO 2

24april2023 04.jpeg



NO 3

work.jpg



No 4

24april2023 02.jpeg



NO 5

work 04.jpeg



