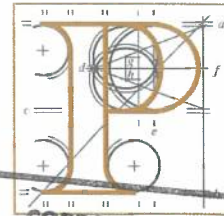


Our Ref: ABP-300489-17

Per Reg Ref: DEC 17/11



An
Bord
Pleanála

CORPORATE SERVICES

21 DEC 2018

COMHAIRLE CHONTAE UÍBH FHAILÍ

Offaly County Council
Áras an Chontae
Charleville Road
Tullamore
Co. Offaly

19 DEC 2018

Re:

Whether the importation of soil for the purposes of site restoration and restoration works using imported inert soil in relation to authorised quarry lands is or is not development or is or is not exempted development.

Cartron Durrow Tullamore Co. Offaly

Dear Sir / Madam

An order has been made by An Bord Pleanála determining the above-mentioned referral under the Planning and Development Acts 2000 to 2018. A copy of the order is enclosed.

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of 5 years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Inspector's Report, the Board Direction and Board Order in respect of the matter on the Board's website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

Yours faithfully,

B. McManus

Brid McManus
Executive Officer

Board Direction Attached

Encls. RL100n

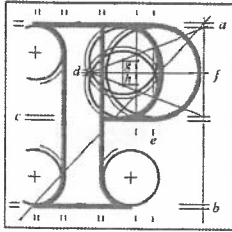
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**An
Bord
Pleanála**

**Board Order
ABP-300489-17**

Planning and Development Acts 2000 to 2018

Planning Authority: Offaly County Council.

Planning Register Reference Number: DEC 17/11

WHEREAS a question has arisen as to whether the importation of soil for the purposes of site restoration and restoration works using imported inert soil in relation to authorised quarry lands at Cartron, Durrow, County Offaly is or is not development or is or is not exempted development:

AND WHEREAS the question was referred to An Bord Pleanála by Offaly County Council on the 20th day of December, 2017:

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

- (a) sections 2(1), 3(1), 4 and 177O of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) the planning history of the site and, in particular, the grant of substitute consent for the quarry in question, under An Bord Pleanála reference number 19.SU.0095 dated the 29th day of June, 2015, and
- (d) the submissions on file and the nature of the proposal:

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the importation of soil for the purposes of site restoration and restoration works using imported inert soil on lands constitutes 'works' as defined in section 2(1) of the Planning and Development Act, 2000, as amended and is, therefore, development,
- (b) the subject works involve the importation and deposition on land of inert soil (whether or not it is deemed to comprise a waste or a by-product) and, therefore, pursuant to section 3 (2)(b)(iii) of the Planning and Development Act, 2000, as amended, the use of the land has materially changed and, therefore, is development,

- (c) the grant of substitute consent under An Bord Pleanála reference number 19.SU.0095 required, under condition number 2, that the developer was to submit to, and agree in writing with, the planning authority, within three months of the date of the Order (that is, within three months of the 29th day of June, 2015), an implementation programme for the progressive restoration of the site in accordance with section 9.4 of the submitted remedial Environmental Impact Statement and drawing number CD014/02, and also required that restoration works were to be implemented in accordance with the agreed programme,
- (d) no evidence has been submitted that the developer had submitted this implementation programme, as required by this condition, and that such an implementation programme had been agreed in writing with the planning authority, nor that any restoration works that have taken place on the subject site, including the importation of soil and its use on the site for restoration, has been carried out in accordance with such an agreed programme,
- (e) if it could be established that the soil that has been infilled was not waste, then the development in question would be classified as land reclamation, and potentially, if the lands in question were to be restored as part of a farm holding, and not used as a quarry at any time in the future, would come within the scope of Article 8C of the Planning and Development Regulations, 2001, as amended, but,

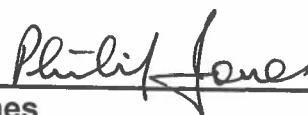
*

- (f) having regard to the lack of evidence of compliance with condition number 2 of the grant of substitute consent under An Bord Pleanála reference number 19.SU.0095, any exemption that would, otherwise, apply is restricted pursuant to Article 9 (1)(a)(i) of the Planning and Development Regulations, 2001, as amended, as such restoration would, in the absence of the agreed programme, contravene this condition and, therefore, the development in question is not exempted development:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the importation of soil for the purposes of site restoration and restoration works using imported inert soil in relation to authorised quarry lands at Carton, Durrow, County Offaly is development and is not exempted development.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

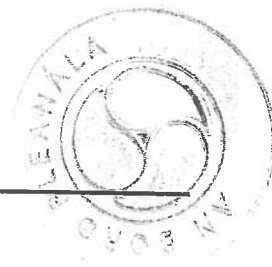


Philip Jones

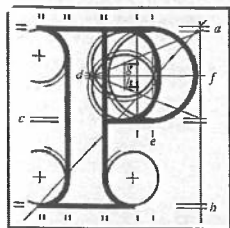
Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.



Dated this 18th day of December 2018.



An
Bord
Pleanála

Board Direction
ABP-300489-17

The submissions on this file and the Inspector's report were considered at a Board meeting held on December 10th 2018.

The Board decided, as set out in the following Order, that the importation of soil for the purposes of site restoration and restoration works using imported inert soil in relation to authorised quarry lands is development and is not exempted development at Cartron, Durrow, Co Offaly.

Board Order as follows:-

WHEREAS a question has arisen as to whether the importation of soil for the purposes of site restoration and restoration works using imported inert soil in relation to authorised quarry lands is or is not development or is or is not exempted development at Cartron, Durrow, Co Offaly.

AND WHEREAS Trevor Hinch of Hinch Plant Hire, Mountmellick, Co Laois requested a declaration on this question from Offaly County Council on the 30th day of November 2017, and the Council referred the question to An Bord Pleanála for determination, under Section 5 (4) of the Planning and Development Act, 2000, as amended, on the 20th day of December 2017.

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

- (a) Sections 2(1), 3(1), 4 and 177O of the Planning and Development Act 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,
- (c) The planning history of the site and in particular the grant of substitute consent for the quarry in question, under An Bord Pleanála reference number SU19.SU0095 dated the 29th day of June 2015, and
- (d) The submissions on file and the nature of the proposal.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The importation of soil for the purposes of site restoration and restoration works using imported inert soil on lands constitutes 'works' as defined in Section 2(1) of the Planning and Development Act 2000, as amended and is therefore development; and
- (b) The subject works involve the importation and deposition on land of inert soil (whether or not it is deemed to comprise a waste or a by-product) and therefore, pursuant to Section 3 (2)(b)(iii) of the Planning and Development Act, 2000, as amended, the use of the land has materially changed, and therefore is development.
- (c) The grant of substitute consent under An Bord Pleanála reference number SU19.SU0095 required, under condition number 2, that the developer was to submit to, and agree in writing with, the planning authority, within three months of the date of the order (that is, within three months of the 29th day of June 2015), an implementation programme for the progressive restoration of the site in accordance with Section 9.4 of the submitted remedial Environmental Impact Statement and drawing number CD014/02, and also

required that restoration works were to be implemented in accordance with the agreed programme;

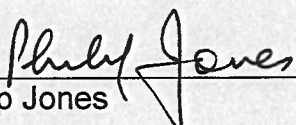
- (d) No evidence has been submitted that the developer had submitted this implementation programme, as required by this condition, and that such an implementation programme had been agreed in writing with the planning authority, nor that any restoration works that have taken place on the subject site, including the importation of soil and its use on the site for restoration, has been carried out in accordance with such an agreed programme;
- (e) If it could be established that the soil that has been infilled was not waste, then the development in question would be classified as land reclamation, and potentially, if the lands in question were to be restored as part of a farm holding, and not used as a quarry at any time in the future, would come within the scope of Article 8C of the Planning and Development Regulations 2001, as amended, but,
- (f) Having regard to the lack of evidence of compliance with condition number 2 of the grant of substitute consent under An Bord Pleanála reference number SU19.SU0095, any exemption that would otherwise apply is restricted pursuant to Article 9 (1)(a)(i) of the Planning and Development Regulations, 2001, as amended, as such restoration would, in the absence of the agreed programme, contravene this condition, and therefore the development in question is not exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (4) of the Planning and Development Act, 2000, as amended, hereby decides that the importation of soil for the purposes of site restoration and restoration works using imported inert soil in relation to authorised quarry lands is development and is not exempted development at Cartron, Durrow, Co Offaly.

Note: The Board noted the provisions of the legislation, as they relate to grants of substitute consent, under Section 177O (1) of the Act, whereby a grant of substitute consent "*shall have effect as if it were a permission under Section 34 of the Act and where a development is being carried out in compliance with a substitute consent or any condition to which the consent is subject, it shall be deemed to be authorised development*". In the circumstances of this case, no evidence was provided by the referrer which established that condition 2 of the grant of substitute consent had been complied with, and accordingly the development in question could not be deemed to be authorised development. Furthermore, if it is the case that condition number 2 of the grant of substitute consent in this instance has not been complied with, and that restoration works were taking place other than in compliance with this condition, the Board noted the provisions of Section 177O (2), whereby, if development is "*not being carried out in compliance with a grant of substitute consent or any condition to which the substitute consent is subject it shall, notwithstanding any other provision of the Act, be unauthorised development*". The Board decided not to deal with this matter further, in the context of this referral, as enforcement is a matter for the planning authority.

[Please issue a copy of this Direction with the Board Order to the parties.]

Board Member


Philip Jones

Date: 10th December 2018