



An
Bord
Pleanála

Board Direction
BD-003245-19
ABP-303182-18

The submissions on this file and the Inspector's report were considered at a Board meeting held on June 6th, 2019.

The Board decided to refuse permission for the following reasons and considerations.

Reasons and Considerations

The site for the proposed development consists of a former quarry, in respect of which a determination was made by the planning authority, pursuant to Section 261A of the Planning and Development Act, 2000, as amended, that development was carried out on this site after the 1st day of February 1990 which would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment, but that such an assessment was not carried out, and that development was carried out on this site after 26 February 1997 which would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out, and in respect of which a notice was issued by the authority on the 20th day of July 2012, which required the quarry owner/operator to make an application for substitute consent. The notice of the planning authority was confirmed, following review, by An Bord Pleanála on the 12th day of June 2013. No such application for substitute consent was made and, accordingly, the quarry is, pursuant to Section 177O(3) of the Act, unauthorised development, notwithstanding any other provision of the Act.

It is considered that the proposed development, which is expressed to be for the purpose of restoration of this previously extracted area, that is, part of the quarry to which the Section 261A notice, referred to above, applied, relies on the prior quarrying development / excavation, and would, therefore, necessarily involve the retention of, and consolidate, the unauthorised development in question. Such development, in the light of the requirements of this legislation, and in the light of relevant case law, would frustrate the requirements of the Environmental Impact Assessment and Habitats Directives, and would allow the developer the opportunity to circumvent the requirements of these Directives. The proposed development, in the absence of prior regularisation of the unauthorised quarrying development upon which it relies and which it is proposed to restore, would therefore be contrary to the Environmental Impact Assessment Directive and the Habitats Directive, and in these circumstances, the Board is precluded from granting planning permission for the proposed development, which would accordingly be contrary to the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to grant permission, the Board had regard to the provisions of the applicable legislation, the planning history of the subject site and relevant case law, and considered that, for the reasons set out in its order, it was precluded from granting planning permission for the proposed development.

Note: In making its decision, the Board had regard to case law, and in particular:-

- Shillelagh Quarries – v – An Bord Pleanála [2012] IEHC 257,
- Hayes and Hayes and Sweetman – v – An Bord Pleanála, [2016 no. 499 JR],
and
- Commission of the European Communities – v – Ireland [2008] (case C-215/06)

Furthermore, the Board noted the comment of the planning authority, in its planner's report of 13th November 2018, that it had had regard to the An Bord Pleanála

decision under file reference number PL27.249167 (Wicklow County Council register reference number 17/748). However, the Board considered that the present case is materially different from that case, in that the quarry area that was to be infilled in that instance did not include any area in respect of which an application for substitute consent was required to have been made, whereas in the present case the quarry which it is proposed to infill/restore was the subject of a direction under Section 261A of the Act requiring an application for substitute consent to be made.

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

Board Member

Date: 7th June 2019

Philip Jones