



An
Bord
Pleanála

Board Direction
BD-002900-19
ABP-303334-19

The submissions on this file and the Senior Planning Inspector's report were considered at a Board meeting held on April 30th 2019.

The Board decided that:-

- (a) An Environmental Impact Assessment is required, and a Natura Impact Assessment is required,
- (b) exceptional circumstances exist in the subject case, whereby it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent, and
- (c) the application for substitute consent shall be in respect of the entire quarry and all of the plant and structures, including the ancillary concrete products manufacturing area to the north of the quarry extraction area, the entire area being as outlined in red on drawing number KEE_TR/01, submitted to An Bord Pleanála on the 21st day of September 2018, and shall relate to the quarrying development that has taken place since the expiry of the planning permission for quarrying on the 5th day of August 2018, and to all manufacturing and processing activities, including the expansion of the blockyard, carried out on the overall site since 2013, but shall not include any proposed further quarrying or any further manufacturing or processing.

Accordingly,

- The Board decided to grant leave to apply for substitute consent, for the Reasons and Considerations set out below,
- To direct that the application for substitute consent shall include a remedial Environmental Impact Assessment Report and a remedial Natura Impact Statement.

REASONS AND CONSIDERATIONS

Having regard to Section 177D, Planning and Development Act, 2000, as inserted by Section 57, Planning and Development (Amendment) Act, 2010, the Board is satisfied that an environmental impact assessment and an appropriate assessment is required, in the light of the scale and nature of the quarrying and ancillary manufacturing activities that has been carried out.

Furthermore, the Board examined whether or not exceptional circumstances exist such that it would be appropriate to allow the opportunity for regularisation of the development by permitting leave to make an application for substitute consent.

In this regard the Board

- considered that the regularisation of the development would not be likely to circumvent the purpose and objectives of the Environmental Impact Assessment Directive or of the Habitats Directive,
- considered that the applicant could reasonably have had a belief that the development that took place was not unauthorised, having regard to the

planning history of the existing quarrying development and case law at the time that the development took place.

- considered that the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment and to carry out an appropriate assessment, and for the public to participate in such assessments, has not been substantially impaired;
- considered the nature of the actual/likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out of the development,
- considered that the actual or likely significant effects on the environment, and likely significant effects on a European site resulting from the development could be remediated;

Taking all of the above into consideration, it is considered that exceptional circumstances exist such that it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

Note 1: The notice to the applicants advising of this decision should also direct that:

- (a) the application must be made within 12 weeks of the giving of the notice or such longer period as the Board may, on request, consider appropriate, and
- (b) the application must include a remedial EIAR and a remedial NIS.

Note 2: In deciding that appropriate assessment is required in this instance, which differs from the Board decision in 2014 under file reference number QV0217, the Board concurred with the view of the Inspector in the current case and noted that the development to which its decision under file reference number QV0217 related solely to the quarry extraction, whereas the development that would be subject of the

application for substitute consent would encompass the totality of development at this location, including quarrying activity since the expiry of planning permission for such development and also the concrete block manufacturing area, which area is located immediately adjacent to the watercourse to the north of the site. Furthermore, the Board had regard to the judgement of the European Court of Justice in the case of People Over Wind – v – An Bord Pleanála (C-323/17).

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

Board Member

Philip Jones

Date: 30th April 2019

DECISION QUASHED