



An
Bord
Pleanála

Board Direction
BD-005331-20
ABP-305305-19

The submissions on this file and the Planning Inspector's report were considered at a Board meeting held on March 3rd, 2020. In addition to the subject file, the Board had before it all relevant planning history files, and also relevant enforcement file documentation supplied by the planning authority, and therefore considered that it had sufficient information to determine the matter.

The Board decided to refuse leave to apply for substitute consent, for the Reasons and Considerations set out below.

The Board considered that it had not been demonstrated that exceptional circumstances exist in this case so as to permit the regularisation of the development in question.

Reasons and Considerations

Having regard to section 177D of the Planning and Development Act, 2000, as inserted by section 57 of the Planning and Development (Amendment) Act, 2010, the Board considered that Environmental Impact Assessment and that Appropriate Assessment is required in respect of the subject development. Furthermore, the Board examined whether or not exceptional circumstances exist such that it would be appropriate to permit the 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 circumvent the purpose and objectives of the Environmental Impact Assessment Directive and of the Habitats Directive,
- considered that the applicants could not reasonably have had a belief that the development that has taken place was not unauthorised, having regard to the planning history and enforcement history of the subject lands,
- considered that the ability to carry out an assessment of the environmental impacts of the development for the purposes of an environmental impact assessment and an Appropriate Assessment, and for the public to participate in such an assessment, has not been substantially impaired,
- considered that the development was likely to have had significant effects on the environment and may have had significant effects on a European site, having regard to the planning and enforcement documentation submitted by the planning authority,
- considered that significant effects on the environment and on a European site could be remediated, and
- considered that, on the basis of the planning history and enforcement information provided by the planning authority (including details of inspections carried out by the authority), it is evident that the applicants had previously carried out unauthorised development, particularly having regard to the terms of condition number 2 of planning authority file reference number QY/23, which limited the duration of quarrying on these lands to a period of 10 years from 16th April 2007, and furthermore which did not permit quarrying/excavation outside the blue line on the site map submitted by the applicants to the authority in 2005, unless a separate grant of planning permission had been obtained.

The Board concluded that exceptional circumstances do not exist such that it would be appropriate to permit the regularisation of the development by permitting leave to

apply for substitute consent, and decided to refuse leave to make an application for substitute consent.

Note: In making its decision, the Board noted evidence of inspections carried out by the planning authority, which showed that quarrying had extended beyond the area specified in condition 2 of the conditions imposed by the planning authority under Section 261(6) of the Planning and Development Act 2000, as amended, under file ref QY/23, and also noted the inspections carried out by Inspectors of the Board in April and December 2019, which showed that quarrying was continuing to take place, well after the expiry in 2017 of the 10-year limit imposed by condition number 2. The Board also noted that the applicants would have been aware of the conditions and limitations imposed by the planning authority, in the light of the extensive correspondence on file from the applicants' agents in relation to other conditions imposed under file QY/23, and accordingly – notwithstanding any argument that might be advanced that compliance with the planning authority's Enforcement Notice of 24th June 2013 was the subject of legal proceedings – could not reasonably have been unaware of the limitations on the operation of the quarry imposed by the planning authority's decision under file ref QY/23, including the spatial extent of the quarrying beyond the area defined in condition 2, and the time limitation to quarrying/extraction on the quarry to the ten-year period from 16th April 2007.

The Board decided not to invoke its powers under section 177L, which enable the serving of a draft direction on the applicants to cease all or part of their activity and operations on or at the subject site, having regard to the enforcement by the planning authority.

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

Board Member

Date: 9th March 2020

Philip Jones