

Board Direction BD-009433-21 ABP-310041-21

The submissions on this file and the Inspector's report were considered at a Board meeting held on 12/11/2021.

The Board decided to grant leave to apply for substitute consent under section 177D of the Act, based on the reasons and considerations set out below.

Reasons and Considerations

Having regard to sections 177C and 177D of the Planning and Development Act 2000, as amended, the Board is satisfied that an environmental impact assessment and an appropriate assessment are required in this case.

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 granting leave to apply for substitute consent.

In this regard, the Board considered that:

this application for leave to apply for substitute consent has demonstrated that
the regularisation of the quarry would not circumvent the purposes and
objectives of the Environmental Impact Assessment Directive or of the
Habitats Directive, because it would allow for the provision of information and
an analysis of the likely significant environmental effects of the development
and the effects of the development on the integrity of European sites,

- notwithstanding the submission of a substitute consent application (ABP ref. 05E.SU0010) inferring that the applicant acknowledged that there was no planning permission for the quarry, prior to receipt of the Planning Authority's enforcement notice under reference UD 2061 dated the 3rd day of July 2020, the applicant could reasonably have had a belief that the quarrying development that took place was not unauthorised, particularly as the Planning Authority had failed to take enforcement action following the initial registration of the quarry and as the retention of an access road to specifically serve the quarry had been granted by the Planning Authority in 2005 (DCC Planning ref. 04/6411),
- 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 has not been substantially impaired, and
 that public participation in such assessments has not been substantially
 impaired, and
- a remedial environmental impact assessment would allow for the remediation
 of actual or likely significant effects on the environment and a remedial Natura
 Impact Statement would allow for the remediation of any adverse effects on
 the integrity of a European site,

Having regard to the foregoing, it is considered that exceptional circumstances do exist such that it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent in relation to the site outlined in this application.

Board Member

Dava Walah

Date: 12/11/2021