



An  
Bord  
Pleanála

## Board Direction 19.LS0033

The submissions on this file and the Senior Planning Inspector's report were considered at a Board meeting held on December 7<sup>th</sup> 2018.

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 of 15.34 hectares, and shall relate only to the quarrying development that has taken place since the first day of January 2010, and shall not include any proposed further quarrying.

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 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 not reasonably have had a belief that the quarrying development that took place after the 31<sup>st</sup> day of December 2009 was not unauthorised, having regard to the terms and conditions of planning permission register reference number PL2/03/191 (An Bord Pleanála reference number PL19.205910).
- 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 applicant had carried out unauthorised development subsequent to the expiry of planning permission for quarrying on the 31<sup>st</sup> day of December 2009,
- 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;

and the Board further considered the following relevant matter:-

- the fact that the applicant had a reasonable expectation, following the Section 261A process, that the development was capable of being regularised under a normal Section 34 application for retention, but that the planning authority's decision in this process did not provide for any means of regularising the quarrying development that has taken place since the 1<sup>st</sup> day of January 2010.

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:** 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, shall be in respect of the entire quarry of 15.34 hectares, and shall relate only to the quarrying development that has taken place since the first day of January 2010, and shall not include any proposed further quarrying.

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

**Board Member**

**Date:** 20<sup>th</sup> December 2018

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Philip Jones