



Board Direction

Ref: 04.LT.0001

The submissions on this file and the Inspector's report were considered at a Board Meeting held on 21st January at which consideration of the case was deferred. Following further consideration at a Board meeting held on 11th February 2016, the Board decided (by a 6:1 majority) to grant leave to apply for substitute consent in accordance with the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

Having regard to:

- the provisions of section 261A(20) of the P&D Act 2000 as amended,
- the planning history of the site, including permission granted under planning authority reference numbers 99/3410, 99/3411, 01/6604 and 03/4570,
- the determination of the section 261A Review of the site carried out by the planning authority, under reference number CKQY0106, which concluded that the assessment of the above planning applications did not constitute an appropriate assessment in the context of the EU Habitats Directive (notification of 23rd August 2012)
- The review of the above notification by An Bord Pleanála (file reference QV0174) which confirmed the determination by the planning authority, with particular reference to planning reference numbers 99/3410, 99/3411, and 03/4570 (Order dated 21st January 2014),
- The subsequent application for substitute consent made by the owner/ operator on 29th August 2014 (ABP reference SU0117) which case has not yet been decided by An Bord Pleanála,

The Board is satisfied that the permissions granted by the planning authority under reference numbers 99/3410, 99/3411, and 03/4570 were defective in a material respect, namely the assessment of the above planning applications did not constitute an appropriate assessment in the context of the EU Habitats Directive. This is considered to comprise a procedural error, given that the permissions were issued following the coming into force of the EU Habitats Directive on 26th February 1997.

Note: Whereas the Inspector suggested that permission number 99/3411 be excluded from the terms of the decision in this case, the Board was not persuaded to follow this approach, noting the following:

- All three relevant planning permissions (planning reference numbers 99/3410, 99/3411, and 03/4570) have been identified as defective in the course of the section 261A Review, including being specifically identified by An Bord Pleanála in its Order made under QV0109;
- Aggregate processing activities (falling within the definition of quarrying) formed part of the development the subject of permission 99/3411;
- The application made under reference SU0117 included the entire relevant area of the quarry, and refers to the aggregate processing activities that formed part of the development the subject of permission 99/3411

Taking the foregoing into account, and the purpose of section 261A(20) - namely to enable the quarry owner/ operator to address a material defect in the permission granted – the Board considered that to exclude reference to permission number 99/3411 would be inconsistent with the treatment of the case to date and would not be in the interests of proper planning and sustainable development.

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

- (a) The application for substitute consent should not include any development falling outside the definition of quarrying
- (b) 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
- (c) the application must include a remedial NIS.
- (d) Should a valid application be lodged within the period set out, the application for substitute consent made under reference SU0117 will be deemed withdrawn.

Board Member: _____ Date: 12th February 2016
Conall Boland

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