



Board Direction

Ref: 06S.LT.0003

The submissions on this file and the Inspector's report were considered at a Board Meeting held on 11th May 2017. The Board decided to **refuse leave** to apply for substitute consent in accordance with the reasons and considerations set out below.

In addition to the planning history cases cited by the Inspector, the Board noted referral case RL3162, whereby a referral question by the quarry operator concerning the planning status of part of the quarry was dismissed by the Board in 2014.

REASONS AND CONSIDERATIONS

Having regard to:

- The report and information provided by the planning authority,
- The submissions and observations on file,
- The planning, enforcement, registration and legal history of the subject quarry,
- The report of the Inspector,

The Board came to the following decision:

The Board is satisfied that the subject application comes within the scope of section 261A (21)(a) of the Planning and Development Act 2000 (as amended) by virtue of its planning and legal history.

The Board is satisfied that development has been carried out at this site after 1st February 1990 which would have required environmental impact assessment and that no such assessment has been carried out. This has already been established by the previous unsuccessful application for leave to apply for substitute consent (ABP reference LS0009) and is not contested. The requirements of section 261A (21)(c) are therefore satisfied.

The Board is satisfied that the requirements in relation to section 261 of the Act (quarry registration) have been fulfilled in so far as this quarry is concerned. The requirements of section 261A(24)(a)(ii) are therefore satisfied.

No planning permission has been granted in respect of the quarry (this is not contested by the parties).

Having particular regard to:

- the overall planning history of development of the site, including the following planning decisions:
 - South Dublin County Council planning application reference S99A/0016;
 - An Bord Pleanála planning appeal case reference PL06S.231371;
 - An Bord Pleanála section 5 referral case references RL2473 and RL3162;
 - An Bord Pleanála case reference LS0009 (leave to apply for substitute consent under section 177D);

- the court judgements issued in relation to the quarry, in particular:
 - the judgement of Costello J [1978] ILRM 85;
 - the judgements of Hedigan J [2012] IEHC 257 and [2013] IEHC 92;
 - the judgement of Baker J [2015] IEHC 838;

the Board concluded that the subject quarry cannot be considered to have commenced operation before 1st October 1964. The planning status of the quarry has been confirmed by An Bord Pleanála and by the High Court on a number of occasions, whereby claims that the quarry operations were a continuation of historical activities commenced before 1964 have been consistently rejected. The Board came to the view that to grant leave to apply for substitute consent on the basis of pre-64 commencement would run contrary to the rational and orderly application of the principles of proper planning and sustainable development. Therefore the requirements of section 261A(24)(a)(i) are not satisfied.

In not accepting the inspector's recommendation to grant leave, the Board considered that the decisions of the High Court and of An Bord Pleanála all underlined the clear distinction between the historical activities on the site, and the operations that commenced and intensified from the late 1970's onwards. This distinction has been repeatedly confirmed in the High Court dating back to the judgement of Costelloe J in 1978, as quoted in the Inspector's report (page 4). Whereas the Inspector was prepared on balance to take a different and more permissive view, enabling the applicant an opportunity to make a further application for substitute consent, the Board did not consider that the subject quarry could reasonably be considered to have commenced pre-1964.

Board Member: _____ Date: 17th May 2017
Conall Boland