



Board Direction

Ref: 26.SU0094

The submissions on this file and the Inspector's report were considered at a further Board meeting held on January 26th, 2017.

The Board considered this application for substitute consent at the same meeting as the application for permission for further quarrying development under ABP file ref no. QD26.QD0028.

The Board decided to refuse substitute consent generally in accordance with the Inspector's recommendation and for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

Having regard to the nature and scale of the subject development, the planning history of the site, and the provisions of Section 177K(2) of the Planning and Development Act 2000 (as amended), it is considered that the operation of the development subject of this substitute consent application which included the deepening and lateral expansion of the quarry area gave rise to a danger to public health and to serious environmental pollution by reason principally of 'Acid Rock Drainage' contamination of groundwater (but also from hydrocarbon contamination), and following on from this contamination of groundwater, a potential future threat to surface waters in the area. In addition, the use of contaminated water for aggregate washing may have resulted in fugitive dust emissions from this site, with elevated concentrations of metals, which may have impacted on residents of the area and road users. To grant substitute consent would, therefore, be prejudicial to public health, detrimental to ecology, and contrary to the proper planning and sustainable development of the area.

Note 1: Having regard to the substantive refusal set out above the Board decided not to attach refusal reason number 2 recommended by the Inspector. The Board further considered that having regard to the Section 261A process in which the applicant and planning authorities had participated it would not be appropriate, at this juncture, to revisit the periods during which works were carried out on site.

Note 2: The Board noted the considerable length of time taken to process the subject application arising, inter alia, from the applicant's submission of a subsequent and associated QD (quarry extension) file lodged under Section 177L of the Act. The Board considered that the need for temporary cessation of activity on site under Section 177J of the Act had been superseded at this stage and, therefore, decided to proceed to determine the substantive substitute consent issue.

Note 3: The Board considered the provisions of Section 177L which allow the Board to require that the applicant cease all or part of the quarrying activity or to carry out remedial measures within a specified period. While the remedial EIS identifies potential options for addressing the ARD problem, these have not been developed to such extent that they could be specified and relied on by An Bord Pleanála at this stage. The planning status of the quarry is clear having regard to the provisions of Section 177O(5) of the Act which state, inter alia, that 'where an application for substitute consent is refused by the Board under Section 177K the development shall notwithstanding any other provision of this Act, be deemed to be unauthorised'. The Board concurred with the Inspector that an order under Section 177L was not necessary and that the matter should be addressed through the appropriate mechanisms available to the planning authority.

Board Member: _____ Date: February 8th, 2017
Nicholas Mulcahy

Please issue copy of direction with order.