



An
Bord
Pleanála

**Board Direction
SU05E.SU0138**

The submissions on file were further considered at a Board meeting held on the 3rd day of October 2024. Given the time lapsed since the Board meeting of the 16th day of June 2023 (arising from legal matters pertaining to the file), the Board further considered the application as a new statutory development plan for the area came into effect subsequent to the previous Board meeting. Having considered the matter the Board confirmed its decision made at the meeting on the 16th day of June 2023 subject to the consideration of the new statutory plan for the area.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) the provisions of the Planning and Development Act 2000, as amended, and in particular Part XA,
- (b) the 'Quarries and Ancillary Activities, Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government, April 2004.
- (c) the provisions of the County Donegal Development Plan 2024-2030,
- (d) the remedial Environmental Impact Report received by the Board on the 11th day of December 2019, and documentation on file,

- (e) the reports of the Board's Inspector, including in relation to potential significant effects on the environment in the report dated 20th day of August 2020,
- (f) the submissions on the file,
- (g) the pattern of development in the area, and
- (h) the nature, scale and location of the development the subject of this application for substitute consent.

Appropriate Assessment Screening

The Board noted that the development is not directly connected with or necessary to the management of a European Site.

In completing the screening for Appropriate Assessment, the Board considered the applicant's Screening Report for Appropriate Assessment (as contained within appendix 6.0 of the remedial Environmental Impact Assessment received by the Board on the 11th day of December 2019) and concurred with the conclusion of that report in respect of identification of the European sites which could potentially be affected, and the identification and assessment of potential significant effects of the proposed development, either individually or in combination with other plans and projects, on these European sites in view of the site's Conservation Objectives. The Board was satisfied that the development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the River Finn SAC (Site Code 002301), or any other European site, in view of the site's Conservation Objectives.

This screening determination is based on the following:

- the nature and scale of the works;
- the distance between the application site and the nearest European site, that being 1.51 km to the River Finn SAC (Site Code 002301);

- the qualifying interests of the River Finn SAC;
- the indirect hydrological connection between the application site and the said European site;
- the distance and dilution factor which would render any form of runoff from the application site insignificant, and
- the quality of the water being discharged from the application site as evidenced in the issuing of a water discharge licence by Donegal County Council for water discharge off site and monitoring results of discharge being within the parameters set by the Council. (A water discharge licence being required for the works irrespective of the indirect hydrological connection to the River Finn SAC and therefore not considered mitigation for the purposes of Appropriate Assessment in this instance.)

Environmental Impact Assessment

The Board completed an environmental impact assessment of the development, taking into account:

- the nature, scale, location, and extent of the development,
- the remedial Environmental Impact Assessment Report received by the Board on the 11th day of December 2019 and associated documentation submitted with the application,
- the submissions received during the course of the substitute consent application, and
- the Inspector's reports.

The Board considered that the remedial Environmental Impact Assessment Report received on the 11th day of December 2019, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed development, and identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the development on the environment.

The Board agreed with the examination, set out in the Inspector's report dated 20th day of August 2020, of the information contained in the remedial Environmental Impact

Assessment Report and associated documentation submitted by the applicant and submissions made in the course of the planning application.

Reasoned Conclusion for Environmental Impact Assessment

The Board considered that the remedial Environmental Impact Assessment Report (rEIAR) received on the 11th day of December 2019, supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment. The Board is satisfied that the information contained in the remedial Environmental Impact Assessment Report is up to date and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board considered that the main significant direct and indirect effects of the development on the environment are those arising from the impacts listed below.

The main significant effects, both positive and negative, are:

- Negative impacts on **population and human health** arising from air emissions, noise and vibration emissions, emissions to water and traffic associated with quarry activities. Mitigation measures are proposed to ensure that these impacts are not significant and include effective mitigation for operational noise.
- Negative effect on **water** potentially. Mitigations proposed and applied. Chapter 6 of the rEIAR notes that quarry operations are subject to water discharge licence with monitoring results being of the highest quality. Excavation has not taken place below the ground water table. No evidence presented that water environment has been affected by the activity subject of this consent application.
- Negative effects on the receiving **landscape and visual impacts** arising from excavation/quarrying. Mitigations proposed will render these effects negligible.
- Negative effects on **land, soils and geology** arising from the quarry activity with the loss of a greenfield and loss of geological resource. Impact on geology will be permanent and negative. Mitigations proposed will include partial restoration of the quarry with the creation of new habitats with associated increase in biodiversity.

Having regard to the above, the Board is satisfied that the development would not have any unacceptable direct or indirect effects on the environment. The Board is satisfied that the reasoned conclusion is up to date at the time of making the decision.

Exceptional circumstances

In deciding to grant substitute consent the Board is satisfied that exceptional circumstances exist that would justify the grant of such consent having regard to the following:

- The regularisation of the development would not circumvent the purpose or objectives of the EIA Directive or Habitats Directive. The application was accompanied by a remedial Environmental Impact Assessment Report and the Board is satisfied that Appropriate Assessment (Stage 2) is not required.
- The applicant had or could reasonably have had a belief that the development was not unauthorised. The planning history and development history pertaining to the subject lands was considered by the Board in assessing this belief.
- The Board's ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment (EIA) has not been substantially impaired. Public participation in that assessment was provided for through the public notification of the submission of the substitute consent application to An Bord Pleanála.
- The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development. The Board completed an EIA in relation to the development in question and concluded that the remedial Environmental Impact Assessment Report submitted on the 11th day of December 2019 identified and described adequately the direct and indirect effects on the environment of the development. The Board determined that there is no likelihood of significant effects on European sites and Appropriate Assessment (Stage 2) is not required.
- The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated. The Board considered

that the remedial Environmental Impact Assessment Report received on the 11th day of December 2019 and Inspector's report were satisfactory in addressing the likely significant environmental effects of the development and also agreed with the conclusions in relation to the acceptability of mitigation measures proposed and residual effects. The Board determined that there is no likelihood of significant effects on European sites and Appropriate Assessment (Stage 2) is not required. No consideration was given by the Board to mitigation or remediation in screening for Appropriate Assessment.

- There is no evidence to indicate that the applicant has not substantially complied with the terms and conditions of the previous planning permission pertaining to the subject lands. As stated above, the Board is satisfied that the applicant had or could reasonably have had a belief that all development undertaken on site was authorised.
- In deciding to grant substitute consent, the Board also considered the following matters relevant:
 - The cessation of operations on the site since c.2015.
 - The desire of the applicant to regularise the planning status of the quarry.
 - The submission from the National Office for Environmental Health Services, Health Service Executive, received by the Board on the 25th day of July 2022 which is generally supportive that 'exceptional circumstances' do exist in this instance.
 - The submission from An Taisce received on the 25th day of July 2022 which queried whether certain provisions of s.177 of the Planning and Development Act 2000, as amended, are consistent with European law. (The Board considered that such a matter is outside its remit when determining the substitute consent application before it.) The Board considered that the submission did not raise any site-specific or development-specific matters indicating that 'exceptional circumstances' do not exist in this instance.
 - No submissions were received from members of the public indicating that 'exceptional circumstances' do not exist in this instance.

Conclusion

Having regard to the nature, scale and location of the development, the provisions of the County Donegal Development Plan 2024-2030, including policies and objectives on natural resource development and the landscape designations applicable to the site, the acceptability of the environmental impacts as set out above, the exceptional circumstances that exist in this instance that would justify the grant of substitute consent as set out above, and subject to the compliance with the conditions set out below, it is considered that the development would not adversely impact on the receiving environment including ground and surface water, would not seriously injure the visual or residential amenities of the area or pose an unacceptable risk to traffic safety. The development would therefore be in accordance with the proper planning and sustainable development of the area.

Conditions

1. (a) This grant of substitute consent shall be in accordance with the plans and particulars submitted to An Bord Pleanála with the application, as amended by the further plans and particulars received by An Bord Pleanála on the 8th day of August 2018, and the 11th day of December 2019 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority and the development shall be carried out in accordance with the agreed particulars.
- (b) This grant of substitute consent relates only to development undertaken, as described in the application, and does not authorise any future development including any future quarrying or any further excavation, on the subject site.

Reason: In the interest of clarity.

2. All environmental mitigation measures identified within the remedial Environmental Impact Report received by the Board on the 11th day of December 2019 shall be implemented in full.

Reason: To protect the environment

3. There shall be no discharge of quarry water to any roadside drains or adjacent watercourses in the absence of a Discharge Licence.

Reason: In order to protect ground and surface water from contamination and pollution.

4. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid within three months of the date of this Order, or as otherwise agreed in writing with the planning authority, and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

5. Within three months of the date of this Order, or as otherwise agreed in writing with the planning authority, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to the Board for determination.

Reason: To ensure the satisfactory restoration of the site in the interest of visual amenity.

Board Member

A handwritten signature in black ink, appearing to read 'Tom Rabbette', written over a horizontal line.

Tom Rabbette

Date: 03/10/2024