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**Planning and Development Acts 2000 to 2019**

**Planning Authority: Donegal County Council**

**Planning Register Reference Number: EUQY168**

**Application for Leave To Apply For Substitute Consent**, by J. and F. Doherty Quarries (Donegal) care of Earth Science Partnership (Ireland) Limited of Tonranny, Westport, County Mayo.

**Development:** Quarry at Devlinreagh, Carrickart, County Donegal.

## **Decision**

**REFUSE** leave to apply for substitute consent under section 177D of the Planning and Development Act 2000, as amended, based on the reasons and considerations set out below.

## **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

## **Reasons and Considerations**

Having regard to section 177D of the Planning and Development Act, 2000, as amended, the Board considered that an environmental impact assessment and an appropriate assessment is required in respect of the subject development. Furthermore, the Board examined whether or not exceptional circumstances exist such that it would be appropriate to permit the 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 circumvent the purpose and objectives of the Environmental Impact Assessment Directive and of the Habitats Directive,
- considered that the applicant could not reasonably have had a belief that the development that has taken place was not unauthorised, having regard to the planning history and enforcement history of the subject lands,

- considered that the ability to carry out an assessment of the environmental impacts of the development for the purposes of an environmental impact assessment and an appropriate assessment, and for the public to participate in such assessments, has not been substantially impaired,
- considered that the development had significant effects on the environment and may have had significant effects on a European site, having regard to the planning history of the site and the reasons for refusal as outlined in previous decisions by An Bord Pleanála, and that there was insufficient information in such previous planning applications in relation to these matters to be certain that this had not been the case,
- considered that significant effects on the environment and on a European site could be remediated,
- considered that, on the basis of the enforcement information provided by the planning authority, it is evident that the applicant had previously carried out unauthorised development, notwithstanding the fact that the planning authority's enforcement file was finally closed in June, 2017.

The Board concluded that exceptional circumstances do not exist such that it would be appropriate to permit the regularisation of the development by permitting leave to apply for substitute consent, and decided to refuse leave to make an application for substitute consent.

In not accepting the recommendation of the Planning Inspector to grant leave to apply for substitute consent, the Board noted the planning history of the subject site, comprising three refusals by An Bord Pleanála relating to the subject quarry (PL 05.131552, PL 05C.221524 and PL 05C.231114). The Board also had regard to the extensive documentation provided by the planning authority in relation to enforcement under its file reference number UDMD05/10, which showed, notwithstanding those refusals, that quarrying continued on the subject site for many years, and was the subject of a High Court Order in 2009 requiring cessation of quarrying from 2011. The Board further noted from this documentation that quarrying continued on the site, notwithstanding this High Court Order, up to and including 2016. Accordingly, the Board considered that the applicant could not have reasonably had the belief that the development that has taken place was not unauthorised, and the Board was also satisfied, based on the enforcement documentation provided by the planning authority, that the applicant had carried out unauthorised development, including processing of quarried materials from the site. The Board, therefore, did not agree with the Inspector that it was appropriate that leave to apply for substitute consent should be allowed, having regard to the extensive enforcement history. Furthermore, the Board had regard to relevant case law, including *Patterson - v - Murphy* [1978] IRLM 85, *McGrath Limestone Works Ltd - v - An Bord Pleanála and others* [2014] IEHC 382, and *Hayes and Others - v - An Bord Pleanála* [2018] IEHC 338.

The Board did not consider that it had been demonstrated that exceptional circumstances exist in this case so as to permit the regularisation of the development in question.

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**Philip Jones**

**Member of An Bord Pleanála**

**duly authorised to authenticate**

**the seal of the Board.**

**Dated this            day of            2019.**