

An
Coimisiún
Pleanála

Commission Order
ABP-318082-23

Planning and Development Act 2000, as amended

Planning Authority: Donegal County Council

Planning Register Reference Number: N/A

Application for Substitute Consent by Bridget and Gabriel Murray care of McMullin Associates Architects of Tirchonail Street, Donegal Town in accordance with section 177E of the Planning and Development Act, 2000, as amended by the insertion of section 57 of the Planning and Development (Amendment) Act, 2010, as amended.

Location of Quarry: Drumbeagh, Mount Charles, County Donegal.

Decision

The Commission, in accordance with section 177K(1)(J) of the Planning and Development Act 2000, as amended, and based on the Reasons and Considerations set out below, decided to **GRANT** substitute consent in accordance with the following conditions.

Reasons and Considerations

The Commission performed its functions in relation to the making of its decision, in a manner consistent with Section 15(1) of the Climate Action and Low Carbon Development Act 2015, as amended by Section 17 of the Climate Action and Low Carbon Development (Amendment) Act 2021, and the requirement to, in so far as practicable, perform its functions in a manner consistent with Climate Action Plan 2024 and Climate Action Plan 2025 and the national long term climate action strategy, national adaptation framework and approved sectoral adaptation plans set out in those plans and in furtherance of the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State.

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

- (a) the provisions of the Planning and Development Act 2000, as amended, and in particular Part XA Substitute Consent,
- (b) the policies and objectives of the Donegal County Development Plan 2024-2030 which seek to facilitate the sustainable and appropriate extraction of aggregates,
- (c) Ireland's 4th National Biodiversity Action Plan 2023–2030, the National Planning Framework (First Revision published April 2025), the Regional Spatial and Economic Strategy 2020-2031 Northern & Western Regional Assembly, the Quarries and Ancillary Activities - Guidelines for Planning Authorities (2004) and the Environmental Management Guidelines: Environmental Management in the Extractive Industry (Non-Scheduled Minerals) (EPA, 2006),

- (d) the remedial Environmental Impact Assessment Report (rEIAR) and the Appropriate Assessment (AA) Screening Report and supporting documentation submitted with the application,
- (e) the report and opinion of the planning authority submitted under Section 177I and the applicant's response to the report,
- (f) the submissions made in connection with the application,
- (g) the nature, scale characteristics and location of the development, as set out in the application documentation,
- (h) the mitigation measures and remedial mitigation measures outlined in the rEIAR, and the restoration scheme proposed, and
- (i) the report and recommendation of the Planning Inspector.

It is considered that, subject to compliance with the conditions set out below, significant effects have not occurred or which are occurring or could reasonably be expected to occur because the development concerned was carried out on the environment, including population and human health, biodiversity, land (including soils and geology), water, air, climate, material assets, landscape and cultural heritage, would not seriously injure the residential amenities of the area, in particular with respect to associated noise impacts and would be acceptable in terms of traffic safety and convenience. The development as carried out, the subject of this substitute consent application, would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment Screening:

The Commission 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 Commission considered the applicant's Screening Report for Appropriate Assessment 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 sites' Conservation Objectives. The Commission 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 St. John's Point Special Area of Conservation (Site Code 000191), the Donegal Bay Special Protection Area (Site Code 004151), the Donegal Bay (Murvagh) Special Area of Conservation (Site Code 000133) or the Durnesh Lough Special Area of Conservation (Site Code 000138), and determined that Appropriate Assessment Stage 2 (the preparation of a Natura Impact Statement) is, therefore, not required.

This screening determination is based on the following:

- (a) the nature and scale of the works;
- (b) the distance between the application site and the European sites,
- (c) the lack of direct connections between the application site and the European Sites;
- (d) the hydrological distances involved between the application site and the European Sites via indirect connections.

Environmental Impact Assessment:

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

- (a) the nature, scale, location, and extent of the development,
- (b) the remedial Environmental Impact Assessment Report received by the Commission on the 22nd day of September, 2023 and associated documentation submitted with the application,
- (c) the submissions received during the course of the substitute consent application, and
- (d) the Inspector's report.

The Commission considered that the remedial Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, adequately considers alternatives to the development, and identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the development on the environment.

The Commission agreed with the examination, set out in the Inspector's report, 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 application.

Reasoned Conclusion for Environmental Impact Assessment

The Commission considered that the remedial Environmental Impact Assessment Report (rEIAR), supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Commission 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 Commission considered that the main significant direct and indirect effects of the substitute consent development on the environment, with the implementation of mitigation and remedial mitigation measures are:

- (a) Land, Soils and Ecology: Permanent loss of bedrock geology as extracted product.
- (b) Water: Historical oil spill that impacted on groundwater that has been remediated as evidenced by the bore hole sampling.

Notwithstanding the conclusion reached in respect to the inability of the proposed measures to mitigate the permanent loss of bedrock it is considered that the environmental effects would not justify a refusal of substitute consent having regard to nature and scale of the quarrying activities undertaken at the subject site.

Exceptional circumstances

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

- (a) 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 Commission is satisfied that Appropriate Assessment (Stage 2) is not required.
- (b) The applicant had or could reasonably have had a belief that the development was not unauthorised. The application documentation, including a correspondence between the applicant and the planning authority, and the limited enforcement proceedings pertaining to the subject lands was considered by the Commission in assessing this belief.
- (c) The Commission'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 Coimisiún Pleanála.
- (d) There is no indication that the previous quarrying activities, subject of the substitute consent application, have resulted in any significant direct or indirect effects on the environment or would have affected the Conservation Objectives of the features for which any European Site in the vicinity has been designated.
- (e) The Commission considered that the remedial Environmental Impact Assessment Report 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

Commission 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 Commission to mitigation or remediation in screening for Appropriate Assessment.

- (f) There are no previous planning permissions relating to the subject site. The quarry activities are not regulated and as such the applicant has carried out unauthorised development.
- (g) In deciding to grant substitute consent, the Commission also considered the following matters relevant:
 - (i) The desire of the applicant to regularise the planning status of the quarry.
 - (ii) The submission from the planning authority indicating no objection in principle in granting substitute consent.
 - (iii) The submissions from Transport Infrastructure Ireland and Inland Fisheries Ireland.
 - (iv) 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, limited 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 compliance with the conditions set out below, it is considered that the development would not adversely impact on the receiving environment, 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. This grant of substitute consent shall be in accordance with the plans and particulars submitted with the application to An Bord Pleanála on the 22nd day of September 2023 except as may otherwise be required in order to comply with the following conditions. For the avoidance of doubt this grant of substitute consent:
 - (a) relates only to development already undertaken as described in the application and to the ground levels as indicated on the drawing titled 'Digital Topographical Survey' (drawing number 12321) received by An Bord Pleanála on the 22nd day of September 2023,

- (b) does not authorise any future extraction activity, or continuation of quarrying and does not relate to any other development on the subject site,
- (c) excludes the unexcavated areas to the east of the subject site within the redline boundary identified as 'GA1' (improved grassland) in Table (6.12): Habitats on site and surrounding environs and as illustrated in Figure (6.3): Habitats within the red line boundary of the remedial Environmental Impact Assessment Report (rEIAR).

Reason: To define the extent of the consent granted and in the interest of clarity.

- 2. The mitigation measures and remedial mitigation measures identified in the remedial Environmental Impact Assessment Report (rEIAR) and other plans and particulars submitted with the substitute consent application, shall be implemented in full by the developer in conjunction with the timelines set out therein, except as may otherwise be required in order to comply with the conditions of this permission.

Reason: To protect the environment.

- 3. Within one month of the date of this Order, the developer shall submit a detailed invasive species management plan, including a timeline for implementation, for the removal of the invasive species recorded on site, Himalayan Knotweed (*Persicaria wallichii*) and Giant Rhubarb (*Gunnera tinctoria*) for the written agreement of the planning authority.

Reason: In the interest of protecting biodiversity.

4. The developer shall comply with the requirements of the planning authority regarding the undertaking, recording and timely reporting of the results of all environmental monitoring to the authority.

Reason: To mitigate the risk of significant impacts on factors of the environment.

5. (a) Within three months of the date of this Order, the developer shall submit detailed proposals, including drawings, for the restoration of the substitute consent site for the written approval of the planning authority. The details shall include:
 - (i) the identification of all areas to be levelled or graded;
 - (ii) the identification of all items of plant and machinery, scrap metal, stockpiles, chemicals/fuels, contaminated materials including any contaminated soil, and waste materials to be removed;
 - (iii) details of measures to ensure the stability of the faces of the quarry;
 - (iv) details of landscaping / screening/ improvements to perimeter fencing and safety notices to be implemented; and,
 - (v) the timescale for the implementation of the restoration scheme.

- (b) The restoration scheme shall be based on the current ground levels within the quarry, as indicated on the drawing titled 'Digital Topographical Survey' (drawing number 12321) received by An Bord Pleanála on the 22nd day of September 2023 and shall not provide for extraction, or excavation other than for site levelling / grading purposes, of the substitute consent application site.
- (c) The restoration of the subject quarry area shall be completed within a period of twelve months after the date of the written approval of the restoration plan by the planning authority unless permission/consent is first granted for the continuation of quarry activity within the substitute consent area under separate process.

All restoration proposals shall be undertaken in accordance with the relevant sections of the following publications:

A Guide to the Protection of Watercourses through the use of Buffer Zones, Sustainable Drainage Systems, Instream Rehabilitation, Climate/Flood Risk and Recreational Planning.

<https://irishriverproject.com/2021/10/11/ifi-urban-watercourses-planning-guide/>

Guidelines on Protection of Fisheries During Construction Works in and Adjacent to Waters. <https://www.fisheriesireland.ie/media/guidelines-on-protection-of-fisheries-during-construction-works-in-and-adjacent-to-waters>

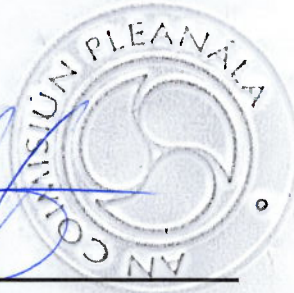
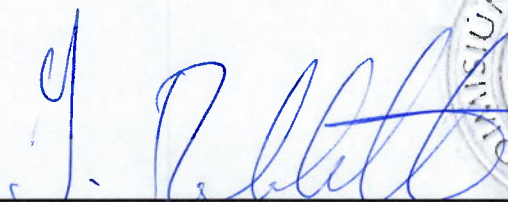
Reason: In the interest of landscape restoration and the proper planning and sustainable development.

6. During the implementation of the site restoration plan the developer shall:
- (a) inspect all vehicles leaving the site and ensure that they are clean;
 - (b) inspect the public road network used by the quarry on a daily basis and shall remove any debris or material deposited on the network from vehicles travelling from the site;
 - (c) provide, subject to the agreement of the planning authority, appropriate temporary signage to warn vehicles on approach to the quarry entrance; and
 - (d) ensure that adequate visibility is maintained at the entrance and the implementation of appropriate safety procedures for the egress of vehicles during the period of site restoration, the details of which shall be agreed with the planning authority.

Reason: In the interest of road safety.

7. Within three months of the date of this Order, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory restoration of the site, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. 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 An Coimisiún Pleanála for determination.

Reason: To ensure the satisfactory restoration of the development.



Tom Rabbette

**Planning Commissioner of An Coimisiún
Pleanála duly authorised to authenticate
the seal of the Commission.**

Dated this 8th day of July 2026.