

An
Coimisiún
Pleanála

Commission Order
ABP-321231-24

Planning and Development Acts 2000, as amended

Planning Authority: Clare County Council

Planning Register Reference Number: N/A

Application for Substitute Consent for repairs to concrete slipway and gravel pathway by Declan Lyons in accordance with section 177E of the Planning and Development Act, 2000, as amended by the insertion on section 57 of the Planning and Development (Amendment) Act, 2010, as amended.

Location of Quarry: Lands at Ballinkillew, Whitegate, County Clare.

Decision

The Commission, in accordance with section 177K 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

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

- (a) the provisions of the Planning and Development Act, 2000, as amended, and in particular Part XA (Substitute Consent) and the provisions of the Planning and Development Regulations, 2001, as amended.
- (b) the applicable national, regional and local planning policy including in particular, the provisions of the Clare County Development Plan 2023-2029,
- (c) the remedial Natura Impact Statement and supporting documentation submitted with the application,
- (d) the report and the opinion of the planning authority and the applicant's response to the report,
- (e) the planning history of the subject site and adjoining lands,
- (f) the nature, scale, characteristics and location of the development, and
- (g) the Inspector's assessment as set out in the Inspector's Report,

it is considered that the proposed development, subject to the conditions set out below, would be appropriate in scale and nature, would not seriously impact on habitats or local amenities, and would otherwise be in accordance with the proper planning and sustainable development of the area.

Environmental Impact Assessment

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination.

Appropriate Assessment Stage 1 Screening

The Commission considered the documents submitted with the application, and all the other relevant submissions on file, and carried out an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European sites. The Commission agreed with the screening assessment and conclusion carried out in the Inspector's Report that the Lough Derg Special Protection Area (Site Code 004058), is the only European Site in respect of which the development has the potential to have a significant effect in view of the Conservation Objectives for the site and that Stage 2 Appropriate Assessment is, therefore, required.

Appropriate Assessment Stage 2

The Commission considered the remedial Natura Impact Statement and all other relevant submissions and carried out an Appropriate Assessment of the implications of the proposed development on the Lough Derg Special Protection Area (Site Code 004058), in view of the site's conservation objectives. The Commission considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the conservation objectives of the site using the best available scientific knowledge in the field.

In completing the assessment, the Commission considered, in particular, the following:

- (a) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (b) the mitigation measures which are included as part of the current proposal, and
- (c) the conservation objectives for the European Site.

In completing the Appropriate Assessment, the Commission accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Site, having regard to the site's conservation objectives.

In overall conclusion, the Commission was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Site in view of the conservation objectives of the site. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable scientific doubt as to the absence of adverse effects.

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 Natura Impact Statement and the proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended.
- (b) There is nothing on the file to indicate to the Commission that the applicant had, or could reasonably have had, a belief that the development was not unauthorised. The Commission is satisfied that the applicant acted under the impression that the works were exempted development, given the nature of the repair works and that similar repairs had been carried out previously.

- (c) The Commission's ability to carry out an Appropriate Assessment has not been substantially impaired. The application was accompanied by a remedial Natura Impact Statement. 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) In relation to adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development, the Commission carried out an Appropriate Assessment of the proposed development as indicated above.
- (e) The Commission was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the Lough Derg Special Protection Area (Site Code 004058).
- (f) The Commission notes that on-site works undertaken resulted in planning enforcement action being taken by Clare County Council, the Commission is satisfied that the applicant acted under the impression that the works were exempted development. The Commission further notes that the applicant is making appropriate efforts to regularise the status of the existing development on the site through the substitute consent procedure.
- (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 subject works.

- (ii) The submission from the planning authority indicating no objection in principle in granting substitute consent.
- (iii) No submissions were received from members of the public indicating that 'exceptional circumstances' do not exist in this instance.

Proper Planning and Sustainable Development

Having regard to the nature, limited scale and extent of the development, the provisions of the Clare County Development Plan 2023-2029, the exceptional circumstances that exist in this instance that would justify the grant of substitute consent as set out above, and also noting that the integrity of Lough Derg Special Protection Area (Site Code 004058) is not adversely affected, the Commission is satisfied that, subject to compliance with the conditions set out below, the development would not adversely impact on the receiving environment and would not seriously injure the visual or rural amenities of the area. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

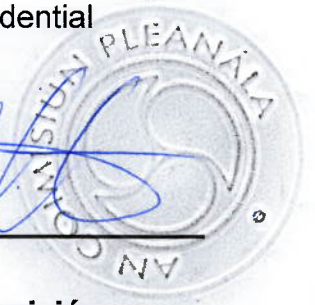
Conditions

1. (a) This grant of substitute consent shall be in accordance with the plans and particulars submitted to An Coimisiún Pleanála (formerly An Bord Pleanála) with the application on the 8th day of November 2024 except as may otherwise be required in order to comply with the following conditions.
- (b) This grant of substitute consent relates only to development undertaken, as described in the application, and does not authorise any future development on the subject site.

Reason: In the interest of clarity.

2. The slipway and associated facilities shall be used as a private amenity connected to the associated dwelling house only. No commercial use of the facilities shall be submitted.

Reason: To restrict the use of the slipway in the interest of residential amenity and environmental protection.



Tom Rabbette

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

Dated this  day of  2026.