

Board Order 09.LS.0023

Planning and Development Acts 2000 to 2018

Planning Authority: Kildare County Council

Planning Register Reference Number: QRA-28-004

Application for Leave To Apply For Substitute Consent, by Sharon Browne care of Cross Architectural and Building Surveyors of 11 An Crois, Allenwood Cross, Allenwood, Naas, County Kildare.

Development: Quarry at Ballysax Great, The Curragh, County Kildare.

Decision

REFUSE leave to apply for substitute consent under section 177D (4) of the Planning and Development Act, 2000, as inserted by section 57 of the Planning and Development (Amendment) Act 2010, 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 inserted by section 57, Planning and Development (Amendment) Act, 2010, the Board considered that a Stage II Appropriate Assessment is required in respect of the development concerned, and also that an Environmental Impact Assessment is required in respect of the development concerned.

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 circumvent the purpose and objectives of the Environmental Impact Assessment Directive or of the Habitats Directive.
- considered that the applicant could not reasonably have had a belief that the development was not unauthorised, particularly in light of the planning history of the subject site,
- considered that the ability to carry out an Environmental Impact Assessment and an Appropriate Assessment and for the public to participate in such assessments has been substantially impaired,
- considered that the development has had significant effects on the
 environment, in particular by way of impacts on nearby residents and the
 landscape, and may have adversely affected the integrity of a nearby European
 site,

- considered that the actual or likely significant effects on the environment or adverse effects on the integrity of a European site that may have arisen as a result of the development, cannot be remedied, and
- did not consider that the demand for sand and gravel in the mid Kildare area is sufficient reason to overcome the environmental issues.

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

In relation to section 177L of the 2000 Act, the Board did not consider it necessary to invoke the powers available to it under that section.

Chris McGarry Member of An Bord Pleanála duly authorised to authenticate the seal of the Board.

Dated this day of 2019

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