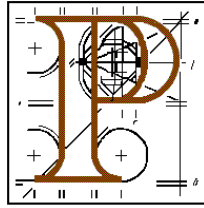


An Bord Pleanála



Inspector's Report

FILE REFERENCE: PL19.245814

Location: Carrowkeel and Clonfinlough Townlands,
Clonfinlough, Co. Offaly.

Proposed Development: Alterations to an existing gravel access road, a
0.27 and 0.84 hectare extension of gravel
extraction to the east and west respectively of
the existing gravel pit.

APPLICATION DETAILS:

Applicant: Dermot Nally Stone Ltd.

Planning Authority: Offaly County Council

P.A. Reference: 15/266

P.A. Decision: Refuse Permission

APPEAL DETAILS:

Appeal Type: First v Refusal

Observers: Ciaran Guinan

INSPECTOR: Sarah Moran

Date of Site Inspection: 3rd July 2016

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The subject site is an existing gravel pit located c. 6km east of Clonmacnoise monastic settlement, in north west Co. Offaly. Fin Lough is c. 3 km to the west of the site. The N62 National Secondary Route runs in a north/south direction approximately 5 km to the east of the site and the village of Ferbane is located approximately 7 km to the south west. The site is accessed via a local road, the L-30082, off the R444 which connects the settlements of Moate, County Westmeath with Shannonbridge, County Offaly via the Clonmacnoise monastic settlement. The site location is indicated in Ordinance Survey maps as '*Esker or Fighting Hill*', which runs to a height of 79 m AOD, however, much of this hill has been removed by the current operations. The surrounding area is lowlying and marshy with undulating hillocks that appear to be underlain with sand and gravel deposits. The lands in the immediate vicinity of the site are generally agricultural in nature, with a scattering of one off houses. There is a local road to the south, which serves several individual residential properties in close proximity to the site. There is a large dwelling house adjacent to the eastern quarry boundary and close to the site entrance. There is an existing, worked out quarry to the north west of the development site, fronting on to the public road, which is now overgrown. In the wider area, extensive areas of bog are being used for production of milled peat by Bord na Mona to the east of the L-30082 and to the south of the site.
- 1.2 The existing gravel pit has a stated area of 9.73 ha. The overall site is elevated relative to the surrounding landscape as it is located on an esker hill. The submitted contour map indicates that extraction has taken place to a depth of c. 16m from the 65m contour line. The quarry has vehicular access from the L-30082, at the eastern end of the overall site. There is a wheel wash facility adjacent to the site entrance. There are 2 no. settlement lagoons at the north western corner of the pit. There is also a mechanical screening plant at this location. There are stockpiles of excavated materials throughout the site and an area of pooled water at the centre of the site, with signage stating 'Deep Water', indicating that excavation may have reached the water table. The proposed 'extension' areas that are the subject of the subject appeal are currently in agricultural use but adjoin the existing excavated area.
- 1.3 The documentation submitted with the appeal does not provide much information regarding quarry operations at the site. According to the most recent historic documentation, ref. PL19.234218 (see below), the quarry operation at the site comprised of stripping the topsoil and excavating the underlying sand and gravel. The gravel was excavated using loaders and screened by a mobile screening plant in order to produce various grades of aggregate. The aggregate was then transported off-site. There was no

excavation below the watertable and a closed water management system was in operation. No water was discharged off the site.

2.0 PROPOSED DEVELOPMENT

2.1 The proposed development comprises the following:

- The relocation, regrading and lowering of the existing access road. The proposed new access road would traverse part of extension A;
- Extension A to the existing gravel pit, 0.27 ha. Located on the eastern side of the existing gravel pit, adjacent to the access road. The lands within plot A range between 65.5m AOD at the highest point to 57m AOD at the lowest. The development involves excavation to a depth of 49m AOD. The application states that this excavation would provide approx. 100 tonnes of gravel;
- Extension B on the western side of the existing gravel pit, 0.84 ha. The lands within plot B range between 61.5m AOD at their highest point to 56.5m at their lowest. This area would be excavated to a depth of 49m AOD. This part of the development includes a 3m high x 10m wide soil embankment along the western site boundary, to act as a visual and noise barrier to nearby residential properties. The application does not state how much gravel it is expected to extract from this area.

3.0 PLANNING HISTORY

3.1 95/480

3.1.1 Permission granted to Eamonn Mahon for development of sand and gravel quarry pit including extraction and processing, service building and septic tank at the subject site.

3.2 02/1136 PL19.201888

3.2.1 Dermot Nally sought permission for extension of gravel extraction operations at existing gravel pit. The existing pit had a stated area of 6.6 ha and the proposed extensions involved 2 no. parcels of land, one to the north of the existing pit and one to the south / south west. The total stated area of both extensions was 7.5 ha. The development involved extraction of 790,000 cu.m. over a period of 9 years. The site was to be extracted to a depth > 1m above the ground water level. An EIS was submitted with the application. Offaly County Council granted permission. The permission was appealed by An Taisce. The Board refused permission for the following stated reason:

It is considered that the proposed development would result in additional traffic generation at an entrance that has restricted visibility in both directions. The proposed development would, therefore, endanger public

safety by reason of traffic hazard and be contrary to the proper planning and sustainable development of the area.

3.3 04/385 PL19.209692

3.3.1 Dermot Nally sought permission to extend the existing gravel pit (stated area 6.775 ha) by an additional 7.578 ha, incorporating several adjoining agricultural fields to the north, south, west, south east, also the relocation of an existing entrance gate. The extraction was to provide for an estimated 790,000 cu.m. over a period of 9 years. The site was to be extracted to a depth > 1m above the ground water level. An EIS was submitted with the application. Offaly County Council granted permission for the development, subject to the exclusion of plot no. 2.

3.3.2 The PA permission was appealed by Ciaran Guinan, named as observer in the subject case. The Board issued a split decision on 5th August 2005. Permission was granted for all of the proposed extensions except for plots nos. 1 and 2. Plot no. 1 was located at the southern end of the overall quarry site and plot no. 2 was at the north western end of the site. Permission was granted for a period of 9 years from the date of the order. Condition no. 4 specified that the subject lands shall be restored to Calcareous grasslands in the form of an esker following cessation of excavations. Permission was refused for plots nos. 1 and 2 for the following stated reasons:

1. *The site is located within an area designated as an “Area of High Amenity” and as a Class 1 “Highly Sensitive Landscape” in the Offaly County Development Plan, 2003-2009. The applicant has not demonstrated that the proposed extension of gravel extraction operations to the north and west in Plots 1 and 2 can be visually accommodated within this sensitive landscape. It is, therefore, considered that the proposed development would result in the reduction of the visual quality of an area of high amenity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*
2. *On the basis of the submissions made in connection with the planning application and the appeal, the Board is not satisfied that the application has been made by a person who has -*
 - (a) *sufficient legal estate or interest in the lands that are designated as Plot 2 the subject of the application to enable the person to continue the existing use of, or carry out the proposed works on the land, or*

(b) the approval of the person who has sufficient legal estate or interest.

In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission on this portion of the site.

The Board order also stated:

In deciding not to accept the Inspector's recommendation to refuse permission, the Board had particular regard to the extent of existing gravel pit operations on the site, to the delisting of the area as a proposed National Heritage Area and to the confined nature of the landscape on the southern side of the existing workings.

3.4 09/166 PL19.234218

3.4.1 Dermot Nally Stone Ltd. sought permission to extend an existing stated quarry area of 9.5 ha by an additional 7.859 ha. An EIS was submitted with the application. The total area was broken into 6 no. plots as follows:

- Plot 1 at the eastern site boundary, to the south of the existing entrance, extension of 1.631 ha, to be excavated to a depth of 49 m AOD. The proposed extension plot A is located at the northern end of plot 1.
- Plot 2 located adjacent to the south-eastern boundary of the quarry, total area c. 1.08 ha, to be excavated to a depth of just over 49 m AOD. The proposed extension plot B is located within a large part of plot no. 2.
- Plots nos. 3 (2.585 ha), 4 (0.412 ha), 5 (0.953 ha), and 6 (1.2 ha) all located in a row to the north west of the existing quarry. All to be excavated to a depth of 49-50 m AOD, > 1m above ground level.

3.4.2 Offaly County Council refused permission for 2 no. reasons relating to (1) the proposed development would adversely impact on the Esker Riada which is designated as an area of high amenity in the County Development

Plan and (2) the Planning Authority is not satisfied based on the information submitted that the proposed development would not be injurious to the ecology of biodiversity of the site. The Board refused permission on 31st March 2010 for the following stated reasons:

1. *The site is located in an area which forms part of the Esker Riada complex and is designated as an area of high amenity in the Offaly County Development Plan, 2009-2015. The development plan seeks to protect and preserve the Esker Riada due to its geomorphological, scientific, historical, recreational and amenity value and uniqueness. It*

is considered that this area of high amenity could not accommodate the proposed development without suffering unacceptable adverse impacts on the character of the landscape. The proposed development, would be contrary to the policies of the development plan, would seriously injure the special character and amenities of the landscape and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. *The Board is not satisfied based on the information submitted in the Environmental Impact Statement which accompanied the planning application that the proposed development would not seriously injure the ecology or biodiversity of the site and would, therefore, be contrary to the proper planning and sustainable development of the area.*

3.6 14/016

- 3.6.1 Offaly County Council granted permission to extend the life of the permission granted under 04/385 PL19.209692 for an additional 5 years, such that the permission will now expire on 4th August 2019.

3.7 EUQY77

- 3.7.1 Section 261A determination relating to a total quarry area of 12.73 ha at the subject site. The PA found that the quarry was operating under permissions 95/480 and 04/385. It was determined that no further action was required pursuant to section 261A of the Planning and Development Act, 2000 (as amended).

4.0 PLANNING AUTHORITY DECISION

4.1 Third Party Submissions

- 4.1.1 The above named observer Ciaran Guinan made a submission to the PA, which objected to the development on similar grounds to those raised in the observation summarised below.

4.2 Submissions by Prescribed Bodies to PA

- 4.2.1 DoAHG Development Applications Unit. Archaeology, 15th October 2015, recommends that further information be requested comprising a geophysical survey of the entire site. Nature Conservation, 19th October 2015, notes that the site was previously part of Clonfinlough Esker pNHA and recommends that further information be requested comprising a comprehensive and enforceable after use plan.

4.3 Technical Reports on File

- 4.3.1 Offaly County Council Environment & Water Services Department 28th September 2015. No objection subject to conditions.
- 4.3.2 Offaly County Council Roads Section 15th October 2015. No objection.
- 4.3.3 Offaly County Council Area Engineer report 15th October 2015. No objection.
- 4.3.4 Offaly County Council planning report 28th October 2015. Recommends refusal.

4.4 Decision

- 4.4.1 The PA refused permission on 3rd November 2015, for one no. reason relating to location within an area which forms part of the Eiscir Riada complex and designated as an Area of High Amenity and High Sensitivity Area in the Offaly County Development Plan 2014-2020; adverse impact on the visual amenities of this landscape; material contravention of County Development Plan policy no. RDP-14 and of County Development Plan objective AHAO-01 due to the proposed diminution of the Eiscir Riada complex.

4.0 GROUNDS OF FIRST PARTY APPEAL

- 5.1 The appeal has been submitted by MCG Consulting on behalf of the applicant Dermot Nally. The grounds of appeal may be summarised as follows.

5.2 General Issues:

- The Area Engineer and other Council departments had no objection to the development.
- The DoAHG submission did not object to the development but raised the issue of archaeological monitoring / surveying. The site owner has always been aware of his responsibilities in relation to archaeology and supervision / reports have been carried out at each overburden stripping on his active pits. All such reports have been submitted to Offaly County Council since 1998. The current plots were purchased in August 2006 and were not included in the original section 261 registration.
- The issues raised by the third party were taken into consideration in the planning assessment of the application. None of the issues raised gave rise to an additional refusal reason. The observer's house is located approx. 400m from the lagoons at the quarry site. The observer has a history of objecting to applications by the site owner in the Clonfinlough area.

- 5.3 Section 37 of the Planning and Development Act 2000 (as amended):
- The Board is requested to overturn the subject decision on the basis that the Development Plan objectives are not clearly stated insofar as the proposed development is concerned. In particular, the definition of the Areas of High Amenity (AHAs) are not clearly grounded in topographical surveys which would support their designation, especially in terms of visual amenity. The definition / mapping of the eskers is based on a Soils and Subsoils GPS and no physical ground survey confirmation of boundaries was carried out.
 - A conflict arises regarding the questionable definition / mapping of the Eiscir Riada, the designation of AHAs under the County Development Plan and the content of a report cited in the grounds of appeal, ref. *'County Offaly Esker Survey 2006'* by Mary Tubridy and Associates. The appeal also cites the *'Teagasc - EPA Soils and Subsoils Mapping Project – Final Report'*.
 - It is submitted that there is significant doubt in the definition of the AHA / Eiscir Riada boundary in the County Development Plan. In the interests of natural justice, given that only a minor portion of the proposed site is within the indicated AHA boundary, the Board is requested to overturn the decision of the PA.
 - The Offaly Esker Survey recognises a distinction between 'new pits' and the expansion of 'existing pits'. There is also a recognition that areas adjacent to eskers are suitable for exploitation of sand and gravel.
 - It is also submitted that Development Plan objective AHAO-01 conflicts with other Development Plan policies, ref. RDP-03 and RDP-14.
- 5.4 Comment regarding modification of the PA decision:
- In the event that the Board is not disposed to overturn the decision, it is requested to modify the decision and to refuse permission only for proposed extension B, which is contained in the AHA defined in the County Development Plan.
 - The entire proposed extension A and approximately 60% of proposed extension B are located outside the boundaries of the AHA. Therefore the refusal reason that the development would materially contravene development plan policy RDP-14 does not apply to these portions of proposed extension areas.
 - Similarly, these portions of the extension areas would not materially contravene objective AHAO-01 of the Offaly County Development Plan.
 - It is open to the Board to consider granting permission in respect of the revised area of c. 0.77 ha, subject to normal operating conditions in respect of such quarrying operations.
- 5.5 Appendices to the appeal:
- Appendix A comprises a copy of the planning report on file.

- Appendix B comprises a copy of Offaly County Council's response to a FOI request submitted on behalf of the appellant. The FOI request sought details of the designation of townlands in Carrowkeel and Clonfinlough as AHA including written reports, memos, maps, etc. prepared by or on behalf of Offaly County Council, explaining how and why the AHAs were determined. Offaly County responded by issuing the applicant with a copy of a document prepared in July 2008 'Proposed Amends AHA's _ 26 June 2008', which sets out the scientific / environmental rationale for the location of AHA boundaries.
- Appendix C is a map indicating the locations of proposed extension areas A and B relative to the existing AHA.
- Appendix D is a copy of a submission made by the applicant to Offaly County Council in relation to the draft County Development Plan 2009 2015, submitted on 28th April 2008.

6.0 PLANNING AUTHORITY RESPONSE TO APPEAL

- 6.1 The PA requests that the Board upholds its decision to refuse permission for the development. No other comments are submitted.

7.0 OBSERVER SUBMISSION

- 7.1 The observer Ciaran Guinan has an address at Ballyhearth, Clonfinlough, Athlone, Co. Westmeath. The main points made may be summarised as follows:

- There is a surplus of sand and gravel pits in the area.
- The development is on the Esker Riada that is within the proposed Clonmacnoise Heritage Zone. The current County Development Plan states that the area is designated as an AHA and a 'Class 1 Highly Sensitive Landscape'.
- It is alleged that the applicant Dermot Nally recently moved into a 0.27ha plot and most of the area is quarried by now, also that he encroached into Plot B without planning permission.
- Dermot Nally Stone Ltd. owns and operates 5 sand and gravel pits in this area, 3 are within a square mile of each other.
- The applicant was granted substitute consent in 2014. The application stated that there is still a very large reserve in the existing pit, which will take approx. 3 years to develop.
- The applicant was originally granted permission for the subject quarry under 95/480. He blatantly ignored all 32 conditions of permission. This eventually led to High Court proceedings. The applicant agreed to abide by all planning conditions, this agreement became the subject of a Court order. However, Dermot Nally continued to operate in breach of the planning conditions.
- A complaint was made to the Ombudsman Office who published a report in 2002. The report was very critical of the manner in which

Offaly County Council dealt with the complaint against Dermot Nally. He continued to carry out quarrying in the area.

- The PA issued a Warning Letter ref. UD/52 to Dermot Nally on 18th November 2004 r.e. failing to comply with 13 conditions of 95/480. He ignored this warning.
- European Court of Justice case 215/06 found in 2008 that Ireland had failed in its obligation to carry out an environmental assessment to ensure that projects are within the scope of Council directive 85/337/EEC of the 27/6/1985. Despite this case and comments to the Health and Safety Authority, Dermot Nally continues to quarry illegally.
- The observer's private well is located 200m from the subject quarry. It had to be abandoned as it filled up with sludge to the point where it originally had over 40 feet of water but is now left with only 4 feet. This was as a result of Dermot Nally quarrying below 52.8m above sea level limit set by Offaly County Council. As a result, the private well has been inoperable and the observer had to bear the cost of a new well, nearly €6,000.
- It is clear that Dermot Nally has effectively continued to quarry in blatant and flagrant disregard for the planning laws since 1997. It would be a tragedy if this whole area was given planning permission.

7.2 The following particulars are submitted with the observation:

- Extract from Office of the Ombudsman Annual Report 2002;
- Details of High Court Settlement;
- Copy of letter from Noel Conaughton to Dermot Nally;
- Copy of enforcement advice note;
- Copy of letter to observer from Health and Safety Authority.

8.0 RELEVANT PLANNING POLICY

8.1 Quarries and Ancillary Activities Guidelines for Planning Authorities, DoELG, 2004.

8.1.1 Section 2.3 states:

Quarries will not be permissible in areas of high landscape value, on European sites, Natural Heritage Areas (NHAs), Nature Reserves or other areas of importance for the conservation of flora and fauna, or in areas of significant archaeological potential (all of which will be indicated on development plan maps), unless it can clearly be demonstrated that such quarries would not have significant adverse impacts on amenities or the environment.

8.1.2 Chapter 3: Environmental Implications. Section 3.5 'Natural Heritage' states:

Extraction and quarrying activities have the potential to impact on areas of valuable habitat, including (Habitats Directive) Annex I priority habitats such as limestone pavement, or orchid-rich grassland on eskers, where they are in the vicinity of such habitats. Habitats outside the quarry site can be impacted on indirectly by dust deposition, alteration to groundwater or surface water supplies, or as a result of run-off or siltation. In each case, it is imperative that the developer has given appropriate consideration to designated habitats, and has designed the workings in an environmentally sensitive manner.

Section 3.6 'Landscape' states:

Aggregate works can remove parts of an existing landscape, such as a hill, or can introduce intrusive features, such as a quarry faces or overburden mounds. The development plan will indicate areas of high landscape quality, together with proposed geological Natural Heritage Areas, where quarrying will not be normally be permitted. While Quaternary landscape features such as eskers and moraines comprise valuable sediments, they also represent non-renewable records of the past climate and environmental change, and should be afforded some protection.

8.2 Offaly County Development Plan 2014-2020

8.2.1 The current Offaly County Development Plan was adopted on 15th September 2014. Chapter 2 of the plan sets out the overall economic and enterprise strategy for the county, including rural development. Chapter 7 of the plan sets out policy on heritage and landscape. The relevant policies and objectives are set out in the assessment below.

9.0 PLANNING ASSESSMENT

9.1 The subject appeal and supporting documentation may be assessed as follows:

- Section 37 provisions and principle of development;
- Requirement for EIA;
- AA screening;
- Visual impacts;
- Archaeology;
- Site restoration;
- Alleged unauthorised quarrying development at the site;
- Conclusion.

9.2 Section 37 Provisions and Principle of Development

9.2.1 Refusal reason no. 1 states that the proposed development would materially contravene County Development Plan policy no. RDP-14 and objective no. AHAO-01. Section 37(2)(b) of the Planning and Development Act 2000 (as amended) provides that where a PA has decided to refuse permission on the grounds that a development materially contravenes the development plan, the Board may only grant permission where it considers that:

- (i) the proposed development is of strategic or national importance, or
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- (iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

I am satisfied that section 37(2)(b)(i) does not apply with regard to the nature and scale of the development. The applicant has not submitted any argument with regard to section 37(2)(b)(iii) and (iv) and there is no evidence that either would apply in this case.

9.2.2 The north of Co. Offaly has a series of eskers, including part of the subject site. Development Plan section 7.1.3 notes that the esker landscape encapsulates the geographical change that emerged following the ice age and merits protection given its unique importance in providing scientific, recreational and amenity value. Development plan map no. 7.8 indicates the locations of the eskers. Section 7.2.15 of the plan states:

Eskers (refer to Map 7.8) are glacial features which are composed of narrow ridges of sand and gravel and are located throughout the county. County Offaly's landscape contains a number of eskers, the most prominent being the Eiscir Riada. A restrictive approach to sand and gravel extraction from 'green field' sites will be encouraged by the council.

Development plan table 7.1.1 lists Heritage Areas / Habitats in Offaly and includes eskers, in particular the Eiscir Riada. Section 7.8 relates to Areas of High Amenity (AHAs). These are identified as areas of scenic and

amenity value in the County Offaly which are worthy of special protection in order to preserve their uniqueness and amenity value, in addition to national and European statutory environmental designations. Section 7.8.7 states that the Eiscir Riada is worthy of conservation due to its geomorphologic, scientific, historical, recreational and amenity value and uniqueness. The location of the AHAs in the vicinity of the subject site, ref. map 7.17, is directly related to the esker locations indicated in map no. 7.8. The following Areas of High Amenity Policy and Objective are relevant:

AHAP-01 It is Council policy to protect and preserve the county's primary areas of high amenity namely the Slieve Bloom Mountains, Clonmacnoise Heritage Zone, Durrow High Cross, Abbey and surrounding area, the River Shannon, Lough Boora Parklands, Grand Canal, Croghan Hill, Raheenmore Bog, Pallas Lake, Clara Bog and Eskers, Eiscir Riada and other eskers. These areas are indicated on Map 7.17. Notwithstanding the location of certain settlements, or parts of, for which there are settlement plans (towns, villages, 'sráids'), within the Areas of High Amenity, it is not the intention of this policy to hinder appropriate sustainable levels of development (as set out in the plans and subject to proper planning). Further, it is policy to facilitate the sustainable extension and expansion of existing visitor, tourist related or other rural enterprises within the Areas of High Amenity, where such development is appropriate and where it can be demonstrated that it gives 'added value' to the extending activity and to the immediate area which is the subject of the 'Area of High Amenity' designation.

AHAO-01 It is an objective of the Council to protect and preserve the county's primary areas of high amenity namely the Slieve Bloom Mountains, Clonmacnoise Heritage Zone, Durrow High Cross, Abbey & surrounding area, the River Shannon, Lough Boora Parklands, Grand Canal, Croghan Hill, Raheenmore Bog, Pallas Lake, Clara Bog and Eskers, Eiscir Riada and other eskers.

Table 7.11.4 provides a summary of Landscape Characteristics and Sensitivities as applicable to High Sensitivity Areas including '(G) The Esker Landscape', which notes the following sensitivities:

- *The eskers have geomorphologic, scientific, historical, cultural, recreational and amenity value and uniqueness.*
- *In particular, the esker system north of Clara bog is critically important, as it is most likely the source of nutrient rich water, which feeds the bogs soak systems.*
- *Eskers are also of economic importance and there is a need to balance the conservation of the important landscape features associated with eskers providing educational / tourism and recreational*

potential with the requirements of aggregate extraction and economic development. Hence, the esker landscape is highly sensitive to any future development and the opening up of new pits for sand and gravel extraction will be strongly resisted (refer to Chapter 2, Economic Development Strategy).

The following Landscape and Amenity Policy is relevant:

LAP-01 It is Council policy that landscape considerations will be an important factor in all land use policy and decision making for the county, ensuring that a pro-active view of development is undertaken whilst maintaining respect for the environment and heritage, as per the general principles of sustainable development. Further it is policy to conserve, protect and enhance the landscape of Offaly at a number of levels:

- The value of the landscape itself, as open countryside and the associated form and character of settlements.*
- The value of the landscape as a resource for economic growth in accordance with its physical and visual attributes.*
- The value of the landscape and its role with habitats and species whose diversity enriches the environment.*

9.2.3 The applicant submits that the relevant County Development Plan objectives were not clearly stated, i.e. that section 37(2)(b)(ii) of the Act applies, on the basis that the County Development Plan mapping of eskers and related Areas of High Amenity (AHAs) is inadequate and questionable. My assessment is based on the following sources of information:

- The *County Offaly Esker Survey 2006* by Mary Tubridy and Associates, October 2006;
- Offaly County Council document *Proposed Amends AHA's _ June 2008*, as obtained by the applicant under FOI and submitted with the grounds of appeal;
- Relevant maps included in the Offaly County Development Plan 2014 – 2020;
- GSI maps indicating the locations of eskers in north Co. Offaly.

9.2.4 I note that the current County Development Plan provisions and maps of eskers (map no. 7.8) and related Areas of High Amenity (map no. 7.17) are based on the mapping provided in the *County Offaly Esker Survey 2006* by Mary Tubridy and Associates, as stated in the Offaly County Council document *Proposed Amends AHA's _ June 2008*. The Tubridy and Associates report resulted from a study of the Esker Riada esker system in the north of Co. Offaly. It maps eskers and adjacent hills using the EPA Soils and Subsoils GIS and fieldwork. A list of esker segments is provided in Table 28 and Map 8a of the study. Figure 4.2 provides details of eskers in the vicinity of the subject site. The site 'Esker or Fighting Hill',

indicated in O.S. maps as located at the subject site, is included as part of the Clonmacnoise system. Section 4.2.1 states:

In addition to these additional esker segments it is proposed to add another seven features genetically classified as fans and deltas to the Clonmacnoise system. Although are not technically eskers they form high, upstanding, steep-sided ridges, and are part of the topographic, cultural and folklore history of the Clonmacnoise esker system. These are (from east to west) the complex elongate ridge north-west of Fin Lough, Tullaghmore Hill, Esker or Fighting Hill, the hill just south of Mannions Crossroads, Bishops Hill, Eelweir Hill and Clavins Hill.

The GSI map for the area is based on soil and subsoil mapping carried out by Teagasc and published in 2009, ref. *Teagasc-EPA Soils and Subsoils Mapping Project Final Report*, DoEHLG, 2009. It indicates a band of 'esker sands and gravels' in the northern part of the site, surrounded by 'glaciofluvial sands and gravels'. While there are some discrepancies, I consider that the mapped areas indicated in the current Development Plan, the 2006 Co. Offaly esker study and the GSI mapping generally correspond (see enclosed copies of same). I therefore consider that the relevant Development Plan objectives based on this mapping, i.e. locations of eskers and Areas of High Amenity are clearly stated with regard to the provisions of section 37(2)(b)(ii).

- 9.2.5 The grounds of appeal also submit that section 37(2)(b)(ii) applies on the basis that Development Plan objective AHAO-01 conflicts with other Development Plan policies, ref. RDP-03 and RDP-14 as follows:

RDP-03 It is Council policy to favourably consider proposals for the expansion of existing industrial or new business enterprise in the countryside where the proposal is;

- (a) an appropriate size and scale,*
- (b) does not negatively impact on the character and amenity of the surrounding area, and*
- (c) has regard to and complies with other guidelines/standards including traffic, noise and environmental considerations.*

This policy will generally relate to enterprises which are rural resource based and which have the potential to strengthen rural areas.

RDP-14 It is Council policy to ensure those extractions (quarries / sand and gravel pits) which would result in a reduction of the visual amenity of areas of high amenity or damage to designated sites, habitat types or species shall not be permitted. It is Council policy that all such workings should be subjected to landscaping requirements and that worked out quarries should be rehabilitated to a use agreed with the Planning Authority which could include recreational, biodiversity, amenity or other

end-of-life uses. The use of these rehabilitated sites shall be limited to wastes such as soil, stone and subsoils and sites shall be authorised under the appropriate waste regulations. Where the Council considers and accepts that in cases where inert material (i.e. soil, stones and subsoil etc.) cannot be recycled or otherwise sold, such materials may be considered for the phased restoration and landscaping of the site in line with standard planning conditions imposed.

I note that chapter 2 of the County Development Plan sets out the Economic and Enterprise Strategy for Co. Offaly. Section 2.8.6 relates to sand and gravel extraction and states:

The Council recognises the importance of sand and gravel extractions in the economic life of the county and its importance as a valuable source of employment in parts of the county. However, it is also recognised that exploitation of deposits can have a seriously damaging environmental impact on the scientific, recreational and amenity value of the County's natural landscape, in particular its esker network. Offaly County Council acknowledges that a satisfactory balance is required between the needs of the building industry and the need to protect the environment ...

The Council recognises the unique importance of Offaly's esker landscape deriving from its scientific, botanical, archaeological and historical value. All proposals for sand and gravel extraction at eskers will be determined by reference to the need to conserve the environment, character and scientific value and the extent to which the proposed development would be damaging to these qualities. The Geological Survey of Ireland has completed Aggregate Potential Mapping providing an indication of where potential gravel extraction can take place in the county.

I consider that the County Development Plan clearly states that a balance has to be struck between economic development and environmental protection with regard to quarry development at eskers. I consider that the stated objectives are not contradictory as they are in accordance with the overall economic and enterprise strategy as stated in Chapter 2 of the plan. I conclude that the relevant County Development Plan policies are not contradictory or conflicting and that section 37(2)(b)(ii) does not apply on this basis.

- 9.2.6 The appeal notes that the Offaly Esker Survey recognises a distinction between 'new pits' and the expansion of 'existing pits', also that areas adjacent to eskers are suitable for the exploitation of sand and gravel. The appeal includes a detailed map of the proposed development relative to the mapped esker locations and the designated AHA. It notes that the mapped esker includes part of plot B but is entirely outside the boundary of plot A. It is submitted that development of the areas outside the mapped esker and AHA would not contravene County Development Plan policy

RDP14 and objective AHAO-01. The appeal contends that it is open to the Board to consider granting permission in respect of the proposed development outside the mapped areas, estimated at c. 0.77ha, subject to normal operating conditions in respect of such quarrying operations. I note section 5.1.4 of the Esker survey, which states:

Quarrying is not compatible with the maintenance of esker geodiversity and biodiversity and the Council should continue to refuse permission for new quarries on this system ... There are other alternatives for the extraction industry or for the expansion of pits which currently operate on this esker system. Considerable reserves of sand and gravel are found in the county. Some are adjacent to the eskers which they are exploiting (Fig. 16). These deglacial features include fans, deltas, kames, sandar and gravelly hummocky moraine ... They cover an estimated 5 times as much land area as the eskers around Clonmacnoise-Clara alone. While these gravels may not be as 'clean' as those in the eskers, they are more extensive.

In addition, section 5.4.3 states in relation to 'managing change':

The operation of pits on the Clonmacnoise esker should not expand on the esker, and excavation does not occur below the water table ... No new pits should be permitted.

The available GSI mapping indicates that the subject site contains both 'esker sands and gravels' and 'glaciofluvial sands and gravels'. However, I also note the statement in section 4.2.1 of the Offaly Esker Study, as quoted above, in relation to the importance of the subject site as part of the Clonmacnoise esker system. In addition, the Offaly Esker Study is a reference document only and does not have any statutory basis. I consider that the relevant County Development Plan policy, as per RDP-14 and AHAO-01 is a restrictive approach to sand and gravel extraction from green field sites at eskers. I consider that the development of both plots would contravene this policy.

- 9.2.7 With regard to precedent, the proposed development plots A and B were part of plots nos. 1 and 2 within the overall quarry development proposed at the site under reg. ref. 09/166 PL19.234218. That appeal was assessed under the previous Offaly County Development Plan 2009-2015, which used the same mapping for eskers and Areas of High Amenity as the current plan. In that case, the Board refused permission on the basis that the site was located in an area which forms part of the Esker Riada complex and was designated as an AHA under the previous 2009-2015 County Development Plan. The Board considered that the AHA could not accommodate the proposed development without suffering unacceptable adverse impacts on the character of the landscape. I note that similar

policies apply under the current County Development Plan and consider that the precedent set by PL19.234218 is relevant to the current case.

9.2.8 With regard to the above, I conclude that section 37(2)(b) of the Act does not apply and that the Board is precluded from granting permission in this case. In addition, I conclude that the proposed development would be unacceptable in principle with regard to County Development Plan policy RDP-14 on the preservation of eskers, the location of the site relative to an Area of High Amenity as per map no. 7.17 and to County Development Plan policy AHAO-01 regarding AHAs. Moreover, the Board has already refused permission for the same type of development at the subject site under PL19.234218 and I see no reason, such as a change in County Development Plan policy or other such circumstances, to revisit that decision. However, I now propose to consider the case on its merits, in order to provide as full an assessment as possible.

9.3 Requirement for EIA

9.3.1 Schedule 5 of the Planning and Development Regulations 2001 (as amended) sets out development for the purposes of Part 10 of the Planning and Development Act 2000 (as amended), i.e. development that would require EIA. Part 2, *Extractive Industry*, specifies:

(a) *Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares.*

The proposed development has a total stated area of 1.11 ha and is well below this threshold. Part 13 of Schedule 5 specifies changes, extensions, development and testing where:

(a) *Any change or extension of development already authorised, executed or in the process of being executed (not being a change or extension referred to in Part 1) which would:-*

(i) *result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, and*

(ii) *result in an increase in size greater than –*

- 25 per cent, or

- an amount equal to 50 per cent of the appropriate threshold, whichever is the greater.

The existing sand and gravel pit has a stated area of 9.73 ha. The proposed extension of 1.11 ha would result in a total quarry area of 10.84, i.e. well above the threshold of 5 ha. The area of 1.11 ha is c. 11.5% of the total existing quarry area of 9.73 ha and is less than 50% of the 5 ha

threshold. Given that part 13(a)(i) and (ii) must apply, then mandatory EIA is not required in this case.

9.3.2 Article 103(2) of the Regulations provides with regard to sub-threshold EIA:

Where a planning application for sub-threshold development is not accompanied by an EIS, and the development would be located on, or in, or have the potential to impact on—

- (a) a European site,*
- (b) an area the subject of a notice under section 16 (2)(b) of the Wildlife (Amendment) Act 2000 (No. 38 of 2000),*
- (c) an area designated as a natural heritage area under section 18 of the Wildlife (Amendment) Act 2000,*
- (d) land established or recognised as a nature reserve within the meaning of section 15 or 16 of the Wildlife Act 1976 (No. 39 of 1976) as amended by sections 26 and 27 of the Wildlife (Amendment) Act 2000,*
- (e) land designated as a refuge for flora or as a refuge for fauna under section 17 of the Wildlife Act 1976 as amended by section 28 of the Wildlife (Amendment) Act 2000,*
- (f) a place, site or feature of ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan, draft development plan or draft local area plan, or proposed variation of a development plan, for the area in which the development is proposed,*
- (g) a place or site which has been included by the Minister for Arts, Heritage and the Gaeltacht in a list of proposed Natural Heritage Areas published on the National Parks and Wildlife Service website,*

the planning authority shall, in determining whether the development would or would not be likely to have significant effects on the environment, have regard to the likely significant effects of the development on such site, area, land, place or feature as appropriate.

As discussed, the site is partially within an esker and a related Area of High Amenity, which is designated as worthy of conservation, ref. section 7.8.7 of the County Development Plan, which states:

The Eiscir Riada which traverses the north-western corner of County Offaly in a more or less continuous line of Eiscir Riada from Shannonbridge to Clonmacnoise and on to Clara, Durrow and Rahugh (County Westmeath), is worthy of conservation due to its geomorphologic, scientific, historical, recreational and amenity value and uniqueness.

The County Offaly Esker Study 2006 highlighted the importance of biodiversity within the north Offaly esker system. Table 2.1 of the study refers to Clonfinlough Esker and states that there are small, unmapped areas with species rich calcareous grassland on Esker Hill. Section 4.2 of the study provides details of the plant species found in this type of grassland. Overall, habitat and species diversity are high on this esker system. On this basis, it is considered that article 103(2)(f) applies and that the proposed development should be subject to EIA.

9.3.3 Subsequently, article 103(3) of the Regulations refers to criteria set out in schedule 7 of those regulations, to be used for determining whether a sub-threshold development would or would not be likely to have significant effects on the environment. The criteria are grouped under three headings, i.e. (i) Characteristics of Proposed Development, (ii) Location of Proposed Development and (iii) Characteristics of Potential Impacts. The following analysis is based on those criteria and on the DoEHLG document *EIA Guidance for Consent Authorities Regarding Sub-Threshold Development*, 2003. I note that the proposed development, along with the existing sand and gravel pit, would have a cumulative impact in an area designated in the County Development Plan as worthy of conservation. In addition, the sand and gravel pit was originally part of a pNHA, at Clonfinlough Esker (site code 000892), however the boundaries of the pNHA changed and are now some distance to the west of the site, see enclosed map. Schedule 7(2)(h) of the Regulations refers to '*landscapes of historical, cultural or archaeological significance*'. I also note that section 5.32 of the DoEHLG guidance on sub threshold EIA refers to areas of high amenity as identified in local authority development plans and states that competent authorities should be mindful of the special characteristics of these types of areas when considering the possible need for EIA of sub-threshold development. With regard to this guidance, to my site visit and to the available information on the subject site, I consider that the proposed development would require sub threshold EIA due to the sensitivity of this location and to the potential for cumulative impacts due to the overall scale of the resultant quarry operation.

9.3.4 To conclude, it is considered that the subject development should be subject to sub-threshold EIA with regard to the potential for cumulative impacts along with the established sand and gravel pit at this site and to its sensitive location at an esker and partially within a designated Area of High Amenity under the current Offaly County Development Plan 2015-2020.

9.4 Appropriate Assessment Screening

9.4.1 There are no Natura 2000 sites within the site boundary or immediately adjacent to the subject site. There are 4 no. SPA's located within a 15 km buffer zone, i.e. Mongan Bog SPA (site code 004017), Lough Ree SPA (site code 004064), Middle Shannon Callows SPA (site code 004096) and River Suck Callows SPA (site code 004097). There are also 9 no. SAC's, namely River Shannon Callows SAC (site code 000216), Lough Ree SAC (site code 000440), Ferbane Bog SAC (site code 000575), Fin Lough (Offaly) SAC (site code 000576), Mongan Bog SAC (site code 000580), Moyclare Bog SAC (site code 000581), Pilgrim's Road Esker SAC (site code 001776), Carn Park Bog SAC (site code 002336) and Crosswood Bog SAC (site code 002337). I note that the documentation on the PA file does not include an AA screening report. The submitted DoAHG comment on nature conservation, dated 19th October 2015, does not refer to AA. This aspect of the case has been assessed with regard to the DoEHLG document *Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities 2009*.

9.4.2 There is no available assessment of possible links to designated sites, which would allow for consideration of potential source-pathway-receptor linkages or associated effects on designated sites with regard to their conservation objectives. The nearest designated sites are Fin Lough SAC, c. 3km west of the subject site and Mongan Bog SAC and SPA, c. 3.2 km north west of the site. There is a potential surface water connection from the immediate south of the development site to the Fin Lough SAC. Fin Lough is a shallow limestone lake surrounded by a complex of wetland habitats, bounded to the north and east by the Clonfinlough esker ridge, and to the south and west by Blackwater Bog. The relevant conservation objective is to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected, i.e. Alkaline fens and Geyer's Whorl Snail. Mongans Bog SAC is a midland raised bog of medium size situated in a basin, surrounded on 95% of its perimeter by high ground on mineral soil. The site is a SAC selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive:

- [7110] Raised Bog (Active)*(priority)
- [7120] Degraded Raised Bog
- [7150] Rhynchosporion Vegetation

The relevant conservation objectives are to restore the favourable conservation condition of the above named habitats and species, defined by detailed attributes and targets. The Mongans Bog SAC Site Synopsis states:

Mongan Bog is of high conservation importance as it is a good example of a raised bog site which contains examples of the Annex 1 habitats active

raised bog, degraded raised bog and depressions on peat substrates (Rhynchosporion). It is mostly intact and has classic hummock and pool formations over a large proportion of the surface. It has several features of special zoological interest. Scenically it is part of an area rich in intact natural features (callows, eskers, limestone pavement) which enhances its importance further. The ongoing intensive research on aspects of bog ecology at the site reinforces its international importance.

Mongan Bog SPA also has a conservation objective to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA, i.e. the Greenland White-fronted Goose.

- 9.4.3 With regard to the precautionary principle and given the lack of available information, it cannot be determined beyond reasonable scientific doubt, that the proposed development would not result on significant direct or indirect effects on the conservation objectives of European sites within 15 km, either individually or in combination with other plans or projects. The proposed development should, at a minimum, be subject to AA screening. However, the lack of available information regarding the proposed development and the surrounding environment precludes any preliminary AA screening.

9.5 Site Restoration

- 9.5.1 The proposed development does not include any information regarding site restoration or remedial measures on expiration of permission or when the sand and gravel resource has been exhausted. Site restoration would generally be considered as an integral part of quarry development and would be subject to EIA and / or AA along with the rest of the development. Section 3.1 of the DoEHLG *Quarries and Ancillary Activities Guidelines for Planning Authorities, 2004*, states that environmental impacts associated with quarries can be permanent, even after closure and decommissioning, unless carefully planned rehabilitation is undertaken. Section 3.5 of the same document states that quarry restoration presents an opportunity to add to the diversity of plants and wildlife and recommends that site-specific restoration options should be evaluated as part of a site restoration plan. Section 3.6 notes that site restoration plans can be an important mitigation for landscape impacts. It recommends that all proposed extractive development proposals must be accompanied by detailed restoration and after-care plans. I note that the DoAHG comment on the proposed development recommends that further information be requested comprising a comprehensive and enforceable after use plan. The lack of a site restoration plan is therefore a fundamental deficiency in the overall application. In the light of the above

assessment of the need for EIA and AA, I consider that such a plan would also have to be included in both assessments.

9.6 Visual Impacts

9.6.1 Having viewed the site and the surrounding area, I found that the existing quarry workings do not have a significant visual impact from local roads. There is one view in the vicinity that is listed for protection in the County Development Plan, ref. V03. This relates to views of Clonmacnoise and River Shannon, Eskers, Mongan Bog and Finlough from Pilgrims Road (Road No. L-07013) in the townlands of Clonmacnoise, Clonascra, Ballyduff and Bloomhill. The relevant views are indicated in County Development Plan map no. 7.18. Having inspected the site and viewed it from public road in the vicinity, I consider that the proposed development is unlikely to have significant adverse visual impacts on the surrounding area in general or on designated view V03 in particular. The development of plot 'A' at the eastern side of the site could be visible from view V03, however the overall direction of that view is towards the River Shannon to the northwest and away from the development site. However, given the sensitivity of the landscape in which the site is situated, it is considered that the proposed development should be subject to a full Visual Impact Analysis in order to fully assess potential visual impacts. Such an assessment would be part of the EIA process.

9.7 Archaeology

9.7.1 There are no Recorded Monuments at or in the immediate vicinity of the subject site. An archaeological assessment, part of EIA. The site is located outside the boundaries of the Clonmacnoise Heritage Zone as delineated in County Development Plan Map no. 7.21. The DoAHG comment on file recommends that further information should be requested comprising a geophysical survey of the entire site. Such an assessment would be part of the EIA process.

9.8 Alleged Unauthorised Development

9.8.1 The grounds of appeal allege that the site owner has carried out unauthorised quarrying development at the subject site. This is a matter for the consideration of the planning authority under relevant enforcement legislation and is outside the scope of the subject appeal.

10.0 CONCLUSION

10.1 The subject application is deficient in several respects, principally in relation to the need for sub-threshold EIA and to the lack of any proposals for site restoration at the end of the working life of the proposed extraction

areas. It is of course open to the Board to request the submission of these particulars as further information under section 132 of the Planning and Development Act 2000 (as amended). However, given my above conclusion that section 37 applies and that the Board is precluded from granting development in any case and that the proposed development is unacceptable in principle with regard to the provisions of the current Offaly County Development Plan 2015-2020, refusal is recommended.

11.0 RECOMMENDATION

- 11.1 Arising from my above assessment, I recommend that the decision of the planning authority should be upheld and that permission should be refused for the reasons and considerations set out hereunder.

REASONS AND CONSIDERATIONS

1. The site is located within an area that forms part of the Esker Riada complex and is designated as an Area of High Amenity under the Offaly County Development Plan 2015-2020. It is considered that the proposed development would detract from the amenities of this landscape and would materially contravene County Development Plan policy no. RDP-14, which is to ensure that those extractions which would result in a reduction of the visual amenity or areas of high amenity or damage to designated sites, habitat types or species shall not be permitted. It would also materially contravene County Development Plan objective AHAO-01, which is to protect and preserve the County's primary areas of high amenity, including Eiscir Riada and other eskers. The Board pursuant to the provisions of section 37(2)(b) of the Planning and Development Act, 2000, is precluded from the granting of planning permission for the proposed development as none of the provisions of section 37(2)(b) (i), (ii), (iii) or (iv) of the said Act apply in this case. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the size of the site upon which the extractive development is proposed, to the thresholds set down in Part 2 and Part 13 of Schedule 5 to the Planning and Development Regulations 2001, as amended, to the criteria set out in Schedule 7 of those Regulations, to the advice in the Guidance for Consent Authorities regarding Sub-threshold Development issued by the Department of the Environment, Heritage and Local Government in August, 2003, to the sensitivity of the subject site at an esker and in a designated Area of High Amenity under the Offaly County Development Plan 2010-2015 and to the cumulative impact of the development in conjunction with previous extractive development in the area, it is considered that the proposed

development would be likely to have significant effects on the environment and should be subject to an environmental impact assessment within the meaning of Part X of the Planning and Development Act, 2000 to 2011. The proposed development would, therefore, require an Environmental Impact Statement which should contain the information set out in Schedule 6 of the said Regulations. In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.

Sarah Moran,
Senior Planning Inspector,
7th July 2016.