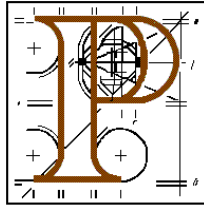


# An Bord Pleanála



## Inspector's Report

**PL05E. 246791**

**DEVELOPMENT:** Continue the extraction of sand and gravel and rock for 20 years

**ADDRESS:** Fawnmore, Falcarragh, Co. Donegal

### PLANNING APPLICATION

**Planning Authority:** Donegal County Council

**Planning Authority Reg. No.:** 15/50132

**Applicant:** Moyle Plant Limited

**Application Type:** Permission

**Planning Authority Decision:** Grant permission subject to conditions

### APPEAL

**Appellant:** An Taisce

**Type of Appeal:** 3<sup>rd</sup> party vs. grant

**Observers:** None

**DATE OF SITE INSPECTION:** 17<sup>th</sup> August 2016

**INSPECTOR:** Stephen J. O'Sullivan

## **1.0 INTRODUCTION**

- 1.1 This report deals with a third party appeal against a decision by Donegal County Council to grant permission for more quarrying on the site of an existing quarry.

## **2.0 SITE**

- 2.1 The site is c2km south of the coast of north-west County Donegal between the villages at Falcarragh and Dunfanaghy,. It has a stated area of 14.38ha and comprises the site of a quarry. The site lies on both sides of the N56 National Secondary Road. The larger part of the site is to the south of this road where the working part of the quarry is. The smaller part to the north has a stated area of 1.53 ha and was not in use at the time of inspection. The main entrance to the quarry is from the N56. The north—eastern boundary of the site is along a county road. Several one-off houses lies opposite the quarry on that road. There is an existing operation on the site to process aggregate and to produce batch concrete, road building materials and blocks. Water is used for washing stone and making concrete. It is obtained from the quarry floor and abstracted from the nearby stream. There is a series of 5 settlement ponds through which water is cleared for reuse or discharge to the stream, in a ratio of 80:20. The fifth settlement pond has a discharge point to a watercourse that runs along the southern boundary of the site. It is a tributary of the Ray River, which enters the sea c2.8km north-west of the site.

## **3.0 PROPOSAL**

- 3.1 It is proposed to extract sand and gravel and rock from the quarry on the site for a period of 20 years. The total area for extraction is 4.379ha. Extraction would be by mechanical means with some blasting. Sand and gravel would be taken from the north-eastern part of the site, designated area 1 on the submitted plans. Rock would be taken from areas 2 and 3 along the southern part of the site, and from area 4 which contains the yard for block making in the middle of the site. The fixed elements of the quarry, including the settlement ponds and buildings will be retained in their locations, while the stockpiles and machinery will be moved as the extraction progresses across the site. It is calculated that 740,587m<sup>3</sup> of material is available on the site, and extraction would continue to a level of 30.5mOD across the site. This is lower than the floor of the current extraction area, which is at c36mOD, and the level of the watercourse on the southern side boundary, which is c44m OD

## **4.0 POLICY**

- 4.1 The Quarries and Ancillary Activities Guidelines for Planning Authorities (April, 2004) offers guidance to Planning Authorities on planning for the extractive industry. Chapter 3 refers to the environmental implications and outlines the range of potential environmental effects caused by quarries which need to be considered. The principal environmental impacts are listed as: noise and vibration, dust deposition / air quality, water supplies and ground water, natural heritage, landscape, traffic, cultural heritage and waste management. Section 4.9 states that it may be appropriate to grant permission for quarries for periods of up to 20 years. .
- 4.2 Section 1.5 of the *Guidelines for Planning Authorities on Spatial Planning and National Road* issued in January 2012 states that planning authorities should guard against the creation of new accesses onto national roads or the intensification of existing accesses there.
- 4.3 The Donegal County Development Plan 2012-2018 applies. Chapter 7 of the plan sets out general policies in relation to extractive industries. Policy EX-P-01 states –

*It is the policy of the Council not to normally permit new extractive industry proposals in area of especially high scenic amenity or why they would adversely impact upon any Natura 2000 site, Natural Heritage Area, nature reserve, groundwater protection area, freshwater pearl mussel catchment or other areas of importance for the protection of flora and fauna or areas of significant archaeological potential, unless it can be clearly demonstrated that such extractive industries would not have significant adverse impacts on the amenities or the environment, and comply with Article 6 of the Habitats Directive.*

## **5.0 HISTORY**

- 5.1 05E. SU0042, Reg. Ref. EUQY179 – the board granted substitute consent for the quarry on the site under section 177K of the planning act on 21<sup>st</sup> July 2014. Condition no. 3 of the consent required the submission of a restoration plan within 3 months, while condition no. 4 required the erection of a fence around the site.

## **6.0 DECISION**

- 6.1 The planning authority decided to grant permission subject to 13 conditions.

Condition no. 1 restricted quarry use to a period of 20 years.

Condition no. 2 limited the annual output from the quarry to 60,000 tonnes, in the interests of traffic safety and to define the development.

Condition no. 6 restricted water abstraction from the Ray River to 3,000m<sup>3</sup> in any year and that it would not amount to more than 25% of the river's flow at the time abstraction.

## **7.0 REPORTS TO THE PLANNING AUTHORITY**

### *On the initial application*

- 7.1 An Taisce – The substitute consent does not confer any presumption that permission to resume quarrying will be obtained. The application needs to be considered *de novo* under the EIA directive. The site is poorly screened in an open landscape. There are eighty houses within 500m which is an impediment to the quarry, particularly to the east where four houses stand. There is an irreconcilable conflict between the location of the quarry and the houses granted by the planning authority.
- 7.2 National Roads Authority – the development would be at variance with official policy on frontage development and would adversely affect the operation and safety of the national road network.
- 7.3 Inland Fisheries Ireland – the mitigation measures described in section 4 of the EIS regarding hydrology and hydrogeology must be adhered to.
- 7.4 Department of Arts, Heritage and the Gaeltacht – No objections on archaeological grounds. A subsequent email stated that there were no objections regarding natural heritage and Natura 2000 sites.
- 7.5 Executive Scientist – The bank of the settlement pond closest to the Ray River needs to be raised by several metres.
- 7.6 Appropriate Assessment – Any potential negative impact on the SAC at Ballyness Bay site code 001090 can be excluded
- 7.7 Planner's report – The principle of development and the access from the N56 is established by the board's grant of substitute consent. The EIS is

summarised. There are no designated views on the approach roads to the site and it is no between the public road and the sea. The development would not result in an intensification in the use of the access to the N56 above that which was established between 1990 and 2012. An archaeological monument on the site has been destroyed by historic sand quarrying activities, as confirmed in the inspector's report on the substitute consent application. It was recommended that further information be sought in respect of –

- The phasing and extraction rates over the proposed 20 year lifetime of the quarry.
- The specifications of the access onto the N56.
- A restoration and aftercare plan.
- Further protection measures to avoid uncontrolled discharge into the Ray River.

*On the further information*

7.8 The Senior Executive Technician recommended conditions regarding the drainage system from the site and noise emissions.

7.9 Transport Infrastructure Ireland – The position set out by the NRA on the initial application is restated.

7.10 An Taisce – Previous permitted development does not justify continuance of use.

7.11 Planner's report – The substitute consent from the board was based on an output of 60,000 tonnes per annum, so continued activity at this rate would not lead to an intensification in the use of the access on the national secondary road that would impact upon its safe carrying capacity. The extraction management plan submitted by the application provides for a total extraction of 1,042,206 tonnes over 20 years (including about 20% of unusable material), an average of 52,110 tonnes per annum. The junction design assessment submitted by the applicant is also acceptable. A grant of permission was recommended.

## **8.0 GROUNDS OF APPEAL**

8.1 The grounds of appeal can be summarised as follows-

- The site has a problematic planning compliance history, with several applications for retention. It has not been demonstrated that the scale and area of excavation has pre 1963 planning status. There are serious operational and environmental concerns, with a photo in the EIS failing to show a wheel wash at the entrance.
- The planning authority erred in holding that the grant of substitute consent issued by the board established the principle of the proposed development. Substitute consent only arose due the enforcement failures by the council and only relates to the regularization of past quarrying. The suitability of the site for more quarrying needs to be considered de novo.
- The use of the term 'continuation' in the published description of development is incorrect. The term is only appropriate where there is a previous time-limited permission which has not already lapsed. A revised public notice should be required that specifies that the proposal is for a renewal of a development that was required to cease operation in 2012. The notice is also deficient in failing to identify the associated works it cites. This is repeated in section 3.3 of the EIS. The status of the block making operation on the site is not addressed or resolved. This matter is significant, as any conditions on site restoration would need to apply to the overall site including the block making area and other structures. It needs to be determined as it is a significant part of the context for the proposed renewal of quarrying on the site. An explanation is required for the exclusion of the 'western area outside the application site boundaries' shown on drawing no. 4.
- Significant unauthorised development occurred on the site after the issuing by the planning authority on 22<sup>nd</sup> August 2012 of the notice requiring an application for substitute consent. This is confirmed by section 4.1.12 of the EIS which states that blasting occurred between November 2012 and July 2014. More blasting may have occurred after the writing of the EIS. A preliminary determination needs to be made as to whether further application for substitute consent or under section 261L of the planning act is required. Also no restoration plan for the quarry was agreed in accordance with condition no. 3 of the substitute consent.

- The development would affect the landscape along the 'Wild Atlantic Way'. There is a lot of houses on the minor roads by the site. There would be serious conflicts between quarrying on the site and the amenity of those houses.
- The 20 year time limit is excessive. The planning authority's decision refers to the permission ceasing to have effect after 5 years. The 20 year period is inappropriate due the planning history of the site and the lack of internal boundaries. Permission should only be granted for 5 years with strict conditions attached for the remediation of the site of both sides of the N56.

## **9.0 RESPONSES**

9.1 The planning authority's response can be summarised as follows –

- The substitute consent regularised the historical quarrying operations on the site. Any alleged failure to comply with the substitute consent is a separate matter that would be addressed by the enforcement procedures set out in the act. There is a grant of permission for the block making plant which is not subject to a time restriction and it can be operated separately from the quarry..
- The use of the term 'continuation' rather than 'renewal' is not a concern.
- The planning authority is satisfied that the 20 year period is reasonable relative to the proposed and previous rates of extraction from the quarry.

9.2 The applicant's response can be summarised as follows-

- In the report on case 05.SU0042, the board's inspector stated that there was nothing in the development plan that would preclude quarrying on the site. The principle of the development is established, as stated by council planner.
- There has only been one instance of enforcement action on the site. It does not have a problematic enforcement history and the operator has endeavoured to engage with the planning authority throughout its operation. The notice given under section 261A determined that the quarry had begun operations before 1964.

- The appellant has not given details of environmental concerns. A wheel wash will be installed if permission is granted. The quarry has a good record on health and safety. The inspector's report on 05.SU0042 found that the previous operation of the quarry had not given rise to adverse effects on the environment.
- There was not requirement on the quarry to cease operation in 2012 just to apply for substitute consent. Throughout the substitute consent and application process the applicant has diligently followed the advice of the planning authority. The concept of continuation encompasses that of renewal. The public notices were adequate and legal, and the EIS properly described the proposed works. A landscape restoration plan was submitted to the planning authority in November 2014.
- The structures associated with the block making operation have specific planning permissions. No unacceptable impacts arise from them and they are in compliance with the development plan.
- The landscape and visual impact assessment in chapter 8 of the EIS was properly conducted and all formal designations were considered. It found that the development would not contravene the provisions of the development plan regarding landscape and visual impacts. The Wild Atlantic Way is not a designated scenic route. The quarry is set back from the coast and screened by intervening topography. The quarry existed when the way was designated. The quarry is mostly screened from the road .
- Impacts on residential amenity were considered in the EIS, particularly with regard to noise and air quality.
- The quarry has existed for 50 years and a further 20 years' operation can be accommodated in this landscape. The guidelines state that a grant of permission for the operation of a quarry for 10 to 20 years would be appropriate.
- The quarry provides material for infrastructure and construction, as well as employment and income in a rural area.



## 10.0 APPROPRIATE ASSESSMENT

10.1 The appeal site is not in or immediately adjacent to any Natura 2000 site. There are, however, 7 such sites in the vicinity. There are Special Protection Areas at Hornhead to Fanad Head, 004194, 2km from the site; at Falcarragh to Meenlaragh, 004149 3km from the site; and at Derryveagh and Glendowan Mountains, 004039, 6km from the site. The appeal site, either in its established state, or that which would arise if the proposed development were carried out or that which would arise if quarrying activity ceased there and the restoration plan required under SU0042 were implemented, would not disturb any of the bird species for which those SPAs were designated. Neither would it provide or deprive them of breeding, foraging or transit habitats. The appeal site is not located upstream of any of the SPAs and would not have any effect on the habitats within them. Therefore the proposed development would not have to potential to affect the maintenance or improvement of the conservation status of the qualifying interests of the SPAs, and would not be likely to have any significant effect upon them. The appeal site would be 1.8km from the Special Area of Conservation at Horn Head and Rinclevan, 00147, and 4km from that at Muckish Mountain, 001179. It would not be located upstream of either of them. Given this separation distance and the absence of a hydrological or hydrogeological connection, the proposed development would not have to potential to affect the maintenance or improvement of the conservation status of the qualifying interests of those SACs, and would not be likely to have any significant effect upon them.

10.2 The appeal site would be located 1.8km from the SAC at Ballyness Bay, 001090. However it is upstream of the SAC and the effluent from it drains towards it. The conservation objectives of that SAC are –

To maintain the favourable conservation condition of the following habitats-

1130 Estuaries

1140 Mudflats and Sand not covered by seawater at low tide

2110 Embryonic shifting dunes

2120 Shifting dunes along the shoreline with *Ammophila arenaria*

2190 Humid dune stacks

and to restore the favourable conservation condition of the following habitats-

2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)

and to maintain the favourable conservation condition of the following species

1013 Geyer's Whorl Snail *Vertigo geyeri*

- 10.3 The proposed development would involve ongoing works and activity that could cause emissions to water upstream of the SAC. These include excavating soils and bedrock; washing and screening crushed rock; the abstraction of water; the discharge of recycled process water; the discharge of runoff from paved surfaces and stockpiles; domestic foul effluent; and the storage and use of hydrocarbons and fuels. Such emissions could have a significant effect on the achievement of one of the conservation objectives of the SAC: to maintain the favourable conservation condition of habitat 1140-mudflats and sand not covered by seawater at low tide. The outfall of the Ray River is adjacent to this habitat. It is not adjacent to habitat 1130 – Estuaries, which occurs inside Ballyness Bay but not outside it. The dune habitats 2130 and 2120 do occur near the Ray River, but those habitats are not dependent on surface water. The proposed development would not have the potential to affect the achievement of the other conservation objectives of the SAC. However, given the scale of the proposed works and activity on the site and its proximity to the SAC, the potential impact of the development on the quality of waters discharging to the mudflats and sand means that the proposed development could be considered likely to have significant effects on the SAC at Ballyness Bay. A stage 2 appropriate assessment is required.
- 10.4 The Natura Impact Statement that was submitted with the application identified the potential impact on the SAC of emissions to water from the development. It referred to chapter 4.5 of the EIS for a description of the mitigation measures that would be implemented to avoid any such impact. These measures can be summarised as follows –
- With regard to surface water abstraction – monitoring and limiting the volume of abstraction so that it does not significantly affect the flow regime and assimilation capacity of the tributary of the Ray River. The existing operations on site involve the abstraction of c3,000m<sup>3</sup> per year, which equates to 0.0001m<sup>3</sup> per second which is 0.3% of the 80<sup>th</sup> quartile flow of the river. The impact of such extraction would be imperceptible.
  - The diversion of runoff from the site to the existing system of 5 settlement ponds which have a cumulative volume of 31,592m<sup>3</sup> with a retention time for discharge water of 4,513 hours, before discharge to the Ray River tributary. This discharge is subject to a licence from the local authority. The average rate of discharge from it is estimated as 7m<sup>3</sup> per hour.

Annex 4.1 of the EIS sets out the results of water monitoring below the discharge point since 2001. They indicate that the settlement pond system that has been in place since 2007 has been effective in controlling the release of suspended solid and other pollutants to surface water.

- The pumping of groundwater which seeps into the excavated areas to the system of settlement ponds.
- The setback of excavation by a minimum of 15m from the tributary of the Ray River to avoid seepage from the watercourse.
- The provision of a collection and storage pond to which the runoff from the paved yard will be diverted so that the discharge to the roadside drain along the N56 will cease. The pond will allow primary settlement of suspended solids. It will be emptied by into the system of settlement ponds on the site.
- Revegetation of stockpiles of soil. Unvegetated stockpiles would be set back 15m from the river and their height and slope will be reduced.
- The stockpiling of aggregates and crushed rock over soil, which allows percolation that attenuates suspended solids in the discharges to groundwater.
- The bunding of the area containing the diesel fuel tank, and the storage of other hydrocarbons in a block shed on a concrete surface with bunding, to avoid spills reaching groundwater or surface waters.
- The installation of a domestic wastewater treatment system adjacent to the offices and canteen on the site.

10.5 The proposed mitigation measures are similar to those which have already been used to control emissions to water from the previous quarrying activity on the site, which certain additional controls including a buffer of 15m between the watercourse and excavation or stockpiling, and the installation of a wastewater treatment system for domestic effluent. The efficacy of the existing measures and the system of settlement ponds has been demonstrated by the water quality monitoring results taken under the discharge licence. It can therefore be concluded that, subject to the implementation of the proposed mitigation measures, the proposed development would not give rise to emissions to water

that would adversely affect the conservation objectives of the downstream SAC at Ballyness Bay, including the objective to maintain the favourable conservation condition of the mudflats and sandflats not covered by water at high tide – habitat 1140. The proper implementation of the required mitigation measures is rendered more certain by the fact that the discharge from the proposed development to surface water would be subject to a discharge licence and on-going monitoring by the local authority.

10.6 Therefore, it is reasonable to conclude on the basis of the information available on the file, which I consider adequate to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects, would not adversely affect the integrity of European site No. 001090, or any other European site, in view of the site's Conservation Objectives. This conclusion is consistent with the appropriate assessment carried out by the planning authority and the advice of the Department of Arts, Heritage and the Gaeltacht in this case. It is also consistent with the appropriate assessment carried out by the board prior the granting of substitute consent for the previous works on the site under 05. SU0042.

## **11.0 ENVIRONMENTAL IMPACT ASSESSMENT**

11.1 The likely effects of the proposed development on the environment can be addressed under the following headings -

- Human beings, including the impact of noise and vibration
- Flora and fauna
- Soil, water, air and climate
- The landscape
- Material assets
- Cultural heritage
- The interaction of the foregoing
- Cumulative impact, and
- Adequacy of the EIS

*Human beings, including the impact of noise and vibration*

11.2 Chapter 1 of section 2 of the EIS is entitled "Human Beings". It refers to employment at the quarry but does not quantify it. It also asserts that a safe working environment will be maintained at the quarry.

11.3 Chapter 7 of section 2 of the EIS refers to noise and vibration. It refers to a noise survey taken at the site during what is described as a busy period in February 2008 using microphones at 5 locations area the site and close to nearby houses. The highest recorded noise level at a sensitive receptor was 43dBA while an excavator was operating. It was reported the noise from processing activity on the site as audible at 39dBa. It was concluded that noise from the operation would be within a daytime limit of 55dB(A) $L_{eq}$ 1hr, which would result in effects of only marginal significance. Given that the proposed development involves works in a similar location and at a similar activity to that which previously occurred on the site, with a similar annual extraction limit imposed by the conditions of the planning authority's decision, the previously recorded noise levels are a useful indication of the likely noise emissions from the proposed development . They demonstrate that the proposed development would be capable of operation without exceeding the noise limits recommended in the guidelines for quarries. The proposed development would therefore be unlikely to have significant negative effects on human beings due to noise.

11.4 The said chapter also refers to vibration as a result of blasting. Annex 7.1 provides a recorded of ground vibration in peak particle velocity (PPV) in mm/sec and air overpressure in dB of 6 blasting operations that occurred between 2012 and 2014. The PPV did not exceed the limit of 12mm/sec recommended in the guidelines, or the that of 125dB for air overpressure. Blasting at the proposed development will occur not more often than once a month and will comply with the limits set down in the guidelines. Given that the proposed development involves operations in a similar location and at a similar activity to that which previously occurred on the site, with a similar annual extraction limit imposed by the conditions of the planning authority's decision, the previously recorded levels of ground vibration and air overpressure are a useful indication of the likely vibrations from blasting at the proposed development . They demonstrate that the proposed development would be capable of operation without exceeded the vibration limits recommended in the guidelines for quarries. The proposed development would therefore be unlikely to have significant negative effects on human beings due to vibration.

#### *Flora and fauna*

11.5 I would refer the board to the appropriate assessment above for consideration of the likely effects of the proposed development on species and habitats that are qualifying interests for Natura 2000 sites. Chapter 3 of the section 2 of the EIS addresses the potential impact of the proposed development on ecology. The site has been the subject of quarrying operations and disturbance. Most of

the site is occupied by habitats that are not of ecological interest. However there is an area of wet heath at the western end of the site of c1.6ha, and another one of 0.6ha at the north-east corner of the site, and there are diverse flora along the river on the southern boundary of the site. No notable species of fauna were recorded during surveys. The proposed development would result in the loss of the area of wet heath at the western end of the site. This is not considered to be a significant negative effect as this habitat is widespread in the area. The development would also pose a threat to flora and fauna if the discharge of effluent towards the Ray River was not properly controlled. The retention of the second area of wet heath at the west of the site, the reinstatement of the dormant part of the quarry to the north of the N56 and the control of effluent discharge were put forward as mitigation measures. The predicted residual effects of the proposed development on flora and fauna were not deemed significant.

- 11.6 The site does not contain flora or fauna of particular conservation interest. The areas of wet heath to the east and west of the quarry are outside the boundary of the current application site and a grant of permission would not authorise works upon them. The likely efficacy of the proposed measures to control the runoff of effluent and pollutants to water from the site have been considered in the appropriate assessment above. In this context this assessment concludes that the proposed development would not be likely to have significant effects on flora or fauna.

*Soil, water, air and climate*

- 11.6 The proposed development would result in the stripping of topsoil from the site. According to chapter 5 of section 2 of the EIS, soil has not been stripped from c4ha of the site. The stripped soil would be stockpiled and would be available for reuse in the provision of landscaped berms and for the eventual restoration of the quarry. There is a potential for the disturbance of soil to cause emissions to air and water. However adequate measures are proposed to mitigate the environmental effects of such emissions, considered below. The soil resources of the area have not been depleted and are not particularly vulnerable. In these circumstances the proposed development will not have significant effects on the environment with respect to soil.
- 11.7 The potential impact of the proposed development on the quality of waters and the measures proposed to mitigate this impact were considered in the appropriate assessment above. Subject to the implementation of the mitigation measures, the residual effects of the proposed development on water are not

likely to be significant. The proposed development would not be in an area that has been identified as subject to flood risk by the OPW. The volume of the system of settlement ponds would provide a significant level of attenuation of stormwater runoff from the site which would ensure that the development did not exacerbate the risk of flooding downstream of the site. The proposed development would not, therefore, give rise to an undue risk of flooding.

11.8 The proposed quarrying operations have the potential to cause dust emissions to air that could have significant environmental impacts on the site and beyond. Annex 2.1 of the EIS provide the results of the monitoring of dust deposition in the vicinity of the site in 2012 and 2014. The results were within the limit of 350mg/m<sup>2</sup>/day recommended in the guidelines. Given that the proposed development involves operations in a similar location and at a similar activity to that which previously occurred on the site, with a similar annual extraction limit imposed by the conditions of the planning authority's decision, the previously recorded levels dust emission are a useful indication of the likely effects of the proposed development on air quality . They demonstrate that the proposed development would be capable of operation without exceeding the emission limits recommended in the guidelines for quarries. The proposed development would therefore be unlikely to have significant negative effects on air quality.

11.9 Any impact of the proposed development on the climate would be imperceptible.

#### *The landscape*

11.10 The proposed quarrying would occur over an extensive site. The land around it is undulating, with the site on relatively low lying land. Views to the coast are obscured by rising slopes to the north of the N56. The area is not subject to designation for landscape protection or scenic amenity, but the national secondary road in front of it is part of the Wild Atlantic Way route that is promoted for tourism. The quarry has a pronounced visual impact on the immediately surrounding area, which includes numerous one off houses and a stretch of the N56 that is c800m long. However this area is not of particular scenic amenity or visually sensitive. The landscape along the Wild Atlantic Way is generally rural and includes many scenic vistas towards the coast and the mountains. However it is not a wilderness. The route passes through many rural areas where development is widespread and the landscape is not of particular scenic sensitivity, including that in which the site is located. In these circumstances the proposed quarrying beside the Wild Atlantic Way would not have a significant negative impact on its character or the amenity which it

affords tourists. The proposed quarrying activity would not have a significant impact on the wider landscape or distant views, as it would be largely screened by intervening topography or its scale would be overwhelmed by the extent of the view. The proposed development would therefore be likely to have a moderate impact on the landscape close to the site. However its effects at a distance or more than c1km would not be significant. The plates provided in volume 3 of the EIS provide a useful illustration of the likely visual impact of the proposed development, given that it would be similar to that of the existing quarry on the site.

#### *Material assets*

- 11.11 The proposed development would have the capacity to impact upon the residential amenity and hence of the utility of the houses in the vicinity. Such a potential impact can be properly mitigated by the implementation of the limits on noise, vibration and dust set down the guidelines, as discussed above. Subject to this, the proposed development would not be likely to have significant negative effects on the houses in the areas.
- 11.12 The proposed development would also have the potential to effect the road network in the area. Chapter 9 of the EIS states that the traffic generated by the proposed development would be similar to that generated by the existing operations on the site. Survey data from 2013 indicated only 24 movements by heavy goods vehicles and 24 movements by other vehicles to or from the quarry per day, which represents only 4% of the total traffic volume on the N56. The extraction plan submitted to the planning authority as further information and the conditions of the planning authority's decision establish that the rate of extraction from the proposed quarry would be similar to that which prevailed during previous quarrying on the site. In these circumstances it is considered that the proposed development would not involve the laying out of a new access onto a national road where the 100kph speed limit applies, nor would it lead to a material intensification in the use of an existing access there. The proposed development would not, therefore, contravene the policy against such stated at section 1.5 of the *Guidelines for Planning Authorities on Spatial Planning and National Roads*. The further information submitted to the planning authority indicated that the turning radii at the access to the N56 are c14.5m, which is in excess of the 10m recommended for simple junctions in rural areas in the DMRB, so that its continued use would not give rise a traffic hazard. In these circumstances it is not likely that the proposed development would have a significant adverse effect on the national road network in the area.



11.13 A wheel wash was not in operation at the access to the site at the time of inspection. The conditions attached to a grant of permission in this case could reasonably require one to be installed prior to the carrying out of development on foot of that permission.

#### *Cultural heritage*

11.13 A survey of the site described in chapter 6 of the EIS found no features of archaeological interest upon it. No features of architectural interest were present either. This is consistent with the fact that the site has been subject to extraction works for a long period. The proposed development would therefore not be likely to have any significant effect on cultural heritage.

#### *The interaction of the foregoing*

11.14 There was extensive interaction of the effects described in the sections above. The works to soil would effect the likelihood of emissions to waters. The likely effects on water quality would have effects on flora and fauna, while emissions to air and the effect on landscape would have a direct impact on the material assets comprised of houses in the area. The EIA has had due regard to such interactions.

#### *Cumulative impacts*

11.15 All the likely effects of the proposed development that were assessed in this EIA were assessed with regard to their cumulative impact with the concrete batching and block making operation and plant on the site. As the assessment is largely based on the results from monitoring of the established operations on the site which includes both quarrying and the said processing activity, it would have been impracticable to assess their likely impacts separately.

#### *Adequacy of the EIS*

11.16 The EIS submitted with the application provided an adequate description of the existing environment, of the proposed development and of its likely effects on the environment. The description of the proposed mitigation measures is adequate. The EIS also included a non-technical summary. The developer did not include a consideration of alternatives and a statement of the main reasons for his choice. However in circumstances where the proposed development is of a similar type, intensity and location to an established development, it may be more reasonable to infer the reasons for his choice rather than to invalidate

the application. The board is therefore advised that the requirements of article 94 and schedule 6 of the Planning and Development Regulations 2001-2015 have been met.

## **12.0 ASSESSMENT OF OTHER ISSUES**

12.1 Works to extract mineral resources constitute development in themselves regardless of whether they also involve a material change in the use of any particular piece of land. The substitute consent that the board granted in relation to the quarry on the site under SU0042 refers to prior works and does not authorise proposed development. The appellant is therefore correct to argue that the principle of the proposed quarrying is not established by the previous quarrying there and the proposal must be considered *de novo*. The description of the development contained in the published notices was adequate, and the use of the word 'continue' did not render the notices defective in any meaningful way. Nor would it constrain the proper consideration of the present planning application. The environmental impact assessment was largely based on the monitoring results of the existing quarry. However this was a practical matter as such results provided useful scientific information as to the likely effects on the environment of a development that was similar in its type and level of activity as that which already occurred on the same site. The use of that information does not imply that the previous activity established any presumption in favour of a grant of permission for the proposed activity there.

12.2 The location of quarries is determined in the first place by the location of the mineral resources which are to be exploited. So neither the national guidelines nor the county development plan have positive guidance to direct quarries to particular locations. The county development plan does have negative policies in this regard, however, in particular policy EX-P-01. As set out in the appropriate assessment and environmental impact assessment above, the proposed development would not have significant negative effects on any Natura 2000 site, nor on flora or fauna, nor on the landscape, nor on residential amenity, nor on the road network in the vicinity. Its nature and location would therefore comply with the provisions of the development plan and the principle of the proposed development is considered acceptable.

12.3 The application before the board is for permission under part III of the planning act for a proposed development. It would not be appropriate for the board to use its powers under part III to determine an application in order to carry out or replicate enforcement functions assigned by part VIII of the act to planning

authorities and courts, either with regard to the proposed quarry, previous quarrying on the site or the operation of the existing block making facility on the site. The development that has been proposed on this application and described in the submitted EIS and other particulars should therefore be considered on its own merits.

12.4 The application included a restoration plan that properly addresses the remediation of the disturbance that would be created by the works that would be authorized under any grant of permission made on foot of this application. It would not be appropriate to refuse permission in this case in order to require remediation works that may or may not be required in respect of development that is not proposed in this case, including the block making facility on the site or previous quarrying to the west of the site on the same landholding. To do so would offend against the principle stated in the paragraph above, which is that the board should not use its powers under part III of the planning act to supplant or supplement powers given to other bodies for other purposes under part VIII of the act.

12.5 The applicant submitted information to the planning authority as to the likely volume of resources on the site that are available for exploitation (c1,042,206 tonnes including c20% unusable material) as well as a programme for their extraction at a rate similar to that which occurred on the site since 1990 (c52,110 per annum) on average. This provides an adequate justification for a grant of permission with an appropriate period of 20 years. Such a period would be consistent with the advice given at section 4.9 of the guidelines on quarries.

### **13.0 CONCLUSION**

13.1 The proposed development would not adversely affect the integrity of any European site. While it would have a marked visual impact on the immediately adjacent area, it would not have a significant effect on the wider landscape. Subject to the implementation of the mitigation measures set out in the EIS, it would not have significant adverse effects on the quality of waters or air and would not give rise to unacceptable levels of noise or vibration. The proposed development would not damage natural or cultural heritage. It would not cause serious injury to the residential amenities of property in the vicinity, nor would it cause traffic hazard or hinder the use of the road network in the area including the N56 national secondary road. The proposed development would therefore be in keeping with the proper planning and sustainable development of the area.

## **14.0 RECOMMENDATION**

14.1 I recommend that permission be granted subject to the conditions 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

In coming to its decision, the Board had regard to:

- (a) the provisions of the Guidelines for Planning Authorities on Quarries and Ancillary Activities issued by the Department of the Environment, Heritage and Local Government in 2004;
- (b) the policies set out in the Donegal County Development Plan 2012-2018 relating to the extractive industry, in particular policies EX-P-01;
- (c) the location of the site within an area that is not designated for the protection of the landscape or natural heritage);
- (d) the pattern of development in the area and the location of the proposed development relative to dwellings;
- (e) the range of mitigation measures set out in the documentation received, including the Environmental Impact Statement, Natura Impact Statement and Further Information;
- (f) the planning history of the site and surrounds;
- (g) the submissions made in connection with the planning application and appeal; and
- (h) the report of the Inspector,

### Appropriate Assessment

The Board agreed with the screening assessment carried out and conclusion reached in the Inspector's report that the European site for which there is a likelihood of significant effects is the Ballyness Bay Special Area of Conservation (site code 001090).

The Board considered the Natura impact statement and all other relevant submissions, including from appellant and observers, and carried out an appropriate assessment of the implications of the proposed development for this European site in view of the site's Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment.

In completing the assessment the Board considered, in particular:

- (i) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects in the area;
- (ii) the mitigation measures which are included as part of the current proposal;
- (iii) the conservation objectives for the European site set out above;
- (iv) the view of the Department of Arts, Heritage and the Gaeltacht.

In completing the Appropriate Assessment, the Board 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 Board was satisfied that the proposed development would not adversely affect the integrity of the European site in view of the site's Conservation Objectives.

#### Environmental Impact Assessment

The Board considered the Environmental Impact Statement submitted with the application, supported by the Further Information submitted to the planning authority, the report, assessment and conclusions of the Inspector with regard to this file and other submissions on file, including the appellant and observers. The Board considered that this information was adequate in identifying and describing the direct and indirect effects of the proposed development. The Board completed an Environmental Impact Assessment, and agreed with the Inspector in his assessment of the likely significant effects of the proposed development, and generally agreed with his conclusions on the acceptability of the mitigation measures proposed and residual effects. The Board generally adopted the report of the Inspector. The Board concluded that, subject to the implementation of the mitigation measures

proposed, the proposed development would not be likely to have significant effects on the environment.

## Conclusion

It is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the character of the area or the amenities of property in the vicinity, would not have unacceptable impacts on ecology, water quality or the landscape and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted the 27<sup>th</sup> day of July and the 27<sup>th</sup> day of November 2015, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

All of the environmental, construction and ecological mitigation measures set out in the Environmental Impact Statement, the Natura Impact Statement and other particulars submitted with the application and as amended in the Further Information shall be implemented by the developer in conjunction with the timelines set out in the foregoing, except as may be otherwise required in order to comply with the conditions of this order.

**Reason:** In the interest of clarity and the protection of the environment during the development.

2. This permission authorises the quarrying of material from the site for 20 years from the date of this order. The site shall be fully restored within two years of the latter date in accordance with the quarry restoration and landscaping plan submitted to the planning authority on the 27<sup>th</sup> July 2015 unless a further grant of planning permission has been made for continued operation.

**Reason:** To limit the impact of the development on the amenities of the area

3. The total output from the quarry herein authorised, measured cumulatively with the output from any other works on the landholding outlined in blue on the site location map submitted with the application, shall not exceed 60,000 tonnes per annum. Records shall be kept of all material exported from the site which shall be submitted to the planning authority every 2 years.

**Reason:** In the interests of clarity

4. The works authorised by this permission shall proceed on the site in accordance with the Extraction Management Plan submitted to the planning authority on the 27<sup>th</sup> day of November, 2015. Excavations shall not occur below a level of 30.5 metres OD.

Prior to the commencement of development a benchmark shall be established on site as a reference point from which all levels shall be taken. Details of the location and construction of the benchmark to be referenced to Ordnance Datum shall be agreed in writing with the planning authority. A topographical survey of the site shall be submitted to the planning authority at least once every two years

**Reason:** In the interest of public health and to protect groundwater quality.

5. Water abstraction from the tributary of the Ray River that runs along the southern boundary of the site shall not exceed 3,000 cubic metres in any one year or 25% of the flow of the tributary at the time of abstraction.

**Reason:** To protect the quality of waters



6. Operating hours for the development shall be restricted to between 0800 hours and 1800 from Monday to Friday and between 0800 and 1600 hours on Saturday. The facility shall not operate outside these hours or on Sundays, Bank or Public Holidays.

**Reason:** To protect residential amenity of the area.

7. Details of all blasting, including blast design and implementation and the hours under which blasting will be permitted shall be agreed in writing with the planning authority at least one month prior to the commencement of development. Blasting shall take place between 1000 and 1600 hours from Monday to Friday only. The frequency of the blasting operation on the entire landholding outlined in blue on the site location map submitted with the application shall be limited to not more one a month, unless the prior written agreement of the planning authority has been given. Monitoring of the noise and vibration arising from the blasting shall be carried out at the developer's expense by an independent contractor and shall be agreed with the planning authority.

Prior to the firing of any blast, the developer shall give notice of its intention to occupiers of all dwellings within 500 metres of the site. An audible alarm for a minimum period of one minute shall be sounded. The alarm should be of sufficient power to be heard at all dwellings adjacent to the quarry.

**Reason:** In the interest of residential amenity.

8. The vibration levels from blasting operations shall not exceed a peak particle velocity of 12 millimetres per second when measured at any three mutually orthogonal directions. The air over-pressure from any blast will not exceed a value of 125 dB(lin) maximum peak. Details of a system to monitor blasting shall be submitted and agreed with the planning authority prior to the carrying out of any development on foot of this permission.

**Reason:** In the interest of public safety and residential amenity.

9. During the operational phase of the proposed development, the noise level from the development as measured at the noise sensitive locations in the vicinity identified in the Environmental Impact Statement, shall not exceed:
- (a) an  $L_{AeqT}$  value of 55 dB(A) during 0800 hours to 1800 hours. The T value shall be one hour; and
  - (b) an  $L_{AeqT}$  value of 45 dB(A) at any other time. The T value shall be 15 minutes. Night time emissions shall have no tonal component.

**Reason:** In order to protect the residential amenities of property in the vicinity.

10. Total dust emission arising from the on-site operations shall not exceed 350 milligrams per square metre per day averaged over a continuous period of 30 days when measured as deposition of insoluble and soluble particulate matter and at any position on the boundary of the facility. An adequate hose capacity shall be maintained in the quarry area to dampen down stockpiles, waste piles, and equipment during periods of dry windy weather to prevent emissions of fugitive dust.

**Reason:** In the interest of protecting the amenities of the area.

11. The wheels and undersides of all vehicles transporting aggregate from the site onto the public road, shall prior to the exit of such vehicles onto the public road, be washed in a wheel washing facility which shall be constructed, installed and operated in accordance with the requirements of the planning authority.

**Reason:** In the interest of the amenities of the area and traffic safety and convenience.

12. All over-ground tanks containing liquids other than water shall be contained in a waterproof bunded area, which shall be of sufficient volume to hold 110 per cent of the volume of the tanks within the bund. All water contaminated with hydrocarbons, including stormwater shall be discharged a via grit trap and oil interceptor with sump.

**Reason:** In the interest of orderly development.

13. Prior to the commencement of development a drainage management plan incorporating a monitoring programme relating to control and management of liquids on site shall be submitted to, and agreed in writing with, the planning authority.

**Reason:** In the interest of public health.

14. No surface water, contaminated water, dust or other matter shall be discharged/deposited on the public road.

**Reason:** In the interest of public health and visual amenity.

15. Prior to the commencement of development on foot of this permission, a stock-proof security fence shall be erected around the entire perimeter of the site.

**Reason:** In the interest of safety.

16. Prior to the commencement of development on foot of this permission, the developer shall lodge with the planning authority a bond of an insurance company, a cash deposit or other security to ensure the restoration and making safe of the site as required. The agreement shall empower the planning authority to apply such security or part thereof to the satisfactory completion of restoration and making safe of the site. 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 Bord Pleanála for determination.

**Reason:** To ensure the satisfactory restoration and making safe of the site.

17. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and

(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

18. The proposed treatment and disposal system for domestic effluent shall be and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of public health

19. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the

Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Stephen J. O'Sullivan  
31<sup>st</sup> August 2016