



An  
Bord  
Pleanála

## Inspector's Report PL11.248088.

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<b>Development</b>	Extension to quarry.
<b>Location</b>	Lower Grennan, Attanagh, Co. Laois.
<b>Planning Authority</b>	Laois County Council.
<b>Planning Authority Reg. Ref.</b>	16/219.
<b>Applicant</b>	Ashfield Haulage Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refusal of permission.
<b>Type of Appeal</b>	First Party and Third Party
<b>Appellants</b>	Ashfield Haulage Ltd. Tom McEvoy .
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	10 <sup>th</sup> May 2017 and 1 <sup>st</sup> June 2017.
<b>Inspector</b>	Derek Daly.

## 1.0 Site Location and Description

- 1.1. The proposed development is located in the townland of Lower Grennan a rural area approximately 1.5 kilometres south of the village of Attanagh and 3.5 kilometres southeast of the town of Durrow in County Laois.
- 1.2. Access to the site is via a private laneway which is located off a local road and which further north at Attanagh village via another local road in a westerly direction affords access to the N77 Durrow Ballyragget National Primary Route and to the east the R432 regional route linking Ballyragget and Ballinakill.
- 1.3. On the site there is an existing sand and gravel pit and the proposal is to extend the quarry operations to the north of the existing pit on lands currently in agricultural use.
- 1.4. The site is in close proximity to a watercourse, the Owenbeg River, which is part of part of the catchment of the River Nore, with a bank berm separating the quarry from the watercourse.
- 1.5. The site has a stated area of 10.7 hectares.

## 2.0 Proposed Development

- 2.1. The development as submitted to the planning authority on the 11<sup>th</sup> of May 2016 as stated in the public notices was for
  - An extension to an existing registered sand and gravel pit.
  - The development involves the dry screening and extraction of sand and gravel and ancillary works including restoration works.
  - It is proposed to extract 312,500m<sup>3</sup> (562,500 tonnes) over five years in a progressive manner over three phases.
  - The average production rate will be c.2,500 tonnes per week, which equates to 98 loads per week.
  - The existing access will be used.
  - The area of extension is indicated as 5.64 hectares.

In the cover letter accompanying the application the applicant refers to the registration of the quarry as pre 1964 and the present quarry operates under the

conditions of this registration. The sand and gravel pit is long established and the proposed extension will occur in a logical and progressive manner. The works will be carried out to ensure no surface water discharges will occur to the River Nore.

The application was accompanied by an EIS and NIS.

2.2. Further information was submitted on the 15<sup>th</sup> of November 2016 which included;

- A revised NIS clarifying matters raised in the further information request.
- Revised details in relation to passing lay-bys including two additional lay-bys and their location and also junction works along the haul route and I would refer to drawing no 12.264-112 Rev PL-01 in this regard on local roads L1751/I17511.
- A structural evaluation of the local road network is also included as is a structural survey of Tallyho Bridge is submitted in a report by PMS.
- A detailed restoration plan is submitted including a phasing of these works. No importation of top soil is envisaged to occur.
- Revised details are submitted in relation to landscape and visual impact.
- A response to the third party submission objecting to the development.
- Under a separate heading matters to be included in an EMS are submitted by Kingfisher Environment Consultants for the monitoring of noise, vibration dust and water.
- Consideration of alternative sites and processes.

2.3. Revised public notices were submitted on the 30<sup>th</sup> of November 2017.

## 3.0 Planning Authority Decision

### 3.1. Decision

The decision of the planning authority was to refuse planning permission and four reasons were stated.

- Reason no 1 refers to information submitted including EIS and NIS that adequate consideration has been given to the effects of the development on

the integrity of the River Barrow and River Nore SAC and River Nore SPA and the development would therefore contravene objective NH 13/001 of the Laois County Development Plan 2011-2017.

- Reason no 2 refers to the inadequate carrying capacity of the road network to accommodate the proposed development and that the development would be a traffic hazard.
- Reason no. 3 refers to cumulative effects arising from the development and the absence of an evaluation of the cumulative effects of the development.
- Reason no. 4 refers to policy BH 14/P06 of the Laois County Development Plan 2011-2017 relating to protection of protected structures and the impact of the proposed works on Tallyho Bridge which is a protected structure. And as a consequence would be contrary to policies BH 14/043 and BH 14-P06 of the Laois County Development Plan.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The enforcement report dated the 20<sup>th</sup> June 2016 refers to unauthorised intensification of the quarry and non-compliance with condition of QY05/38.

The planning report dated the 4<sup>th</sup> of July 2016 refers to;

- The site's location in the context of designations.
- The site's planning history.
- Submissions and reports received.
- Development plan policy and guidance.
- The applicant has not extended outside of the registered area.
- The assessment identifies issues that require further information including issues relating to the road network, restoration of the site, visual issues the submission of an environmental management system and information in relation to the content of the EIS in relation to alternatives, flora and fauna.

- The planning authority engaged consultants to assess the NIS and further information on a wide range of matters required to be submitted on the basis of the consultant's report.
- Further information was recommended relating to 11 matters for clarification.

The planning report dated the 1<sup>st</sup> of February 2017 considered the further information submitted and indicates;

- The further information submitted was assessed by consultants engaged by the planning authority and received by the planning authority on the 1<sup>st</sup> February 2017, which concluded that the further information received has not provided sufficient information to conclude no significant impact on the River Barrow and River Nore SAC and River Nore SPA capable of removing all reasonable scientific doubt referring specific to Kingfisher; the Pearl Water Mussel; an absence of data in relation to surface water and groundwater monitoring and data and details relating to restoration.
- The traffic details and methodology to control movements of trucks on the local road network is questioned, the capacity and pavement of the road network for the level of traffic anticipated remains an issue and the level of passing lay-bys also remains as an issue.
- The survey of Tallyho Bridge is considered inadequate.
- Issues remain in relation to the restoration plan.
- Water impact assessment was not submitted as requested.
- Response in relation to visual impact is addressed.
- Based on the response submitted refusal was recommended.

### 3.2.2. Other Technical Reports

The area office report dated 10<sup>th</sup> June 2016 requested further information in particular relating to impacts on the road network and a bridge from the traffic and weight of vehicles on the road network.

The road design report dated 22<sup>nd</sup> June 2016 requests further information in relation to lay byes on the local road L17511, the upgrading of junctions, the need for a structural survey of haulage routes and Tallyho Bridge.

The road design report sent to the planning department on the 27<sup>th</sup> January 2017 having reviewed the further information refers to a need for design details and scaled drawings in relation to the junction of the L1751 and L17511, details relating to the 2 proposed lay byes including road drainage and the bridge survey is inadequate and shall be a principal inspection and in this regard there is reference to TII Eirspan Survey.

### 3.3. Prescribed Bodies

- 3.3.1. Submission received from **An Taisce** dated the 1<sup>st</sup> June 2016 refers to the history of the site and that the site has no post 1963 status and that the original quarrying was not subject to EIA. Reference is also made to the level of housing in the area and the compatibility of the site to these uses.
- 3.3.2. Inland Fisheries Ireland in a submission dated 10<sup>th</sup> June 2016 indicates no objects subject to conditions relating to control of discharges, and control of silt and oil through interceptors. A further submission dated 23<sup>rd</sup> December 2016 restated this position.
- 3.3.3. DAHG in a submission dated 27<sup>th</sup> June 2016 in relation to archaeology request monitoring.

### 3.4. Third Party Observations

Submission was received questioning the validity of the application, refers to the site and issues in relation to proximity to a Natura 200 site and the impacts arising from the development on this site. This view is restated in relation to the response of further information in a submission dated 6<sup>th</sup> January 2017.

Peter Sweetman and Associates in a submission dated the 8<sup>th</sup> January 2017 questions the AA screening report and that this position and the basis on which it was determined is flawed.

## 4.0 Planning History

The site has a planning history.

**P.A. Ref. NO. QY05/38**

Permission was granted for the registration of the quarry subject to 15 conditions.

**P.A. Ref. NO. QY92**

The planning authority determined Section 261A did not apply.

## **5.0 Policy Context**

### **5.1. Quarries and Ancillary Activities Guidelines for Planning Authorities 2004.**

5.1.1. The purpose of the guidelines is to offer guidance to planning authorities on planning for the quarrying industry through the development plan and determining applications for planning permission for quarrying including restoration of sites.

5.1.2. Chapter 3 refers to the environmental implications and that there are a wide range of potential environmental effects caused by quarries which need to be considered when dealing with proposals for new development, or for significant expansion of existing extractive industries and such impacts may arise during the development stage or may endure throughout the life of the quarry, possibly over several decades.

The environmental impacts identified include noise, vibration, dust, effects on the amount and quality of water, lowering of the water table, effects on the natural heritage, the cultural heritage, landscape, traffic and waste materials. The impact it is indicated can be permanent, even after closure and decommissioning, unless carefully planned rehabilitation and restoration is undertaken.

### **5.2. Development Plan**

5.2.1. The operative plan is the Laois County Development Plan 2011-2017.

5.2.2. Chapter 3 of the plan relates to Development Plan strategy and in section 3.3.3 referring to Extractive Industries it is indicated that;

“Many quarry areas emerged during the last plan period. These now are nearing the end of their lifespan. Reuse of quarry areas for new employment uses will be considered, however this will be guided by environmental considerations given the sensitive nature of the use and in the interests of maintaining safety and capacity on

the national road network, the development must be consistent with policies included in Chapter 10. Restoration plans must be provided in all cases”.

5.2.3. Chapter 7 relates to Economic Development and section 7.16 refers specifically to Mineral Aggregates where it is indicated that;

*“The Council recognises that the aggregate and concrete products industry contribute to the development of the national, regional and local economies by the proper use and management of natural resources for the benefit of the community and the creation of employment opportunities. These products are required as essential building materials in the social and economic development process including the provision of housing and infrastructure. Laois County Council will seek to safeguard these valuable resources for future extraction”.*

It is also indicated that “

In considering whether a further permission should be granted, the planning authority should have regard (inter alia) to the following factors:

- a) The extent of the remaining mineral resources and
- b) The extent of existing capital investment in infrastructure, equipment, etc.
- c) Policy TT10/P11 in relation to road safety or protection of efficiency and capacity on the national road network.

In relation to policy the following are outlined;

**EC 7 / P53** Support in principle the expansion of -aggregates and concrete products industry which offers opportunity for employment and economic development generally and ensure that any plan or project associated with extractive industry which has the potential to significantly affect a Natura 2000 site is appropriately assessed in accordance with Article 6 of the Habitats Directive in order to avoid adverse impacts on the integrity of the site;

**EC 7 / P54** Support in principle the processing of minerals to produce cement, bitumen or other products in the vicinity of the source of the aggregate, where the transport network is suitable to reduce trip generation.



**EC 7 / P55** Ensure that the development of aggregate extraction, processing and associated concrete production does not significantly impact on established rights of way and walking routes.

I would also refer to Map 1.12.4 relating to quarries and minerals which identifies a quarry in the location of the proposed development.

Chapter 13 relates to Natural Heritage and sections 13.2.2 to Designated Sites; 13.2.3 Special Areas of Conservation (SACs); 13.2.4 Special Protection Areas (SPAs) and 13.2.5 Appropriate Assessment.

Relevant objective is NH 13 / O01 *“To maintain, protect and where possible enhance the conservation value of existing European and national designated sites (NHA, SAC and SPA) in the county and any additional sites that may be proposed for designation during the period of this Plan”*.

Relevant policy is NH 13 / P09 *“Restrict developments that would be likely, either individually or in combination with other developments, Plans or projects to give rise to significant adverse effects on Natura 2000 sites, and any additional sites that may be proposed for designation during the period of this plan having regard to the sites’ conservation objectives”*

In relation to landscape section 13.9 the site is located within an area LCT2- Lowland Agricultural Area. It is not within any specific designation of area with a protected view and prospect. The plan it is noted refers to the importance of the river valleys visually in the county is recognised and referred to in policy;

NH13/ P46 *“Maintain the Rivers throughout the County whilst ensuring that all works are carried out subject to appropriate environmental assessment in accordance with Article 6 of the Habitats Directive, in respect of any proposed development likely to have an impact on a designated natural heritage site, site proposed to be designated and any additional sites that may be designated during the period of this Plan”*.

Chapter 14 relates to Built Heritage. Tallyho Bridge which is located on the public road network between the N80 and the village of Attanagh is a protected structure RPS NO. 526 and the relevant policy is BH 14 / P06 *“Protect Protected Structures from works that would adversely affect or erode their special character and where proposals are made to extend a protected structure or to site new buildings within*

*the curtilage of a Protected Structure, ensure protected structure status is used as a stimulus to the imaginative and considered design of new elements”.*

### 5.3. **Natural Heritage Designation**

- 5.3.1. The appeal site is not within but is very proximate to Natura 2000 sites. The nearest site is the River Barrow and River Nore SA code 002162 located approximately 120 metres to the south of the site. The river Nore is also a SPA site code 004233 with the kingfisher species the main species of qualifying interest.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

- 6.1.1. **The first party appellant** c/o Kingfisher Environmental Consultants in a submission dated the 27<sup>th</sup> of February 2017 refers to;

General points raised.

- The site is identified on the map of quarries and minerals in the current county development plan and is a valuable and sustainable source of aggregates with reference to map 1.1.2.5 of the plan.
- The site was registered as a pre-1964 quarry under section 261 ref QY05/38 subject to 15 conditions and the quarry continues to operate subject to those conditions.
- The proposed extension is a progressive extension of the registered quarry.
- It was determined by the planning authority that the quarry was not required to apply for substitute consent under section 261A or to require the submission of a rNIS or rEIS.
- The policies of the current county development plan support and recognise the importance of the extraction industry.
- No objection was made by the environment and water services departments of Laois County Council and no objection was lodged by DAHG.

Specifically, in relation to reasons for refusal.

Reason no.1.

- The reason for refusal follows a review of the EIS and NIS by consultants engaged by the planning authority.
- It is contended that the NIS submitted has provided an in-depth evaluation of the plan and project including an assessment of the any potential risk associated with the development and all appropriate mitigation measure to mitigate any potential risk.
- Direct and indirect impacts were considered and these considerations were considered alone and in combination.
- The review identified no known proposals which would give rise to the potential for in combination impacts on Natura 2000 sites.
- There will be no cumulative effect with the adjacent quarry which will be closed and restored.
- Traffic using the existing quarry will cease and be displaced by the new quarry.
- The NIS it is contended fully fulfils the criteria to eliminate any doubt that the proposed development will not have any direct or indirect impact on European designated sites.
- In relation to kingfishers and the SPA designation there is no proof of actual sightings of this species by the NPWS. The applicant did carry out a survey in relation to this species and in page 33 of the NIS it is indicated that no actual sightings of kingfishers were noted.
- In relation to water impacts the extraction will occur above the watertable; no wet processing will occur; there are no discharges, monitoring occurs; no issues have arisen in relation to the extraction from angling and fisheries interests and all sources of risks are identified and mitigation measures outlined.
- There is no risk to European sites and qualifying interests and the applicant is prepared by condition to carry out any further monitoring of groundwater.
- Sufficient data is submitted to assess potential water impacts and a detailed assessment of risk including from fuels and the use of plant and machinery.

- There are no direct or indirect pathways from the proposed site which could pose a risk to a European site and this is set out in the NIS.
- Extraction works have been carried out on the site and in that time has not significantly impacted on the surface water environment.
- Progressive restoration reduces the risks arising from the stripping and removal of material.
- There is no direct outlet to surface water bodies.
- There is an EMS on site to address any emergencies which could potentially arise.
- The River Nore is protected by distance and a landscaping berm and the river will remain unaffected by the proposed extension.
- In relation to the River Nore pearl mussel the majority are located upstream of the site and studies and tests indicate no impact from the quarry downstream in relation to suspended solids.
- The site does not support the feeding ground for kingfishers.
- Noise issues such as blasting do not arise and no issues arise in relation to other noise generating activities.
- Dust surveys indicate that the site operates within permitted levels and mitigation measures are outlined to address potential impacts from dust generated activities.
- The restoration of the site will be phased and lands restored to agricultural use and measures are in place to address potential impacts with no negative short or long term impacts on Natura 2000 sites.
- There is no impact on a Natura 2000 site, or reduction of such site and the conservation objectives of the SAC and SPA will be met by allowing the proposed site development to proceed.

In relation to reason no 2; (capacity of road network)

- In relation to capacity of the road network a detailed TTA was carried out.
- The haul route is the same route used for the current quarry.

- The TTA indicates the road network has the capacity to cater for the proposed development.
- The applicant conducted an analysis of the structure of the road network and the applicant is willing to accept a reasonable pro rata contribution to any overlay works and payment of a bond.
- It is noted that road design did not recommend refusal.
- The existing road network is used and the number of loads is indicated as 20 per day. There is little traffic on the road and lay byes were identified and strategically located to provide maximum visibility and facilitate safe passing on the road.
- No issues of dirt and muck on the road have been reported.
- No traffic hazards arise or were raised in traffic reports.

Reason no. 3. EIS.

- The appellant contends that the EIS and its addendum fully considers any cumulative effects.
- There are no cumulative effects as the old quarry will be closed.
- Traffic effects are displaced as traffic from the old quarry are replaced by traffic serving the new extension of the quarry.
- Cumulative effects were considered as part of the screening process and no known proposals are within the study area.
- The working area of the proposed development will be further away from the Natura site.
- The appellant has examined all quarries and other active planning applications in the area and the findings demonstrate the development will not have any cumulative effects.
- The NIS provides precise and definitive findings which remove any scientific doubt of effects arising.
- The proposed extension is in direct contact and adjacent to the existing registered quarry.

- The quarry operates under strict controls and there has never been concern in relation to operations at the site.
- Appropriate and adequate consideration has been given to the potential effects of the development on the environment.
- In relation to source-pathway-receptor the applicant has carried out an examination and clearly set out that there are no potential sources of pollutants or impacts. The planning authority has not identified that there is an identified source and pathway.

Reason no 4. Impact on Tallyho Bridge a protected structure.

- The reason for refusal does not state that the planning authority had any structural concerns in relation to the bridge or the proposed traffic loadings in the reason for refusal.
- An appraisal of the bridge was carried out and identified that the bridge was performing well structurally and some maintenance works were identified in the study carried out.
- Based on these findings the reason for refusal is not valid.

6.1.2. **The third party appellant Tom Mc Evoy** in a submission dated the 27<sup>th</sup> of February 2017 refers to;

- The planning authority were not entitled to accept the application as being valid because it included and was mainly an application for retention which is contrary to ECJ-215/06 and section 26 of the planning and Development (Amendment) Act 2010.
- No AA screening which would comply with Kelly v ABP was carried out.
- No AA which would comply with CJEU 259/11 was carried out.
- There was no assessment of incombination effects.
- There are no exceptional circumstances which apply to this application under section 57 of the Planning and Development (Amendment) Act 2010.
- The decision is an abuse of process because the quarry was permitted to operate while it was unauthorised.

- The process of registration is dubious.
- The finding that the quarry would not have an effect on the adjoining river is clearly flawed.
- The conditions of the registration are inadequate and ineffective.
- There has not been effective enforcement and the Board is requested to direct the planning authority to stop unauthorised development.
- Appendices in support of the grounds of appeal are submitted.

## 6.2. Appellant Responses

6.2.1. The appellant Tom McEvoy in a response dated the 20<sup>th</sup> of March 2017 refers to; The appellant states the view that the Board are prohibited from adjudicating while the quarry is unauthorised development and the application is an attempt to subvert the Habitats and EIA Directives.

6.2.2. Ashvale Haulage in a response to the appeal by Mr McEvoy refer to

- The application is not retention.
- There was AA Screening carried out.
- There is a detailed assessment of in-combination effect.
- The quarry is accepted by Laois County Council as pre 1963.
- The applicant has always complied with requirements of the planning authority and the conditions of the registration are complied with.
- There is a bond in place for restoration of the site.
- There is no unauthorised development occurring on the site.

## 7.0 Assessment

7.1. The development as submitted to the planning authority on the 11<sup>th</sup> of May 2016 as stated in the public notices was for

- An extension to an existing registered sand and gravel pit.

- The development involves the dry screening and extraction of sand and gravel and ancillary works including restoration works.
- It is proposed to extract 312,500m<sup>3</sup> (562,500 tonnes) over five years in a progressive manner over three phases.
- The average production rate will be c.2,500 tonnes per week.
- The existing access will be used.
- The area of extension is indicated as 5.64 hectares.
- Reference is made to the registration of the quarry as pre 1964 and the present quarry operates under the conditions of this registration. The sand and gravel pit is long established and the proposed extension will occur in a logical and progressive manner. The works will be carried out to ensure no surface water discharges will occur to the River Nore.

The application was accompanied by an EIS and NIS which was revised following further information.

- 7.2. There are two appeals a third party appeal which refers to the planning history of the site and issues relating to unauthorised development and that this precludes the Board adjudicating on development which is unauthorised and a first party appeal against the decision of the planning authority to refuse planning permission.
- 7.3. I propose to initially assess the development as submitted noting that the third party has raised the issue of unauthorised development. In this regard I would consider that unauthorised development and enforcement are matters for the planning authority and not the Board and the planning authority have accepted the application as a valid application and made a decision on the application submitted.
- 7.4. **Principle of the development.**
- 7.4.1. In section 5 of this report I have outlined the policy context at national and county level relating to the extractive industry which includes the restoration of sites and the inclusion of measures to safeguard amenities the environment the protection of heritage both natural and built.
- 7.4.2. In relation to the site, it is not within any amenity designation identified in the county development plan. In overall terms quarry development is by its nature a tied



resource and location based development and application must be assessed in this context. The principle of the development is, therefore, I consider, reasonable. It must however be considered in the context of other factors which are site specific and relate to the context of the site and potential impacts arising from the development on the receiving environment and this provided for in national guidance and the provisions of the county development plan.

7.5. In relation to the proposed development I propose to consider the site specific considerations under the following

- Visual and landscape considerations
- Roads and traffic
- Soils and water
- Air and Climate
- Residential amenities
- Heritage

**7.6. Visual and landscape considerations.**

7.6.1. In relation to visual impact the site is located within an area defined as located within an area LCT2- Lowland Agricultural Area. It is not within any specific designation of area with a protected view and prospect. The plan it is noted refers to the importance of the river valleys visually in the county is recognised and referred to in policy. The EIS in section 3.9 and further information has not identified any visual impact arising from the development.

The site is located in a lowland area with a high level of screening from hedgerows and other vegetation and the site is not prominent in a local context. The site is not readily visible from the National road network and is only visible from the local road network in very close proximity to the site.

7.6.2. The overall impact will result in the alteration of existing levels and in that context the impact is permanent but the proposal provides for restoration to agricultural use with grading to assimilate the site into the receiving landscape. I would have no objections in relation to the proposed development based on the documentation submitted.

## 7.7. Roads and traffic.

- 7.7.1. Traffic hazard is specifically referred to in reason number 2 of the planning authority decision to refuse planning permission and Tallyho Bridge a protected structure is referred to in reason no. 4 of the planning authority's decision to refuse permission.
- 7.7.2. Traffic and roads is addressed in section 3.10.3 of the EIS and further information was submitted by way of further information in particular in relation to haul routes provision of lay byes and the capacity of the road network and bridge structures in particular Tallyho Bridge to serve the development. I would also refer to appendix 3.10 of the EIS which includes a TTA.
- 7.7.3. The site is served by a private road which in turn leads onto a narrow public road, the L17511, which in turn has a junction with another local road, the L1751, in the village of Attanagh. The bulk of traffic serving the development will then travel westwards on the local road to the N77 Durrow Ballyragget National Secondary Route the principle road serving the area with ease of access to the M8 corridor and areas of the counties of Laois and Kilkenny.
- 7.7.4. The quarry is anticipated to operate for a period of 5 years and based on projected extraction rates the anticipated traffic generated by this development estimated as 20 inbound and 20 outbound HGV movements per working day based on the estimated annual rates of material to be transported. Provision is made for staff and miscellaneous traffic giving in pcus (2 pcus equating to 1 hgv) a total pf 96 movements, 48 arrivals and 48 departures. There is reference to the current/ previous operations of the quarry and that the levels of traffic demonstrate no capacity or queueing problems on the road network and this given the anticipated volumes and moderate increase in traffic no issues would arise.
- 7.7.5. In relation to traffic estimates I would accept that the overall level of traffic likely to arise from the development is relatively low if previous usage and extraction rates for the quarry were to continue into the future operation of the site. The level of anticipated traffic is however related to demand for material and the rate of extraction will vary upwards and downwards depending on demand. I would also accept that as a resource based industry traffic is determined by material being extracted at a source/location where the resource is available and therefore alternative extraction demand is determined by the availability of the resource.

- 7.7.6. The major issue in relation to the proposal is that the site is served by a local road network which is in particular on the road immediately adjacent to quarry which is extremely narrow in width with no scope for passing vehicles. There are also long distances beyond a line of sight between locations where even two passenger vehicles can safely pass without taking into consideration a HGV passing a passenger vehicle or two HGV vehicles having to pass. When this occurs it would be necessary for one vehicle to reverse back to a passing point. The number of passing points proposed is not, I consider, adequate for the length of the road.
- 7.7.7. The applicant has indicated measures to address this matter including radio control traffic management and that this has been operated satisfactorily in the past. This is largely dependent on a very tight management of vehicular movement and that levels of extraction remain relatively low and other operators do not require material from the quarry.
- 7.7.8. The road network I consider is simply not adequate in this context to accommodate the nature and level of traffic which the development generates.
- 7.7.9. I would accept that under registration given the acceptance of pre 1963 status provision may have had to be made for optimising traffic flow and management but the current application is for permission and is considered *de novo*. In this context I do not consider that the current road network in the section from the site to the village of Attanagh has the capacity and is suitable to accommodate the development as proposed.
- 7.7.10. In relation to the local road network from Attanagh to the N77 this road is in sections is also narrow and substandard in alignment but the road is generally wider allowing for passage of vehicles and can I consider accommodate the level and passing of vehicles which the proposed development will generate. I would have concerns that the road would accommodate an increased level of HGVs and that works to strengthen the pavement and in particular the side verge in some sections is necessary. I would, however, note that the road carries all forms of vehicles and subject to improvements to pavement and other minor improvements traffic issues do not, I consider, arise.
- 7.7.11. I also note that the planning authority raise matters in relation to Tallyho Bridge a protected structure and that deterioration of the bridge will arise. It is difficult to

outline an appraisal of this matter as the planning authority, having raised the matter of potential structural impact and having sought further information which was supplied by the applicant, have not raised any specific matters in the reasons for refusal of permission that would indicate structural concerns that can be attributable to the proposed development and the traffic which the proposed development will generate. The applicant has as requested examined the bridge and outlined maintenance works and protective measures which could be addressed.

- 7.7.12. The issue of maintenance of the bridge and road network is a matter for the roads authority not the applicant. The roads authority can apply resources and funds to protect the structure or where a direct relationship is outlined to indicate proportionate levels of deterioration of the bridge relative to the traffic generated by the development to require payment of a contribution.
- 7.7.13. Having considered the details submitted I consider that there are significant issues in relation to the capacity of the road network that are not addressed by the details as submitted and these issues cannot be addressed by condition.

#### **7.8. Soils and Water.**

- 7.8.1. In relation to water related matters this is addressed in sections 3.2.3.2, 3.2.3.3, 3.3 and 3.6 of the EIS and in subsequent submissions.
- 7.8.2. The site is located in close proximity to the confluence of the River Nore and its tributary the River Owenbeg.
- 7.8.3. There is no direct discharge to the rivers from the current quarry and no direct discharges are proposed from the proposed development. Discharge on the site is to groundwater. The proposed development will involve extraction of material further from the main watercourses than occurs/occurred under the currently registered quarry.
- 7.8.4. Data submitted in relation to water quality indicates no negative impact on the River Nore upstream and downstream of the site.
- 7.8.5. There is recognition of potential impacts arising in particular as the top soil is stripped increasing the risk to groundwater and the extraction depth proposed is above the groundwater level on the site and the water level in the River Nore. Groundwater flows flow direction are indicated as deep though no direct site based

evidence is submitted to support this. No foul drainage is proposed to be discharged on the site and mitigation measures are outlined in relation to the use of oils and fuels. No processing of material is proposed on the site. The site restoration plan to be carried out on a rolling basis is indicated as important in maintaining a buffer between workings on the site and the protection of the groundwater body.

- 7.8.6. Based on the methodology of extraction and mitigation measures outlined no significant impacts are identified in the EIS.
- 7.8.7. Given the proximity of the site to the River Nore a waterbody of major ecological significance the management of water and control of discharge is important in any assessment of this site.
- 7.8.8. It is important to note that there are no watercourses on the site to provide direct discharge from the site to the river. Working levels are above groundwater levels and river levels. An examination of the previous workings on the site indicate a dry working site and the depth of the level of extraction on the proposed site retains this depth and level of extraction. No processing, screening and washing of material involving the use of additional process water is proposed on the site. There is it would appear no documented evidence to suggest that the past operations on the site have resulted in deterioration of water quality in the River Nore. There is no information of deterioration in relation to groundwater and it is noted that operations will be further removed from the river in the current proposal.
- 7.8.9. The proximity to the River would notwithstanding the absence of surface water movement on the site, given the ecological significance of the River Nore, require that subterranean movement of water and discharge of water to groundwater be assessed and evaluated. The information in the EIS is largely based on desktop work and in relation to local hydrology indicates that “it is expected that dep groundwater flow directions are likely to be generally in a north to south direction and towards the east of the site in a north-west to south-east direction” (section 3.2.3.2 of EIS). The planning authority by way of further information it is noted did request a water impact assessment to enable a scientific evaluation of impact on ecological features.
- 7.8.10. The applicant has contended that sufficient information has been submitted to assess impact to water referring to past operations, water quality data and local

knowledge of the site and area and that the proposed development will provide for an operation which will be above the groundwater table and the nature of the operations will not result in processing and washing resulting in potential adverse impacts to groundwater.

- 7.8.11. I do not necessarily fully dispute what is stated but to assess impacts qualitative data is necessary to affirm this as the case and there is need I consider for on-site testing to establish this to be the case. It is not sufficient to rely on desktop data and studies in the wider area, it is necessary to establish the position clearly on the site itself and based on results and on-site data the potential of adverse impacts can be scientifically evaluated and eliminated or if identified appropriate mitigation measures can be set out to address and negate any impact identified.
- 7.8.12. Given the factors specific to the site in terms of hydrogeology and the proximity of the site to the River Nore in relation to impact on water I do not consider that information submitted by the applicant is sufficient to reach such a conclusion with reliable scientific certainty.

## 7.9. **Air and Climate**

- 7.9.1. Air quality and climate are referred to in sections 3.4 and 3.5 of the EIS.
- 7.9.2. The existing environment is outlined and the site has been the subject of dust level surveys and monitoring. The data as submitted indicate levels which are below permitted EPA Luft limits of 350mg/m<sup>2</sup>/d.
- 7.9.3. The main sources of impact in relation to air are identified in the documentation submitted including stripping of soils, stockpiles, traffic and weather conditions. Mitigation measures are outlined to ameliorate potential impacts.
- 7.9.4. In relation to noise, the existing receiving environment is outlined, sensitive receptors identified and noise levels arising from the development were surveyed. Noise levels it is indicated are below permitted levels as outlined in table 3.7.2.3.1.1. Mitigation measures are outlined to reduce noise levels in section 3.7.4 and ongoing monitoring is proposed.
- 7.9.5. Given the scale and nature of the operations on the site I am satisfied that the operations on site to date do not and have not posed a significant impact or residual impact in what is a quiet rural area.

7.9.6. I also consider that the noise environment is generally acceptable and will not significantly impact on the amenities of the area. With the continued implementation of appropriate mitigation measures and the implementation of ongoing monitoring as set out by the applicant I would have no objections to the development.

#### 7.10. Residential amenities

7.10.1. Section 3.10 refers to human beings but other sections of the EIS also refer to impacts which potentially impact on residential amenity including noise, dust and traffic. Many of these issues arising have already been referred to in the assessment.

7.10.2. I would accept that the development by its nature impacts on the area and receiving environment given that the site is located in a relatively remote rural area and will potentially generate levels of noise and dust and traffic levels and will be therefore be a source of intrusion.

7.10.3. The development although it will impact it will not, I consider, be at a level to adversely impact on the area and residential amenities.

#### 7.11. Heritage

7.11.1. In relation to heritage section 3.2 of the EIS relates to flora and fauna and chapter 3.8 to cultural heritage. Other documentation including an NIS and structural appraisal of Tallyho Bridge were submitted. Further information in particular in relation to habitats on the site was submitted by way of further information.

7.11.2. In relation to ecology the documentation as submitted outlines the existing environment. The site itself is not within a Natura site but is close proximity to the River Barrow River Nore SAC and River Nore SPA approximately 120 metres distant, which is a Natura site. The appeal site is farmland adjoining the registered quarry which is located between the appeal site and the River Nore.

7.11.3. The primary issue in relation natural heritage is the relationship of the site to the river and the ecological significance of the River. Therefore, although no direct interaction is indicated and envisaged in the submissions made by the applicant, the operations proposed on the site must be considered in the context of any implication of impact direct and/or indirect on the river and the ecology it supports.

- 7.11.4. The applicant refers to the previous operations of the quarry and that the current proposal will be further removed from the river. The current operations have not it is contended adversely impacted on natural heritage and as the proposed development being further removed will be further away from the river and the SAC it is similarly contended that no significant impact will occur.
- 7.11.5. The habitats present on the site are outlined. Details are also outlined in relation to avifauna, mammals, insects and amphibians with no listed habitats or species identified on the appeal site.
- 7.11.6. The River Barrow River Nore SAC code 002162 is a vast linear site with a diverse range of qualifying interests ranging including many estuarine habitats and species. The main considerations are alteration or loss of habitat of ecological significance; discharges to the river and potential impact on the water quality of the river and any impact on any qualifying species arising from the development.
- 7.11.7. Specific to the site itself there is within the site no significant habitat of ecological interest with an absence of diversity largely arising from the nature of recent extractive operations and the use of the land for farming. In many respects the proposed development will mirror the previous works on the adjoining registered quarry site in relation to alteration of the landscape and disturbance of species pending the completion of the restoration works. There is no loss of a Natura site.
- 7.11.8. In relation to impact from discharges to the river the applicant has referred to past operations on the adjoining lands and the absence of identified impacts. Given that the proposed quarry is further distant from the river subject to the implementation of mitigation measures it is contended that the proposed development will not impact on the river. As already indicated in section 7.8.11 and 7.8.12 of this report in relation to water I do not consider this has been assessed to a satisfactory degree.
- 7.11.9. The impact on water quality has implications in particular to species which are qualifying interests in the River Barrow River Nore SAC code 002162 including salmon, otter, lamprey crayfish and the pearl water mussel. The River Nore is also of significance as a SPA site code 004233 is of high ornithological importance as it supports a nationally important population of Kingfisher, a species that is listed on Annex I of the E.U. Birds Directive.



- 7.11.10. In relation to assessment of potential impacts the applicant submitted further information as requested by the planning authority and the planning authority raised issues in relation to the level of information submitted on a number of species highlighting the kingfisher. The applicant has contended that the information submitted is adequate and where necessary goes further than desktop studies highlighting that in the revised NIS it is clearly indicated that no kingfisher were observed either within or close to the site.
- 7.11.11. The primary issue in relation to natural heritage is that notwithstanding the long established use of the adjoining lands as a quarry and information submitted to support a view of absence of an impact on in particular on qualifying species, in assessing this proposal, the onus is on the applicant to submit information to support a position that a future proposed development will not impact on species in particular river dependent species. The absence of information specifically relating to a water related impact arising from the development does not support a position that an impact or effect cannot be discounted.
- 7.11.12. In relation to built heritage there is no protected structure on the site. The material drawn from the quarry will use the local road network and to reach the N80 will cross over Tallyho Bridge which is a protected structure RPS NO. 526 and is referred to reason no 4 of the decision to refuse permission. The relevant policy in relation to protected structures is BH 14 / P06 *“Protect Protected Structures from works that would adversely affect or erode their special character and where proposals are made to extend a protected structure or to site new buildings within the curtilage of a Protected Structure, ensure protected structure status is used as a stimulus to the imaginative and considered design of new elements”*
- 7.11.13. In section 7.7.11 and 7.7.12 I have referred to Tallyho Bridge. The protection and conservation of the bridge is of importance and the bridge represents an important feature of the built heritage of the area in terms of architectural history. The applicant, as requested, did survey the bridge and outlined recommendations to conserve and enhance the structure. It is, however, difficult to outline an appraisal as the planning authority, having raised the matter of potential structural impact and having sought further information which was supplied by the applicant, have not raised any specific matters in the reasons for refusal of permission that would

indicate structural concerns that can be attributable in a significant manner to the proposed development.

- 7.11.14. The issue of maintenance of the bridge is a matter for the roads authority not the applicant. There is nothing to suggest that the continued operation of a quarry will impact the bridge in a manner to lead to its eventual removal and if necessary the onus is on the roads authority can apply resources and funds to protect the structure.

## **8.0 ENVIRONMENTAL IMPACT ASSESSMENT.**

### **8.1. Environmental Impact Statement.**

- 8.1.1. The application is accompanied by an Environmental Impact Statement. The documentation as submitted also included a Natura Impact Statement and accompanying appendices.

### **8.2. Structure and Content of EIS**

- 8.2.1. The EIS is laid out in a single volume with a main text, non-technical summary and appendices.
- 8.2.2. As per the requirements of the EIA Directive, the EIS:
- Describes the project and provides information on the site, the nature of the proposed development and the scale of the development.
  - Describes the measures envisaged to avoid, reduce, and if possible, remedy significant adverse effects.
  - Provides data to identify and assess the main effects which the proposal is likely to have on the environment.
  - Provides a description of the main alternatives studied by the developer an indication of the main reasons for the choice of alternative put forward, taking into account environmental effects, and
  - Includes a non-technical summary of the above information.
- 8.2.3. The content and scope of the EIS is considered to be acceptable and in compliance with the requirement of Articles 94 (content of EIS) and 111 (adequacy of EIS content) of the Planning and Development Regulations, 2001 (as amended).

8.2.4. In relation to the adequacy of the EIS, I consider that it contains the information specified in Schedule 6 of the Planning and Development Regulations 2001, as amended. Having reviewed the EIS, and other documentation including the NIS and all the supporting documentation to the application and applicant's and other responses

- I am satisfied that the information is sufficiently detailed and comprehensive, and can be considered as a contribution towards the process of assisting the relevant decision maker and the competent authority, in this case the Board, to carry out a robust and accurate assessment of the development for the purposes of environmental impact assessment.

### **8.3. Environmental Impact Assessment.**

8.3.1. In accordance with the requirements of Article 3 of the EIA Directive and Section 171A of the Planning and Development Act, 2000 (as amended), the environmental assessment is carried out under the following headings:

- Human beings, flora and fauna;
- Soil, water, air, climate and the landscape;
- Material assets and cultural heritage;
- Interactions between the foregoing.

### **8.4. Likely Significant Direct and Indirect Effects.**

#### **8.4.1. Human Beings, Flora and Fauna.**

##### **Human Beings.**

Impacts on human beings arising directly and indirectly as a result of the proposed development was considered in detail in many sections of the EIS and primarily in section 3.10.

Direct and indirect impacts will arise as a result of the development. A direct impact in relation to employment will be in relation to employment. Potential impacts can arise in relation to noise, traffic and general disturbance and mitigation measures are outlined in relation to these potential impacts. The primary issue which arises is in relation to impact on the road network and impact on local road users.

##### **Flora & Fauna.**

The site is not located within a designated site. No habitats or species of conservation interest are identified on the site. No development will take place within the boundary of any Natura 2000 site. There will as a consequence be no direct physical impact on any Natura 2000 site through loss of habitat or effect on the conservation objectives of any site.

Due to proximity to the proximity to the River Nore a SAC and SPA indirect effects potentially arise. The EIS outlines mitigation measures to address potential effects in relation to surface water and other emissions from the site. Given the proximity to the River Nore the potential of sediment and other substances entering the river could give rise to an impact. Mitigation measures are outlined but there is an absence of sufficient information based on on-site survey to assess potential impact on the River Nore and in the absence of this it is not possible to adequately assess impact on species dependent on the river and the quality of water in the river.

#### 8.4.2. **Soil, Water, Air, Climate and the Landscape**

##### **Soil.**

Direct impacts will arise from the permanent removal of material off the site. It is however proposed to restore the site to farmland post the extraction phase and there is a restoration plan outlining four phases. Having regard to the nature and scale of the development and the proposed subject to the satisfactory management of the stripping of the topsoil and over burden, its ongoing storage for reuse and the implementation of the restoration plan I would not consider that a significant impact arises.

##### **Water.**

The EIS outlines the process to be carried out and that excavation will occur above groundwater level and the site will therefore be a dry working area. Stripping of soil will increase risk to groundwater and in the absence of surface watercourses on the site discharge will be to groundwater. There is an absence of clarity in relation to groundwater flows and any potential impact on the River Nore and given the ecological significance of the river it is important to have a clear understanding of any potential impact and robust data to discount any impact. Having regard to the information submitted and the proposed means to mitigate potential impacts on the

hydrological environment, the potential of impact to receiving water cannot be ruled out.

### **Air.**

The issue of air quality arises in sections 3.4 and 3.5 of the EIS.

Given the nature of the proposed development there is potential of direct impacts likely to arise, during the lifetime of the development arising from fugitive dust and noise arising from the operation of plant and from traffic in particular HGVs going to and from the site

In relation to noise, data is submitted in relation to past operations of the site and projected noise levels from the proposed development with consideration in relation to impact of sensitive receptors. Mitigation measures are proposed in relation to controls on machinery and landscaping to minimise noise levels. Impacts will not be considered to be significant.

In relation to dust emissions historical recorded data indicates that dust emissions are below permitted levels permitted under national guidance. Based on the information submitted it is reasonable to assume that this position will not change in relation to the proposed development if the stated mitigation measures are applied.

Having regard to the relative distance of the site from residential properties and the measures outlined, it is considered that the development will not give rise to significant noise or dust nuisance on sensitive receptors. Impacts, direct and indirect, of a significant nature are not, therefore, likely to arise.

Cumulative impacts, on noise from the proposed development, in conjunction with existing, planned or proposed infrastructure arising from noise and dust generated on the site, from the proposed developments are also not likely to arise.

### **Landscape**

Section 3.9 of the EIS and information submitted by way of further information has not identified any visual impact arising from the development. The site is located in a low lying area with mature trees and other vegetation dominating the landscape. The site is located in a lowland area with a high level of screening from hedgerows and other vegetation and the site is not prominent in a local context. The site is not readily visible from the National road network and is only visible from the local road network in very close proximity to the site.

The overall impact by the nature of the development proposed will result in the alteration of existing levels and in that context the impact is permanent but the proposal provides for restoration to agricultural use with grading to assimilate the site into the receiving landscape. I would have no objections in relation to the proposed development based on the documentation submitted. Impacts on the landscape, in conjunction with existing, planned or proposed infrastructure are not, therefore, likely to arise.

#### 8.4.3. **Material Assets and Cultural Heritage**

Section 3.10 EIS refers to material assets and traffic primarily in the context of human beings in the context of employment and meeting infrastructural needs and local recreational activity of fishing and indicates no impacts arising. I would agree with the conclusions as stated.

The issue of traffic is also considered and assessed and further information was also submitted in particular in relation to the standard of the local road network. The assessment as set out considers the impact of the development on the local road network in the context of the anticipated traffic which the proposed development will generate.

The primary issue in relation to traffic is the current nature of the road network from the site to the N77. The road network is generally narrow in particular and the site is served by a private road which in turn leads onto a narrow public road, the L17511, which in turn has a junction with another local road, the L1751, in the village of Attanagh. The bulk of traffic serving the development will then travel westwards on the local road to the N77 Durrow Ballyragget National Secondary Route the principle road serving the area with ease of access to the M8 corridor and areas of the counties of Laois and Kilkenny.

The anticipated traffic generated by this development estimated as 20 inbound and 20 outbound HGV movements per working day based on the estimated annual rates of material to be transported. Provision is made for staff and miscellaneous traffic giving in pcus (2 pcus equating to 1 hgv) a total pf 96 movements, 48 arrivals and 48 departures.

There is reference to the current/ previous operations of the quarry and that the levels of traffic demonstrate no capacity or queueing problems on the road network

and mitigation measure currently in place to overcome recognised problems arising from the narrow width of the L17511 are outlined and proposed in relation to addressing the problems arising from a long section of narrow road with limited scope for passing of vehicles and relatively few opportunities for vehicles to move off the road.

In relation to traffic estimates I would accept that the overall level of traffic likely to arise from the development is relatively low and also that as a resource based industry traffic is determined by material being extracted at a source/location where the resource is available and therefore alternative extraction demand is determined by the availability of the resource. In this regard future traffic generation may be above or lower than the anticipated trip generation.

The major issue in relation to the proposal is that the site is served by a local road network which is in particular on the road immediately adjacent to quarry which is extremely narrow in width with no scope for passing vehicles. The number of passing points proposed is not, I consider, adequate for the length of the road.

The road network I consider is simply not adequate in this context to accommodate the nature and level of traffic which the development generates. The mitigation measure outlined do not I consider address the overall deficiency of the road network.

Having considered the details submitted I consider that there are significant issues in relation to the capacity of the road network that are not addressed by the details as submitted and these issues cannot be addressed by condition.

## **Cultural Heritage**

### **Archaeology.**

In relation to archaeology, there are no recorded monuments within the proposed development site. Mitigation measures and the inclusion of ongoing archaeological monitoring of works would address any potential impact arising.

### **Architecture..**

The primary issue in relation to a protected structure is Tallyho Bridge a protected structure and that deterioration of the bridge will arise from the traffic generated by the proposed development. It is difficult to outline an appraisal of the potential impact

as the planning authority having raised the matter of potential structural impact and having sought further information which was supplied by the applicant have not raised any specific matters that would indicate a clear correlation of structural concerns that can be attributable to the proposed development. The issue of maintenance of the bridge is a matter for the roads authority not the applicant for the roads authority to apply resources and funds to protect the structure and can be remedied if such a structural issue is identified.

#### **8.4.4. Interactions between the foregoing.**

Impact Interactions.

Although impact interactions, subject to mitigation, are I consider unlikely to be significant. The major interaction of concern relates to water and any level of discharge from the site arising from the operations on the site on the receiving River Nore a watercourse of major ecological significance. As already indicated the details submitted do not provide sufficient clarity that an impact cannot be ruled out.

#### **8.4.5. Summary and Conclusion.**

Having regard to the above, it is my view that the significant environmental effects arising as a consequence of the development have been adequately identified and assessed. Issues arise however in relation to traffic given the nature of the road network serving the development and that potential discharge to receiving water cannot be ruled out.

### **9.0 Appropriate Assessment - Screening.**

9.1.1. The applicant submitted a NIS and following a request of further information a revised NIS referred to as Revision 1.

9.1.2. The site is not within a designated site but is in close proximity to The River Barrow and River Nore SAC site code 002162 and the River Nore SPA site code 004233, which are within 120 metres of the appeal site.

#### **9.2. Stage 1 Screening for Appropriate Assessment.**

9.2.1. In relation to the Stage I screening, the issue to be addressed is whether the project is likely to have a significant effect, either individually or in combination with other plans and projects, on European sites in view of those sites' conservation objectives.



- 9.2.2. Section 1 of the NIS outlines the nature of the proposal and the receiving environment including water quality of the River Nore upstream and downstream of the site. Measures to mitigate potential impacts arising from the development are also outlined concluding that there will be no significant impacts on the surface water environment or on the nearby SAC or SPA.
- 9.2.3. In the subsequent AA screening it concludes in section 6.4 that neither the existing quarry or the proposed quarry will have any impacts on Natura 2000 sites but applying a precautionary approach a Natura Impact Statement was prepared.
- 9.2.4. The conclusion as outlined in section 6.4 is largely based on an appraisal of the operation of the existing quarry and that it is not within a Natura site. There is no clear appraisal of potential impacts which could potentially arise or a description of the qualifying interests which could potentially be effected by the operations of the proposed development. There is no clear or detailed assessment indicating in a structured manner with baseline data as to why a stage 2 screening was excluded. There is no detailed data submitted to exclude source pathway receptor from the site to the Natura sites or the consideration of cumulative effects.
- 9.2.5. In the context of the distance from the SACs and the absence of a clearly identifiable data to exclude link between the appeal site and an SAC, the potential of likely and significant effects (direct or indirect) of the project alone and in combination with other projects I consider cannot be reasonably ruled out on the basis of objective scientific information. There is, I consider, an absence of an assessment of a detailed water impact in relation to the proposed development on the receiving environment and by extension the nearby Natura sites. It does not necessarily follow that proximity will give rise a potential effect but it is I consider necessary to submit data that can with reasonable certainty exclude such potential effect.
- 9.2.6. In conclusion, in relation to the stage 1 screening report, the process and methodology followed, I consider, is not sufficiently robust in having identified the Natura 2000 sites in carrying out an assessment and identification of potential impacts and effects. It does not exclude the presence and/or absence of pathway from the site to the Natura sites by on site survey data.
- 9.2.7. It is reasonable, therefore, to conclude that on the basis of the information on the file, there is insufficient information to issue a screening determination as indicated by

the applicant, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site Nos. 002162 and 004233 in view of their Conservation Objectives, and a Stage 2 Appropriate Assessment is therefore required.

- 9.2.8. By applying the precautionary principle, the requirement to proceed to stage 2 in relation to the River Barrow and River Nore SAC site code 002162 and the River Nore SPA site code 004233 where the likelihood of significant effect cannot be discounted without further examination is therefore, I consider, reasonable and correct.

### 9.3. **Stage 2 – Natura Impact Statement**

- 9.3.1. Arising from the stage 1 screening the stage 2 NIS initially focuses on the habitats on the appeal site identifying four habitats which are not qualifying habitats. Surveys on the site were also carried out in relation to fauna and no species of a qualifying interest were observed including kingfishers which are of significance in relation to the River Nore SPA.

- 9.3.2. The qualifying interests of the River Barrow and River Nore SAC are;

Estuaries [1130]

Mudflats and sandflats not covered by seawater at low tide [1140]

Reefs [1170]

Salicornia and other annuals colonising mud and sand [1310]

Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]

Mediterranean salt meadows (*Juncetalia maritimi*) [1410]

Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation [3260]

European dry heaths [4030]

Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]

Petrifying springs with tufa formation (*Cratoneurion*) [7220]

Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0]

Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]

*Vertigo moulinsiana* (Desmoulin's Whorl Snail) [1016]

Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]

Austropotamobius pallipes (White-clawed Crayfish) [1092]

Petromyzon marinus (Sea Lamprey) [1095]

Lampetra planeri (Brook Lamprey) [1096]

Lampetra fluviatilis (River Lamprey) [1099]

Alosa fallax fallax (Twaite Shad) [1103]

Salmo salar (Salmon) [1106]

Lutra lutra (Otter) [1355]

Trichomanes speciosum (Killarney Fern) [1421]

Margaritifera durrovensis (Nore Pearl Mussel) [1990]

- 9.3.3. The SAC is large and diverse and given the nature of the SAC includes a large range of habitats many of the habitats which in the NIS are excluded as they are coastal habitats and far removed from the site. I consider this approach as reasonable.
- 9.3.4. In relation to the SAC the NIS focuses on a number of species as relevant referring to crayfish; lamprey; river lamprey; salmon; otter and margaritifera durrovensis (Nore Pearl Mussel).
- 9.3.5. The NIS in section 7.2.1.1.1 addresses the Nore Pearl Mussel indicating its identified locations which are primarily upstream of the site though a section of the river downstream is also identified. The conservation objectives in relation to the species are stated and potential threats.
- 9.3.6. In assessing potential impacts on the SAC and pearl mussel areas upstream are excluded and in relation to sites downstream the main potential negative threat arises from sediment and chemical loss. Given the nature of the operations with no surface water discharges no impact from the appeal site to the species is predicted.
- 9.3.7. There is no assessment of the other water based species identified as relevant.
- 9.3.8. The NIS in section 7.2.2 addresses the River Nore SPA and in particular the Kingfisher. It is indicated that no sighting of the species was observed on the site and immediate area but the operations on the site and the distance of the extractive operations from the river bank would pose no disturbance to the species if the species migrated into the area.

- 9.3.9. Other potential impacts arising from noise and dust are outlined and assessed and operations in relation to site restoration are also outlined and assessed in relation to potential impact.
- 9.3.10. In relation to impact and prediction and conservation objectives an assessment of likely effects if any are indicated in tabular form in section 7.5.1 of the NIS. No loss or reduction of a Natura site habitat is indicated, no direct and indirect effects to a Natura 2000 site is identified and no direct and indirect damage to the physical environment in relation to water resources and water quality is indicated in relation to habitats and species.
- 9.3.11. Cumulative effects are also addressed in relation to the development identifying through a planning screening exercise development in the area and concludes no cumulative effects.
- 9.3.12. The overall conclusion as set out in section 8 of the NIS is no impacts or effects arising in relation to a Natura site or species.

#### 9.4. **Conclusions and comment relating to Appropriate Assessment**

- 9.4.1. My initial comments are in relation to the documentation submitted would be;
- No loss or displacement of a qualifying habitat will arise from the development.
  - In relation to species I am satisfied that in relation to the SPA the documentation submitted would indicate no effect in relation to the kingfisher species.
  - In relation to the SAC although the NIS makes reference to a number of species as relevant referring to crayfish; lamprey; river lamprey; salmon; otter and margaritifera durrovensis (Nore Pearl Mussel) there is no assessment of effect on these species other than the Nore Pearl Mussel.
  - There is I consider no definite appraisal in relation to source pathway receptor.
  - Due to proximity to the proximity to the River Nore a SAC and SPA direct and indirect effects potentially arise. The EIS outlines mitigation measures to

address potential effects in relation to surface water and other emissions from the site.

- There is I consider an absence of sufficient information based on on-site survey to assess potential impact on the River Nore and in the absence of this it is not possible to adequately assess impact on species dependent on the river and the quality of water in the river.
- A more robust water impact assessment is I consider necessary given the proximity of the site to the River Nore a waterbody of major ecological significance with species of conservation interest and therefore the management of water and control of discharge is important in any assessment of this site.
- Notwithstanding the site's history in relation to extraction and the absence of surface water movement on the site given the ecological significance of the River Nore requires that subterranean movement of water and discharge of water to groundwater be assessed and evaluated. It is noted that the planning authority by way of further information did request a water impact assessment to enable a scientific evaluation of impact on ecological features.
- The applicant has contended that sufficient information has been submitted to assess impact to water.
- I however consider to assess impacts and likely significant effects qualitative data is necessary to affirm this as the case and there is need I consider for on-site testing to establish this to be the case. It is not sufficient to rely on desktop data and studies in the wider area, it is necessary to establish the position clearly on the site itself and based on results and on-site data the potential of adverse effects can be scientifically evaluated and eliminated or if identified appropriate mitigation measures can be set out to address and negate any impact identified.
- Given the factors specific to the site in terms of hydrogeology and the proximity of the site to the River Nore in relation to impact on water I do not consider that information submitted by the applicant is sufficient to reach such a conclusion with reliable scientific certainty.

- The primary issue in relation to natural heritage is that notwithstanding the long established use of the adjoining lands as a quarry and information submitted to support a view of absence of an impact on in particular on qualifying species in assessing this proposal the onus is on the applicant to submit information to support a position that a future proposed development will not have significant effect on species in particular river dependent species. The absence of information specifically relating to a water related impact arising from the development does not support a position that a significant effect cannot be discounted.
- I therefore consider that the documentation as submitted has not provided sufficient information to determine whether or not likely significant effects, either individually or in combination with other plans or projects, on the European sites can be reasonably ruled in or ruled out on the basis of objective scientific information.
- Having considered the documentation as submitted, including submissions from all parties, I therefore do not consider that the project can be ruled out as not adversely affect the integrity of a European site, either individually or in combination with other plans or projects, in view of the site's conservation objectives.

9.4.2. On the basis of the information provided with the application and appeal, including the Natura Impact Statement, and in light of the assessment carried out above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European Site No. 002162, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

## 10.0 Recommendation

10.1. Having considered the submissions received in relation to this appeal and the documentation submitted I would therefore recommend that the application be refused.

## 11.0 Reasons and Considerations

1. Having regard to the nature and extent of the development and an assessment of the documentation submitted as part of the application it is considered that information has been submitted in relation to the assessment of the effects of the proposed development would not preclude consideration that the development would not have a significant adverse effect on the conservation interests of the River Barrow and River Nore SAC Site Code 002162 and that a detailed water impact appraisal and assessment has been submitted to conclude that no significant effect can be reasonable certainty be excluded. As a consequence, the Board are therefore not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European Site No. 002162, in view of the site's Conservation Objectives. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2. Having regard to the nature of the road network serving the proposed development in particular the substandard nature of the L17511 in relation to pavement width and alignment, and also sections of the L1751, which are deficient in relation to pavement width and alignment; the absence of a sufficient level passing lay byes and the nature of traffic anticipated to travel to and from the site, it is considered that the local road network is not capable of satisfactorily accommodating the traffic which the proposed development will generate. The proposed development would therefore result in a traffic hazard and obstruction to road users and would therefore be contrary to the proper planning and sustainable development of the area.

### Appropriate Assessment Screening

The Board considered the Natura Impact Statement and its revision and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for European Sites in view of the site's Conservation Objectives of the River Barrow and River Nore Special Area of Conservation (Site Code 002162) and River Nore Special Protection Area (Site Code 004233). 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,
- ii) mitigation measures which are included as part of the current proposal,
- iii) Conservation Objectives for these European Sites, and
- iv) the significance of protecting water quality and resources on which many of the water based species of conservation interest are dependent

In completing the AA, 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 Sites, having regard to the site's Conservation Objectives.

- 11.1.1. In overall conclusion, the Board was not satisfied that the proposed development would not adversely affect the integrity of European sites in view of the site's Conservation Objectives.

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Derek Daly  
Planning Inspector

14<sup>th</sup> July 2017