



An
Bord
Pleanála

Inspector's Report ABP-303817-19

Development	Quarry.
Location	Green Hollows Quarry, Windgate Road, Howth, Co. Dublin.
Planning Authority	Fingal County Council
Applicant	George Cooke
Type of Application	Leave to appeal for substitute consent under section 177C-of the Planning and Development Act 2000 (as amended).
Type of Appeal	First Party Direct Application
Date of Site Inspection	17 October 2019
Inspector	Dolores McCague

1.0 Introduction

- 1.1.1. This is an application for leave to apply for Substitute Consent for a quarry, under section 177C(1) of the Act.

2.0 Site Location and Description

- 2.1.1. The site is located at Green Hollows, Windgate Road, Howth, Co. Dublin and is known as Green Hollows Quarry and otherwise 'The Hollows' Quarry.
- 2.1.2. The existing quarry is located near the centre of the peninsula of Howth, c14km northeast of Dublin city. It is located c 1.5km south of the centre of the village of Howth, where the pattern of development to the east is low density residential development. Windgate Road is c100m to the east. Open heathland, accessible to the public by way pathways, surrounds the site. A tarmacadam access road runs from a gated entrance at Windgate Road, to serve the subject site, a few houses to the west and several telecommunications masts. The nearest houses are c50m east of the site boundary, along Windgate Road.
- 2.1.3. The highest ground on Howth peninsula is to the west of the subject site, in the form of a number of peaks, from which the land falls north to Howth village, and east and south to sea cliffs. Although close to a hilltop, the site sits in a hollow screened from the most of the surrounding area except from higher ground.
- 2.1.4. There are a number of parcels of land associated with the quarry, those the subject of this application are located north of the road, and are more limited in extent than those associated with a previous appeal to the Board in 2007. A fenced in area north of the road defines a larger area than the subject site. To the south of the road there is an associated landscape suppliers, in the same ownership.

3.0 Planning History

PL06F.QC2143, Planning Authority Reg. Ref.Q/05/007 registration under Section 261; the appeal related to the imposition of conditions. The Board's decision, amended Conditions 8 – dust, and 12 - Wheel wash; and confirmed Conditions 11 - Annual Environmental Audit, 13 – Drainage; 15 - Topsoil Storage and 16 - Waste Storage.

The continued operation of the quarry was therefore permitted subject to the following conditions:

1 General

2 Topographical Survey

3 Limitation of extent of area to be extracted

The extraction of rock on the subject lands shall be limited to the area within the blue coloured line as indicated on the Site Layout Plan, Site Layout Drawing No. G2033-105, submitted as Additional Information on 20th October 2005. No extraction of rock shall be undertaken on any part of the lands outside said area unless a separate planning permission has been granted for such development.

4 Operating hours

5 Operations of quarry

The quarry shall be operated in accordance with the Environmental management System ISO 14001 standards, which has been in place since 2001.

6 Noise

7 Vibration and Overpressure

8 Suppression and Dust Control

a) Dust levels at the site boundary shall not exceed 350 milligrams per square metre per day averaged over a continuous period of 30 days (Bergeshoff Gauge). Details of the proposed monitoring programme shall be submitted for the agreement of the planning authority within 6 months of the date of this order. Details to be submitted shall include monitoring locations, commencement date and the frequency of monitoring results. Details of all dust suppression measures shall also be submitted for the agreement of the planning authority within 6 months of the date of this order.

Reason: To control dust emissions arising from the development and in the interest of the amenity of the area.

9 Access for Monitoring

10 Topographical Survey

Every five years (by the end of February each period) for the permitted lifetime of the quarry, the operator shall submit:

a topographical survey carried out by an independent qualified surveyor agreed with the Planning Authority, including a cap surveyed against established perimeter beacons, the form and location of which shall be agreed with the planning authority, showing all areas i) that have been excavated to date, ii) that have been prepared for excavation, and iii) that may have been restored.

An aerial photograph which adequately enables the planning authority to assess the progress of the phases of extraction.

11 On an annual basis (by the end of February each year) for the permitted lifetime of the quarry, three copies of an environmental audit shall be submitted to the Planning Authority. This audit shall be carried out at the expense of the operator by suitably qualified and experience independent environmental auditors, whose names shall be submitted to the planning authority for prior approval, and shall contain the following: -

A record of all movements of heavy vehicles outside the permitted operating hours

A record of surface water quality, and groundwater quality and levels, measured at monthly intervals.

A full record of any breaches over the previous year of dust, noise, vibration / air overpressure, and water quality standards.

A written record of all complaints received, including actions taken on each complaint.

12. Measures, including a wheelwash and/or spraying facilities (as necessary), sufficient to remove dust and mud from the wheels and underside of all vehicles transporting material from the site onto the public road, shall be implemented within one year of the date of this order. Details of the proposed measures, including drawings, shall be submitted for the agreement of the planning authority for written agreement within 6 months of the date of this order.

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

13. Within 6 months of the date of this Order, the Operator shall submit a report to the Planning Authority on the Water Management System in place at the quarry. This report shall include an assessment of Foul Water Treatment, Surface Water Drainage, Water Supply and Surface Water/GW Protection Measures in place at the

quarry. This report shall detail how silty water is presently treated and disposed of at the above location.

Reason: In the interest of proper planning and sustainable development of the area.

14 Records of types and quantities of wastes

15. All topsoil removed in the course of quarrying operations shall be separately retained from waste materials (including sub-soil and overburden) so that it can readily be re-used by spreading evenly over the worked surface or backfilled. Topsoil shall be stockpiled in mounds not greater than one metre in height to ensure that the soil flora and fauna are not destroyed.

16. The unusable materials accruing from current working shall be stored separately. A storage plan of said wastes shall be submitted to the Planning Authority after final grant of conditions. It is recommended that said wastes shall be deposited in excavated areas, and any future waste materials shall not be deposited above the general level of ground, but shall be deposited in excavated areas as rehabilitation proceeds. Such material shall have occurred naturally on the site and not as a result of previous filling of imported material to the site. Any material which is classed as waste shall be disposed of at an authorised facility by authorised waste carriers.

Details of location of said materials prior to disposal shall be identified as part of the aforementioned plan. No such materials shall be located on protected habitats as identified in the Dry Heath survey.

17 Controlling impact on roads

18 biodiversity

19 phasing of development

Within three months of the date of this decision or such other period as may be agreed with the Planning Authority, a suitable site plan showing the proposed phasing of the development shall be submitted for the approval of the Planning Authority. This plan shall indicate the areas that have been worked, the proposed future phasing of extraction for the remaining areas (which would be subject to a separate planning permission), and the proposed timing of, and proposals for, the rehabilitation of all the areas.

20 Archaeological Impact Assessment

- 21 Discovery of remains of Archaeological or Historical Interest
- 22 Control External Lighting
- 23 Rehabilitation and Landscaping
- 24 Landscaping and Boundary treatment
- 25 Rehabilitation on Cessation of Works
- 26 Standard Development Contribution.

Application details: in the application the owner was stated to be the Howth Estate, Deer Park Hotel, Howth, County Dublin; and the operator Mr George Clarke. A map accompanying the application indicated an ownership boundary within which areas were identified north and south of the road as current extraction areas and storage areas; with buildings shown north of the road at two locations. The details stated that the overall quarry is approx. 8/10 acres however only a small area is quarried, approx. 1.5 acres. In addition to the stone quarried on site, other stone is brought into and stored within the quarry throughout the year and stored for periods of time, for resale to smaller building companies and landscape designers. Stone is brought in bulk and then sold on, often in a modified form. This comes from other quarries and consists of stone and brick; approx. 10-15 loads brought in per year.

They indicated that no areas of the quarry were exhausted.

Maps on that file were received by the planning authority on the 27th April 2005, undated and 20th October 2005, dated 17th October 2005. The April map shows two areas indicated as 'extracted areas outlined in red' which correspond to the areas outlined in the current application (303817). The map received by the planning authority on 20th October 2005 shows more extensive current extraction areas and an ownership boundary.

An accompanying report detailed noise monitoring which had been carried out and that dust monitoring was being carried out, results not available.

Planning Authority Reg. Ref. Q/12/007 - Substitute Consent - the planning authority determined that development was carried out after 1st February 1990, that given the sensitive location of the quarry an EIA should have been undertaken; the planning authority also determined that development was carried out after 26th

February 1997 regarding which neither appropriate assessment nor screening for appropriate assessment were carried out, which required screening for appropriate assessment and if required appropriate assessment.

The requirements in relation to registration under S 261 were fulfilled. The site had a pre-1964 commencement; however, it was considered that the quarry has not been operating within a bona fide pre-1964 use as subsequent development, due to its nature and direction, including downwards excavation would not have been envisaged pre 1964. As such, it was considered that the applicant be directed to apply for Substitute Consent.

The file includes: from the evidence available it is unclear if any significant development took place after 3rd July 2008; currently in relation to Howth Stone, only the cutting and cleaning of existing extracted material is undertaken on site as and when orders are received.

4.0 Policy Context

4.1. Development Plan

- 4.1.1. Fingal County Development Plan 2017-2023 is the operative plan, relevant provisions include:

Zoned HA, with the objective 'to protect and improve high amenity areas.

Vision: Protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness and sense of place. In recognition of the amenity potential of these areas opportunities to increase public access will be explored.

'Extraction/Quarrying' is not listed as either 'Permitted' or 'Not Permitted' in the use classes related to the zoning objective.

Uses which are neither 'Permitted in Principle' nor 'Not Permitted' will be assessed in terms of their contribution towards the achievement of the Zoning Objective and Vision and their compliance and consistency with the policies and objectives of the Development Plan

The 'Local Objective' map shows an objective to preserve views from the access road running through the site and there is an objective to preserve the prospect from a point to the northwest.

Local objective 140 Implement projects agreed by the Howth SAAO management committee having regard to the funding available under the Howth SAAO levy scheme.

Local objective 145 Reduce the number of masts on the West Mountain to the minimum necessary through co-location and removal.

Objective HOWTH 4 Protect and manage the Special Amenity Area, having regard to the associated management plan and objectives for the buffer zone.

4.2. Howth Special Amenity Area Order 1999

The site falls within the area of the SAAO (Special Amenity Area Order) for Howth. The order covers a total of 547 hectares, including Ireland's Eye and the heathland, woods, cliffs, shingle beaches and wooded residential areas of the south-eastern half of the Howth peninsula.

These areas have a rich diversity of flora and fauna and include protected species such as the green-winged orchid, the red squirrel and seabirds such as kittiwakes, guillemots and gannets.

The order also designates a 21km network of public footpaths, which are shown on SAAO Map A.

The following points are of note: -

The access road through the site is listed on Map A as being a footpath designated as a public right of way by the order.

The site is identified as an 'other area' with an objective 'to preserve the beauty and distinctive natural character of the area.

Map B shows the site as falling within a proposed Natural Heritage Area.

The written statement contains a series of policies aimed at reconciling the natural, cultural, recreational, environmental and residential objectives of the various uses and users of the peninsula.

Objective 2.2 relates to the preservation of the skyline and views of the peninsula from surrounding areas.

Objective 2.4 states that the council will not normally permit development that reduces existing areas of heathland.

'Extractive Industry' is listed as a use that is 'Open for consideration' in Schedule 3.

4.3. Natural Heritage Designations

- 4.3.1. The site is located within Howth Head SAC 000202, for which the qualifying interests are:

Vegetated Sea Cliffs of the Atlantic and Baltic coasts, and
European Dry Heaths

The site is of national importance for breeding seabirds

Conservation Objectives for the site are to maintain or restore the favourable conservation status of habitats and species of community interest.

The conservation objectives note that the European dry heath has not been mapped in detail for Howth Head SAC and thus the total area of the qualifying habitat is unknown. Dry heath is the dominant habitat within the SAC and occurs on the slopes above the sea cliffs and in the central part of the peninsula. The habitat occurs in mosaic with other habitats, such dry grassland and exposed rock in places.

5.0 Legislative Context

- 5.1.1. Planning and Development Act 2000 as amended

177C.— (1) A person who has carried out a development referred to in subsection (2), or the owner or occupier of the land as appropriate, to whom no notice has been given under section 177B, may apply to the Board for leave to apply for substitute consent in respect of the development.

2) A development in relation to which an applicant may make an application referred to in subsection (1) is a development which has been carried out where an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required, and in respect of which—

(a) the applicant considers that a permission granted for the development by a planning authority or the Board may be in breach of law, invalid or otherwise defective in a material respect, whether pursuant to a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union, or otherwise, by reason of—

(i) any matter contained in or omitted from the application for permission including omission of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or inadequacy of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or

(ii) any error of fact or law or a procedural error,

or

(b) the applicant is of the opinion that exceptional circumstances exist such that it may be appropriate to permit the regularisation of the development by permitting an application for substitute consent.

177D.— (1) Subject to section 261A(21), the Board shall only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required in respect of the development concerned and where it is further satisfied—

(a) that a permission granted for development by a planning authority or the Board is in breach of law, invalid or otherwise defective in a material respect whether by reason of a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union, or otherwise, by reason of—

(i) any matter contained in or omitted from the application for the permission including omission of an environmental impact statement or a Natura impact statement or both of those statements as the case may be, or inadequacy of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or

(ii) any error of fact or law or procedural error,

or

(b) that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

(2) In considering whether exceptional circumstances exist the Board shall have regard to the following matters:

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;

(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;

(c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;

(d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;

(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;

(f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;

(g) such other matters as the Board considers relevant.

5.1.2. Planning and Development Regulations 2001 as amended

SCHEDULE 7

Criteria for determining whether a development would or would not be likely to have significant effects on the environment.¹

2. Location of proposed development

The environmental sensitivity of geographical areas likely to be affected by proposed development, having regard in particular to:

¹ To determine if EIA is required

the absorption capacity of the natural environment, paying particular attention to the following areas:

(e) areas classified or protected under legislation, including special protection areas designated pursuant to Directives 79/409/EEC and 92/43/EEC.²

6.0 The Application

6.1. Applicant's Submission

6.1.1. The applicant requests that the Board grant leave to apply for substitute consent in respect of the works carried out on the site. The case put forward by the applicant can be summarised as follows:

- Applicant received no notice under section 177B of the Act, regarding the Green Hollows Quarry.
- It is a small family run quarry which is the only source of Howth stone.
- Fingal Co Co under Section 261A of the Act, determined that the quarry had pre-63 status and that neither intensification or extensification had taken place during its many decades of operation. The planning officer viewed a change in depth and direction in the extraction process as development and that this had taken place since the 1st February 1990 or 26th February 1997 and determined that an application for substitute consent under S 261A(2) of the Act should be submitted to An Bord Pleanála.
- Fingal Co Co (FCC) erroneously posted the S 261A(2) determination to an incorrect address - George Cooke, The Hollows, Windgate Road, Howth. However this location is neither a business or residential address and, as a result the correspondence was never received by Mr Cooke. A different address was provided to Fingal Co Co by George Cooke in the S261 application for quarry registration in 2007. He was unaware that Fingal Co Co had commenced a review of his quarry registration under S261A, he was not expecting any communication from the Council in 2012.

² ie. Birds Directive and Habitats Directive

- Neither Mr Cooke nor Gráinne Mallon & Associates received any communication from Fingal Co Co in respect of the S 261A determination. Gráinne Mallon & Associates ceased trading in July 2010 and Gráinne Mallon did not resume work until 2015.
- It is unclear how the Council arrived at the determination that the depth and direction of extraction had changed, without communicating with anyone working in the quarry. Mr Cooke would contend that there has been no change whatsoever in the last 100 years.
- In recent months Mr Cooke met with Fingal Co Co on an unrelated matter and was shocked when a senior planning official raised the issue of the S261A determination and that they were considering enforcement.
- They are threatening to close the quarry and deprive the family of their livelihood.
- They would have appealed the S261 if they had known about it.
- Any determination that a change in depth and direction in the extraction process used by a quarry for more than 70 years constitutes development under the Act is incorrect both in fact and in law.
- Attached to the application are a copy of the S261 registration form; a copy of the S 261A Planner's report; and a copy of the S 261A determination.

6.2. Planning Authority Submission

- 6.2.1. The planning authority has made a submission, which includes:
- 6.2.2. S 261A of the Planning and Development Act 2000 as amended requires the planning authority to assess the need for an EIA or NIA. The planning authority determined under file ref. Q/12/007 that quarrying at the site, while limited in extent, had intensified after 1990 and determined that EIA and NIA or screening for these assessments was required by managers order signed 21st August 2012 and required the owner/occupier of the quarry to apply to An Bord Pleanála for substitute consent.
- 6.2.3. The quarry operator, George Cooke and his planning consultant Grainne Mallon, maintain in the letter received, that the operator received no letter of notice under S

177B of the Planning and Development Act from FCC. The letter of notification on Q/12/007 was sent to George Cooke, the Hollows, Windgate Road, Howth. FCC planning department have been in communication with Mr Cooke and his planning consultant on matters relating to the unauthorised nature of the quarry since early 2016. Hazel Craigie A/Senior Planner for Howth Malahide advised Grainne Mallon by email on the 1st February 2016 that her client should contact An Bord Pleanála regarding the option of review of the FCC Section 261A(3)(a) notice. The decision of FCC was attached to the email. It is acknowledged in the response by Ms Mallon by email of 16th February 2016 that the documents were received. The use of an incorrect postal address by FCC when sending out the documents in 2012 is also raised by Ms Mallon in her response.

- 6.2.4. Furthermore at a meeting in early 2017 between the A/Senior Planner for Howth Malahide and George Cooke and Grainne Mallon, Ms Mallon advised that she would make contact with An Bord Pleanála to determine if the option was available for An Bord Pleanála to undertake review of the S261A notice, notwithstanding the remove from the issuance of the notice by FCC. By way of email dated 18th July 2017, the quarry operator and agent were reminded by FCC of the need to contact An Bord Pleanála regarding this matter. The email also set out the obligation of FCC to proceed with enforcement action in the event that An Bord Pleanála could not undertake a review of the FCC decision.
- 6.2.5. Telephone communication took place during November 2017 with the quarry operator and email communication took place during the same month with the operator and his agent setting out that FCC would be obliged to undertake enforcement on the operation of the quarry. A meeting took place in FCC offices on the 19th December 2017 where the rationale behind the requirement to undertake enforcement action was set out to George Cooke, his son Jonathan Cooke and Grainne Mallon, by David Murray Senior Executive Planner and Phillip Long Senior Executive Officer.
- 6.2.6. The quarry operator and his agent state that he was not aware of the decision of FCC under Q/12/007 made 21st August 2012. FCC records indicate that the operator's agent was made aware of the need to regularise the operation of the quarry from early 2016. FCC has made continual contact over the intervening period, directing the quarry operator to make contact with An Bord Pleanála on this matter.

6.2.7. The letter from Grainne Mallon to An Bord Pleanála is noted. It is also noted that FCC are currently undertaking enforcement action on the matter of the decision under Q/12/007 as required by Circular Letter PL4/2014 dated 17th October 2014. FCCC acknowledge the correspondence from the operator's agent regarding the issue of notification of the quarry operator of the 2012 decision and are satisfied that the operator has made contact with the Board on this matter.

6.3. **Other correspondence**

6.3.1. A letter has been received from Seán Haughey TD requesting to be informed when a decision has been made.

7.0 **Assessment**

7.1. **Requirement for Environmental Impact Assessment (EIA) or EIA determination**

7.1.1. The thresholds concerning EIA are set out in the Planning and Development Regulations 2001 as amended. With respect to the extraction activities, Schedule 5, Part 2, Class 2 (b) sets out the following applicable threshold: Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares.

7.1.2. The existing quarry (c0.5ha) does not exceed the 5-hectare threshold.

7.1.3. The site is located within a SAC and therefore, having regard to the criteria for determining whether a development would or would not be likely to have significant effects on the environment, set out in the Planning and Development Regulations 2001 as amended, which includes consideration of location and areas classified for protection under the Habitats Directive I consider that 'a determination as to whether an environmental impact assessment is required', was or is required.

7.1.4. Having regard to the scale and nature of the development that has taken place, and for which regularisation would be sought, I am of the view that a requirement for EIA with respect to Article 109(2), Planning and Development Regulations 2001 as amended arises, and the likelihood of significant effects on the environment cannot be excluded for the purposes of EIA, therefore, the development does qualify for consideration for leave to apply for substitute consent being a development in respect of which EIA is required.

7.2. Requirement for Appropriate Assessment (AA)

- 7.2.1. The site falls within SAC site code 000202 for which the qualifying interests are:
Vegetated Sea Cliffs of the Atlantic and Baltic coasts, and
European Dry Heaths
- 7.2.2. The Conservation Objectives for the site are to maintain or restore the favourable conservation status of habitats and species of community interest.
- 7.2.3. In my opinion, having regard to the sensitive location within a Natura site, AA or screening for AA is required.
- 7.2.4. The development, therefore, qualifies for consideration for leave to apply for substitute consent, being a development in respect of which AA or screening for AA is required.

7.3. Exceptional Circumstances

- 7.3.1. With regard to exceptional circumstances, the matters to which the Board is required to have regard under S.177 D (2), are set out hereunder and assessed.
- 7.4. *Would regularisation of the development concerned circumvent the purposes and objectives of the EIA Directive or the Habitats Directive?*
- 7.4.1. I am satisfied on the basis of the site history and the level of environmental assessment that has been undertaken in respect of previous planning applications, that the regularisation of the subject development would not circumvent the purpose and objectives of the EIA Directive or the Habitats Directive.
- 7.5. *Could the applicant have reasonably had a belief that the development was not unauthorised?*
- 7.5.1. The submission states that the owner / operator disputes the determination that the depth and direction of extraction had changed, or that such could be arrived at without communicating with anyone working in the quarry.
- 7.5.2. He also contends that any determination that a change in depth and direction in the extraction process used by a quarry for more than 70 years constitutes development under the Act is incorrect both in fact and in law.

7.5.3. In addition he contends that the determination was not communicated to him or his agent.

7.5.4. I am therefore, satisfied that the applicant could reasonably have had the belief that development within the site was not unauthorised.

7.6. *Has the ability to carry out EIA or AA and to provide for public participation in such an assessment been substantially impaired?*

7.6.1. I do not consider that there is any impairment to carrying out EIA and AA, including providing for public participation.

7.7. *Regarding the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development.*

7.7.1. I note that the Board's previous decision under 06F.QC.2143 concluded that subject to the modifications set out, the continued operation of the quarry would not be contrary to the proper planning and sustainable development of the area.

7.8. *Regarding the extent to which significant effects on the environment or adverse effects on the integrity of a European site.*

7.8.1. I am of the view that there is scope to address any potential impacts through avoidance or remediation and good management practices.

7.9. *Regarding whether the applicant has complied with previous permissions granted or has previously carried out unauthorised development.*

7.9.1. There is no evidence to suggest that the applicant has any difficulties in relation to these matters.

7.10. *Such other matters as the Board considers relevant.*

7.10.1. The submission refers to this being the only quarry which produces Howth stone.

7.11. **Conclusion**

7.11.1. It is my conclusion that exceptional circumstances do exist in this case as: the regularisation of the development would not circumvent the purposes or objectives of the EIA Directive and the Habitats Directive; the applicant could reasonably have had a belief that the development was not unauthorised; the ability to carry out EIA

and AA and provide of public participation has not been substantially impaired; and having regard to the limited nature of any actual or likely effects on a European site resulting from the development and its continued use.

8.0 Recommendation

- 8.1.1. I recommend that the Board grant leave to apply for substitute consent and direct that the application be accompanied by a remedial Environmental Impact Assessment Report and a remedial Natura Impact Statement.

9.0 Reasons and Considerations

Having regard to Section 177D of the Planning and Development Acts, 2000-2016 the Board is satisfied that:

- a) the development is one where an EIA or a determination as to whether EIA is required, and
- b) the development is one where Appropriate Assessment (AA) or screening as to whether AA is required, and
- c) that exceptional circumstances exist by reference, in particular, to the following:
the fact that the regularisation of the development would not circumvent the purpose or objectives of the Environmental Impact Assessment Directive or Habitats Directive;
that the ability to carry out EIA and AA and provide for public participation has not been substantially impaired;
the reasonableness of the grounds for believing that the development was not unauthorised arising from the level of permitted development on the site; and
the nature and extent of the actual or likely significant effects on the environment resulting from the development.

The Notice to the applicants advising of the decision should also direct that:

the application be made within 12 weeks of the giving of the notice or such longer period as the Board may, on request, consider appropriate, and

The application includes a remedial Environmental Impact Assessment Report and a remedial Natura Impact Statement.

Planning Inspector

8th November 2019

Appendices

Appendix 1 Photographs

Appendix 2 Fingal County Development Plan 2017-2023, extracts.

Appendix 3 NPWS mapping showing SAC site code 000202