



An
Bord
Pleanála

Inspector's Report

ABP-305305-19

Development	Quarry
Location	QY23, Moyfin, Longwood, Co. Meath
Planning Authority	Meath County Council
Applicants	Phoenix Rock Ltd T/A Frank Pratt and Sons Ltd.
Type of Application	Leave to apply 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	16 th December 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.
- 1.1.2. The quarry was registered (s261) by Meath Co Co on the basis that it was a pre '64 quarry and conditions were attached to its continued operation. Arising from the review required under s261A Meath Co Co decided that the quarry wasn't pre '64, that development post '90 would have required EIA and development post '97 would have required AA. The Board confirmed this finding and enforcement was commenced. A judicial review of the enforcement in 2013 put this action into abeyance and the quarry has continued to operate since. The parties to the judicial review, Meath Co Co and the quarry operator, agreed that an application for leave to apply for substitute consent would be made. Two such applications have been made. The first (303644 was received 6th February 2019 and withdrawn on 26th July 2019 following a request for further information by the Board. The subject application was made on the 30th August 2019.
- 1.1.3. The details submitted include a letter; details of land registry folio 3369 (Appendix A – Folio information) with a black and white map, showing an area corresponding to QY23 outlined, a second map with an area outlined in red and a notation Folio 3369, this area includes the former area and additional lands to the north; and a document titled monitoring results, which is a report by Enviroco Management Ltd: a Ground & Surface Water Report, September 2007.
- 1.1.4. Although the subject application provides limited details of the development for which leave to apply for substitute consent is sought, the Board has information on two other files with regard to these lands and in my opinion these provide the Board with sufficient information to consider the leave to apply for substitute consent application.

2.0 Site Location and Description

- 2.1.1. The site is located at Moyfin, Longwood, Co Meath, approximately 2.8 kilometres northwest of Longwood Village. The site is accessed from a narrow county road which runs along the western site boundary. Further west, approximately 350 metres from the site, the River Boyne flows north-eastwards in a meandering fashion

between Longwood and Trim. Just south of Longwood, the Royal Canal crosses the river via the Boyne Aqueduct, close to the Kildare Meath boundary, which is further south.

- 2.2. The public road follows a line roughly parallel to the river approx. 340m therefrom. Between the road and the river there are extensive quarry areas. A quarry operated by the subject applicant, and in the same ownership as the subject quarry, is accessed opposite the northern gateway to the subject quarry. A notice prominently displayed at the entrance states that is subject to a waste licence. The subject quarry is to the east of the road.
 - 2.2.1. The OSI 'discovery' map of the area, shows a contour line (70m) which indicated elevated land within the subject site. It appears that the subject development has removed the elevated ground and in addition has extended below the prevailing ground level.
 - 2.2.2. The existing quarry was operational on the date of inspection, for the quarrying of aggregate. Washing, grading and crushing operations producing a range of products. Extensive areas within the quarry have been returned to an elevated mounded shape which can only have been achieved with the importation of material. The letter accompanying the application refers to 'topsoil' and 'a valid article 27 application under the Waste Framework Directive'.
 - 2.2.3. Roads in the area are in poor condition and show evidence of use by heavy goods vehicles, (potholes, frayed edges, haphazard extending of edges).
 - 2.2.4. The application details describe the site as Moyfin Pit QY 23, once comprising four quadrangle fields: 5.346 ac and 5.67 acres adjacent to the road and 5.067 acres and 6.634 acres adjoining to the east: total 22.717ac or 9.2ha. The site is stated to be is in the ownership of Fursey McGuire, Stoneyford House, Longwood, since 1992, and in the McGuire family for a number of generations.
 - 2.2.5. The lands within the red line boundary include the lands registered as QY23 together with additional lands to the north.

3.0 Planning History

ABP-303644-19 application for leave to apply for substitute consent under Section 177C, withdrawn.

That file attached to the subject file.

ABP Ref. QV17.QV0037 / PA Ref. QY23: following a determination by Meath County Council, by order dated 1st August 2012, under Section 261A of the Planning and Development Act, as follows:

- Under subsection (2)(a)(i) that development was carried out after the 1st day of February 1990, that would have required an environmental impact assessment or a determination as to whether an environmental impact assessment was required, but that such an assessment or determination was not carried out or made, and
- Under (2)(a)(ii) that development was carried out after the 26th day of February 1997, that would have required, an appropriate assessment, but that such assessment was not carried out, and
- Under subsection (4)(a) that the quarry commenced operation on or after the 1st day of October 1964, and no permission was granted in respect of the quarry under Part III of the Planning and Development Act 2000 to 2011 or Part IV of the Local Government (Planning and Development) Act 1963.

a request for a review of the decision, under Section 261A(4)(a), was lodged with the Board on 20th August 2012.

The Board, in exercise of its powers under section 261A of the Planning and Development Act, confirmed the determination of the planning authority in respect of Section 261A(2)(a)(i), Section 261A(2)(a)(ii) and Section 261A(4)(a) of the Act, on the 29th May 2013.

That file attached to the subject file.

Section 261: QY23 Moyfin Quarry – an application for the registration of a quarry at Moyfin, Longwood, Co. Meath under Section 261 of the Planning and Development Act, 2000 (as amended). Meath County Council notified the applicant on 16th April

2007 of the decision to register the quarry under Section 261 and to impose 22 no. conditions on the operation of the quarry.

UD13117: Meath County Council served an Enforcement Notice (dated 24th June 2013) under Section 154 of the Planning and Development Act on the owner / operator of the quarry. The notice requested that the operator of the quarry cease all quarrying activities, remove all quarry plant and machinery and secure the site so as to prevent unauthorised access. The Section 154 Notice is subject to a Judicial Review in the High Court (2013/567 JR). The respondents to the JR are Meath County Council and An Bord Pleanála. It was agreed at the High Court, 6th November 2019, that the quarry operator would apply to An Bord Pleanála for leave to apply for substitute consent re QY23.

UD14003: Meath County Council served an Enforcement Notice under Section 154 of the Planning and Development Act requesting that the operator cease all quarrying activities, secure lands to adjoining roads and secure the site so as to prevent unauthorised access.

4.0 Policy Context

4.1. Development Plan

Meath County Development Plan 2017-2023 is the operative plan. The Development Plan review, which commenced in 2017, was paused in accordance with the provisions of the Planning and Development (Amendment) Act 2018 pending the National Planning Framework (N.P.F.) and the requirement to develop and adopt a Regional Spatial & Economic Strategy (R.S.E.S.). Following the adoption of the RSES by the Eastern & Midland Regional Assembly on Friday 3rd May, 2019, Meath County Council recommenced the review of the Draft Meath County Development Plan.

Relevant provisions include: recognising the importance of the extractive industry; the need to protect areas of proven potential from incompatible development; that transportation of minerals on public roads must be done in such a manner as not to

cause nuisance to other road users; requiring rehabilitation of worked out pits; and the need to protect Natura sites.

4.2. Natural Heritage Designations

- 4.2.1. The site is located approximately 350 metres east of the River Boyne and River Blackwater SAC (site code 002299), and the River Boyne and River Blackwater SPA (site code 004232).

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:

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

¹ To determine if EIA is required

² ie. Birds Directive and Habitats Directive

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:

- The operator believed that there was a recognition of the site under s261 and operated in accordance with the s261 decision;
- There has never been any surface water discharge from the site to the nearby stream or the River Boyne and Blackwater SAC;
- The site operated above the groundwater table;
- There is no impairment to the ability to carry out a remedial EIAR; and
- The applicant has complied with previous planning permissions granted.

6.1.2. Other details supplied with the request include:

- It is stated that aggregate was extracted using a tracked excavator. Aggregate is loaded into trucks using a dumper truck. Works on site included screening of aggregate and stockpiling on site. No discharges from the site have occurred during the operation of the quarry and there is no connectivity with the River Boyne.
- Topsoil material was used to reinstate the site in accordance with a valid article 27 application under the Waste Framework Directive. The purpose of the works is to reinstate the land in accordance with s261 conditions attached to the quarry. The movement and re-spreading of topsoil is restricted to occasions when the soil is dry, and the ground is sufficiently dry to allow the passage of heavy vehicles, plant and machinery over it without damage to the soils. It was therefore required to reinstate the topsoil to meet the restoration requirements. A number of areas with(in) the ownership boundary will be reinstated to grassland use in 2019.
- Moyfin Pit – QY23 is a sand and gravel pit operational since 1960 and therefore predated the requirement for a planning permission application under the Local Government (Planning and Development) Act, 1963. In 2005 Fursey McGuire applied to MCC to register QY23. The PA granted permission in accordance with

s261(7). No requests to prepare or submit planning applications or Environmental Impact Statement was made at the time. The total area was stated to be 9.49ha with an extraction area of 3.21ha. Maps indicate a small, old quarry in the northeast corner of field. The order dated 16th April 2007 stated the quarry had been registered and imposed conditions on its continued operation. The operator carried out works and monitoring in order to comply with the conditions.

- A s261(A) notice was issued in August 2012 to Furseay McGuire, this determination was appealed by Furseay McGuire and Frank Pratt and Sons Ltd.
- MCC issued a s261A(4)(a) decision based on the conclusions of the determination. The owner or operator did not seek a review of the determination.
- The Board decided to confirm the decision of MCC in relation under s261A(4)9a) and to require the PA to issue an enforcement notice under subsection 154.
- Part of the reasoning for the determination was the overall area, the pit breached the water table and proximity to the R Boyne and Blackwater SPA/SAC. However, it is acknowledged by all parties there are no discharges from the site. The eastern stream while containing water during winter, does not contain any measurable flows or discharge to the R Boyne. Based on site visits and water level monitoring the water table is not breached. There are no properties within 0.2km of the site. All results for noise dust and water quality parameters etc detailed in the s261 decision were within their respective limits. Activities and methods of extraction had not changed. There was no rock extraction on site. Details of monitoring in 2006 and 2007 are included in appendix B.
- The s261(A) decision was issued on the 29th May 2013. A judicial review of the enforcement notice was appealed to the High Court in 2013. The case had remained with the High Court since 2013 (2013/567 JR). An agreement between MCC and the first named parties (owner/operator) was reached in November 2018. It was agreed at the High Court on 12th November 2018 that the quarry operator Frank Pratt and Sons Ltd would apply to An Bord Pleanála for leave to apply for substitute consent in relation to QY23 under s177C of the Planning and Development Act.
- The case was under judicial review since 15/07/2013. No requirement to stop quarrying was imposed by the judicial review.

6.2. Planning Authority Submission

6.2.1. No response received.

7.0 Assessment

7.1.1. This is an application for leave to apply for Substitute Consent under section 177C of the Act. The application is stated to be under Section 177C, however s177C (2) is in two parts (a) 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 defective and (b) exceptional circumstances. It is not stated under which heading the application is made however it appears to be under s177C (2) (b).

7.1.2. Section 177D (1) of the Act specifies that the Board can 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 (per s177D(2)(b)) where it is further satisfied 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.

7.1.3. In considering whether exceptional circumstances exist the Board is required to have regard to the matters set out under the heading 177 D (2) above.

7.2. Background

7.2.1. The proceedings that have led to the making of this application are summarised as follows:

- In 2005 Fursey McGuire applied to Meath County Council (MCC) to register the quarry under Section 261 of the Planning and Development Act, 2000. MCC issued a notice on 16th April 2007 that the quarry had been registered in accordance with Section 261 and imposed conditions on its continued

operation. The total area of the quarry was stated to be 9.49 hectares with an extraction area of 3.21 hectares.

- In 2012, Meath County Council determined under Section 261 (A) of the Act that:
 - The quarry commenced operation on or after the 1st day of October 1964, and no permission was granted in respect of the quarry under the 2000 or 1963 Acts.
 - Development was carried out on the site that would have required an environmental impact assessment or a determination as to whether an environmental impact assessment was required, but that such an assessment or determination was not carried out or made, and
 - Development was carried out on the site that would have required an appropriate assessment, but that such assessment was not carried out, and
 - A request for a review of the decision was lodged with the Board on 20th August 2012. The Board confirmed the determination of the Planning Authority in May 2013.
- In June 2013 MCC issued an Enforcement Notice under Section 154 of the Act to the owner and operator of the quarry. The notice requested that the operator of the quarry cease all quarrying activities, remove all quarry plant and machinery and secure the site to prevent unauthorised access. This notice is subject to a Judicial Review in the High Court (2013/567 JR).
- The applicant and Meath County Council agreed in the course of the legal proceedings that the notice party would lodge an application for leave to apply for substitute consent to An Bord Pleanála.
- This is the second application for leave to apply for substitute consent submitted to An Bord Pleanála. The previous application 303644, submitted 6th February 2019, was withdrawn.
- The application is for leave to apply for substitute consent for a quarry, that is for quarrying activity and for no other use of the land.

- The site is referred to as comprising four fields which in total amount to 9.2ha; it is also referred to as Moyfin Pit – QY 23. Two maps are provided, one corresponds to QY 23, the second on which an area is outlined in red includes QY 23 and an area to the north. No extraction area is shown. It should be noted that extraction has also taken place to the north of QY 23.
- The inspector’s report on file QV17.QV0037A (s261A review of QY23) includes:

9.1.4 Black & white aerial photography from 1973/1974 indicates no quarrying within the site of QY23 as registered by Meath County Council under section 261. Quarrying on the opposite side of the access road is clearly visible in this aerial photograph. Black & white aerial photography from 1994/1995 does not appear to indicate any quarrying within QY23 – whereas quarrying on the opposite side of the access road is clearly visible. The first indication of quarrying at QY23 is on the colour aerial photograph for 1999/2000 where there is quarrying in the south central portion (with an access road) and a separate quarry area in the northeast corner. Colour aerial photography from 2004/2005 indicates an expansion of quarrying in the south central portion of the quarry site. Colour aerial photography from 2009/2010 indicates a substantial increase in quarrying – advancing northwards and extending over the boundary of the QY23 section 261 registration area. Also of note in this photograph is a link road with quarrying operations to the northwest – on the opposite side of the access road. Since the time of the latest aerial photograph, quarrying has advanced further to the north and to the west – towards the county road.

9.2 Review of Determination under Section 261A(2)(a)(i)

Whether Environmental Impact Assessment (EIA) was Required

9.2.1 Aerial photography indicates that there was no quarrying at this site in 1973/74. Later aerial photography from 1994/1995 indicates what may be a small area of quarrying within field 5.067 acres. Aerial photography from 1999/2000 indicates quarrying commenced in the south central portion of the site – between fields 5.67 and 6.634 acres. The European

Communities (Environmental Impact Assessment) Regulations 1989, and the Local Government (Planning and Development) Regulations 1990, required quarries with extraction areas in excess of 5ha to be subject to EIA. Since the time of commencement of quarrying of sand & gravel at this site, extraction has extended northwards. The planning authority estimated an extraction area of some 5.4ha in June 2012. I would estimate the extraction area at this site to be approximately 7.0ha. There is no question but that historical and continued quarrying at this site would have required/does require EIA.

I agree with this laying out of the facts by the inspector with regard to the lands comprising QY23. Although it appears that quarrying did not take place over the entire area within the red line boundary, and although there may have been a very small area in which quarrying commenced prior to 1st February 1990, the first aerial photography available being 1994/1995 when a small area was then being quarried; the vast majority of the quarrying has been carried out since that date.

It is also apparent that quarrying has extended north of the boundary of QY23. It is also a fact that quarrying is still ongoing at this site.

- I note that the Board decided to request information in the previous application for leave to apply for substitute consent, which information has not been supplied. In my opinion there is sufficient information available on the various files: 17.QV.0037, 303644 and the subject file, to allow for an assessment in this case.

7.3. Preliminary

- 7.3.1. It is worth stating that the application refers to the pre 1964 existence of the quarry, which suggests that they are making the argument that the s261A determination, under ABP Ref. QV17.QV0037 / PA Ref. QY23: that the quarry commenced operation on or after the 1st day of October 1964, and that no permission was granted in respect of the quarry, is incorrect. Leave to apply for substitute consent is predicated on the need for planning permission, where a development is not relying on pre 1964 existence.

7.4. Requirement for Environmental Impact Assessment (EIA) or EIA determination

- 7.4.1. 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.
- 7.4.2. The Board has previously determined in ABP Ref. QV17.QV0037 / PA Ref. QY23 that development was carried out after the 1st day of February 1990, which would have required an environmental impact assessment or a determination as to whether an environmental impact assessment was required.
- 7.4.3. The development would therefore qualify for consideration for leave to apply for substitute consent being a development in respect of which EIA is required.

7.5. Requirement for Appropriate Assessment (AA)

- 7.5.1. The site is c350m from cSAC River Boyne and River Blackwater (designated in June 2003) site code 002299 for which the qualifying interests are:
Alkaline fens; Alluvial forests; Atlantic Salmon; River Lamprey; and Otter.
The Conservation Objectives for the site are to maintain or restore the favourable conservation status of habitats and species of community interest.
- 7.5.2. The site is c340m from SPA River Boyne and River Blackwater (designated 20th October 2011) site code 004232, for which the conservation interest is:
Kingfisher.
The Conservation Objectives for the site are to maintain or restore the favourable conservation status of habitats and species of community interest.
- 7.5.3. The watercourse that flows along the eastern boundary of the site ultimately discharges into the River Boyne c. 450m – 500m to the northeast of the quarry site. The potential for interaction between ground water and surface waters is also a consideration.
- 7.5.4. The Board has previously determined in ABP Ref. QV17.QV0037 / PA Ref. QY23 that development was carried out after the 26th day of February 1997, which would have required an appropriate assessment (AA).

7.5.5. The development would therefore qualify for consideration for leave to apply for substitute consent being a development in respect of which AA is required.

7.6. **Exceptional Circumstances**

7.6.1. 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.

Would regularisation of the development concerned circumvent the purposes and objectives of the EIA Directive or the Habitats Directive?

7.6.2. I would be concerned that regularisation of the development concerned would circumvent the purposes and objectives of the EIA Directive or the Habitats Directive.

Could the applicant have reasonably had a belief that the development was not unauthorised?

7.6.3. It has been submitted that the operator believed that there was a recognition of the site under s261 and that it operated in accordance with the s261 decision. It is also submitted that no requirement to stop quarrying was imposed by the judicial review. Documentation on the previous file 303644 indicates that development continued after the enforcement notice which issued on the 24th June 2013. Details of complaints received and inspections carried out by officers of MCC show the ongoing nature of the quarry operations until February 2018. From my site inspection of 16th December 2019 I can confirm that quarrying is still taking place.

7.6.4. It is worth noting that the application has been made by Phoenix Rock Ltd T/A Frank Pratt and Sons Ltd (operator), whereas the owner is stated to be Fursey McGuire, Stoneyford House, Longwood. It may be that a distinction is being made between the operator and the owner. It is stated in the current application that the 'operator' believed that there was a recognition of the site under s261 and operated in accordance with the s261 decision.

7.6.5. In relation to the owner, the s261(A) notice (August 2012) and the notification of the Board's determination (May 2013) both issued to Fursey McGuire; ABP Ref. QV17.QV0037 / PA Ref. QY23.

7.6.6. The letter to the Board (16th August 2012) appealing the PA's s261(A) notice, on behalf of Fursey McGuire, was cc'd to Phoenix Rock Enterprises Ltd T/A Frank Pratt and Sons, Kilmurray, Trim, Co. Meath.

7.6.7. The judicial review has as the reference Maguire T/A Frank Pratt & Sons & Ors v Meath County Council & Ors.

7.6.8. In my opinion neither the owner nor the operator/applicant could reasonably have had a belief that the development was not unauthorised.

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

7.6.9. I have some concern in this regard, particularly with regard to providing adequately for public participation.

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.

7.6.10. I have some concern in this regard. It has to be noted that there have been ongoing complaints regarding this development and it is difficult to envisage how the impacts can now be addressed in a remedial EIAR.

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

7.6.11. I have some concerns regarding the extent to which there is scope to address such impacts.

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

7.6.12. It appears that the owner has several other quarries but no evidence has been presented to suggest that either the applicant or the owner has any difficulties in relation to these matters.

Such other matters as the Board considers relevant.

7.6.13. There is nothing to note under this heading.

7.7. Conclusion

- 7.7.1. It is my conclusion that exceptional circumstances do not exist in this case as the regularisation of the development could circumvent the purposes or objectives of the EIA Directive and the Habitats Directive; the applicant could not reasonably have had a belief that the development was not unauthorised; the ability to carry out EIA and AA and provide of public participation may have been substantially impaired; and having regard to the 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 should not grant leave to apply for substitute consent for the following reasons and considerations.

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) is required, but is not satisfied that:
- c) exceptional circumstances exist by reference, in particular, to the following:

the fact that the regularisation of the development could circumvent the purpose or objectives of the Environmental Impact Assessment Directive or Habitats Directive; that the ability to carry out EIA and AA and in particular to provide for public participation may have been substantially impaired;

that there are no grounds for considering that the applicant could have reasonably had a belief that the development was not unauthorised, in particular the development which was carried out since the enforcement notice was served 24th June 2013; and

the nature and extent of the actual or likely significant effects on the environment resulting from the development.

Planning Inspector

23rd December 2019

Appendices

Appendix 1 Photographs

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

Appendix 3 NPWS mapping extracts