



An
Bord
Pleanála

Inspector's Report

ABP-307870-20

Development

A single storey truck and plant maintenance shed of approx. 432sqm that includes staff welfare facilities; an underbody truck wash located on the concrete apron surrounding the shed; proprietary wastewater treatment system; interceptor; soakaway; and all ancillary works. Revised by significant further information consisting of a new water purification system to welfare facilities.

Location

Redbog, Blessington, Co. Kildare.

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

19/1230

Applicant(s)

Hudson Brothers Ltd.

Type of Application

Permission for Retention

Planning Authority Decision

Grant Permission for Retention

Type of Appeal

Third Party v Grant of Permission for Retention

Appellant(s)

Paul Woods

Observer(s)

None

Date of Site Inspection

29.09.2020

Inspector

Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located within a quarry approx. 1.5km north of Blessington in east Co. Kildare. The site is immediately adjacent to the Co. Wicklow boundary which is approx. 100 metres south of the site.
- 1.2. There are a number of separate quarries in the vicinity of the site. The development subject of the application is located within the boundaries of an existing quarry operation. There is substantial quarry-related traffic in the vicinity and a number of quarry roads. There is a concrete apron and gravel surfacing and other hardstanding surrounding the structure. There are containers placed adjacent to the structure. There are also stockpiles of quarried material in the immediate vicinity. On inspection, there were quarry-related vehicles and machinery at the truck and plant maintenance shed.
- 1.3. The site has an area of 0.2322 hectares.

2.0 Proposed Development

- 2.1. Permission for retention is sought for:
 - A single storey truck and plant maintenance shed including staff welfare facilities,
 - Underbody truck wash, wastewater treatment system, interceptor and soakaway.
- 2.2. The maintenance shed has a floor area of 432sqm (including the adjacent containers) and a height of 8.6 metres. It is externally finished in blue cladding.
- 2.3. Further information was submitted in relation to, inter alia, a 'Screening for Appropriate Assessment' report, a description of the use and operation of the maintenance shed, the method of removal of the structures in the context of the restoration of the overall quarry, wastewater treatment details and clarity on the water supply (an ultraviolet water purification system is to treat water abstracted from a quarry pond which already supplies the plant wash area). The application was re-advertised as significant further information because of the new water purification system to service the welfare facilities.

3.0 Planning Authority Decision

3.1. Decision

Permission for retention was granted by Kildare County Council subject to nine conditions including: the eventual removal of the development from the site and site remediation, restriction of the use of the shed to vehicles and plant associated with the permitted quarry, surface water disposal, the wastewater treatment system to be operated and maintained in accordance with the EPA Code of Practice and payment of a development contribution.

3.2. Planning Authority Reports

3.2.1. Two Planning Reports form the basis of the County Council's decision. The second report concludes that the development for which retention is sought is considered acceptable in the context of an industrial-type facility providing an ancillary service to the main use of the land i.e. extraction. The Report also notes that the facility will be removed following cessation of extraction and the land remediated in line with the overall quarry.

3.2.2. Other Technical Reports

Roads, Transportation and Public Safety Department – No objection subject to conditions, based on the further information response.

Environment Section – No objection subject to conditions, based on the further information response.

Environmental Health Officer (EHO) – The proposal is acceptable, subject to a condition, based on the further information response.

Water Services – No objection subject to a condition.

Heritage Officer – No further comment or objection, based on the further information response.

Compliance/Unauthorised Development Section – No further comments.

3.3. Prescribed Bodies

Department of Culture, Heritage and the Gaeltacht – AA Screening should be submitted.

Department of Communications, Climate Action and Environment (Geological Survey Ireland (GSI)) – The ‘Blessington Delta’ County Geological Site (CGS) is located in the vicinity of the site. While CGSs have no statutory protection they are typically afforded protection within County Development Plans and should be considered within this context.

Health and Safety Authority – No observations.

An Taisce – All outstanding compliance issues relating to quarry operations need to be addressed and resolved as a preliminary matter.

3.4. Third Party Observations

None.

4.0 Planning History

Specific to this Application

4.1. ABP Reg. Ref. ABP-307456-20 – In July 2020, the Board granted an application for Leave to Appeal to Paul Woods against the decision of Kildare County Council to grant subject to conditions a permission to Hudson Brothers Ltd. The application was based on the wording of Condition 3 of P.A. Reg. Ref. 19/1230 and whether the development was applicable solely to the development permitted under P.A. Reg. Ref. 07/267, which according to the application, expired on the date P.A. Reg. Ref. 19/1230 was granted, or whether it would also apply to the permission sought under P.A. Reg. Ref. 20/532. The Board decided that,

- (i) ‘The development, in respect of which a decision to grant permission has been made, will differ materially from the development as set out in the application for permission by reason of condition numbered 3 imposed by the planning authority to which the grant is subject, and

- (ii) The imposition of condition numbered 3 will materially affect the applicant's enjoyment of the land adjoining the land in respect of which it has been decided to grant permission or reduce the value of the land.'

Condition No. 3 of Kildare County Council's decision is:

3. The shed shall only be used for the maintenance of HGVs and plant associated with operation of the quarry permitted under reg. ref. 07/267 and shall not be used for the maintenance of any other vehicles or plant.

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

- 4.2. ABP Reg. Ref. ABP-307455-20 – In July 2020, the Board refused an application for Leave to Appeal to David and Cathriona Byrne, Bannagroe, Hollywood, Co. Wicklow against the decision of Kildare County Council to grant subject to conditions a permission to Hudson Brothers Ltd. The Board decided that it has not been shown that the development in respect of which a decision to grant permission has been made will differ materially from the development as set out in the application for permission by reason of conditions imposed by the planning authority to which the grant is subject.

Quarry Site

- 4.3. P.A. Reg. Ref. 07/267 – Permission was granted in 2010 for the continuation of aggregate extraction and processing by mechanical means, blasting, aggregate processing, washing, screening, crushing, power-house, control rooms, office building, portacabin/canteen, water recycling plant, lagoons, landscaping berms and all associated works on an approx. 57.9 hectares site, Section 261 Reg. Ref. QR42. An EIS was also submitted. The decision was subject of a first party appeal in relation to development contributions (ABP Reg. Ref. PL 09.235502). Condition 5 restricted the permission to a 10 year period.
- 4.4. P.A. Reg. Ref. 20/532 – A planning application was made in 2020 for:
- Continuation of aggregate extraction and processing as permitted under P.A. Reg. Ref. 07/267,
 - Extension of the extraction activity to the west (10.7 hectares) and north (3.1 hectares) to match existing extraction depth,
 - Replacement of existing wastewater system with a proprietary effluent treatment system,

- An area of 0.23 hectares, subject of P.A. Reg. Ref. 19/1230 is excluded,
- An EIAR and NIS accompany the planning application.

Kildare County Council's planning report dated 30.10.2020 stated that the planning application for the continuance of use cannot be considered as it includes the retention of unauthorised development(s) which would have required an appropriate assessment and EIA. Section 34(12) of the Planning & Development Act, 2000 (as amended) states that a planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required an EIA, a determination as to whether an EIA is required or an appropriate assessment. The planning report considered that development at the site, comprising continuance of use of an existing extraction facility, is unauthorised and retention permission is required because specific development continued on site in breach of conditions, including Condition 5 of P.A. Reg. Ref. 07/267 which required all activity to cease following expiry of the appropriate period, i.e. 18.09.2020. Kildare County Council's website, under 'Application Status', states 'Incompleted Application' for P.A. Reg. Ref. 20/532.

5.0 Policy Context

5.1. Kildare County Development Plan 2017-2023

- 5.1.1. Chapter 10.7 (Rural Development – Extractive Industry) contains a number of subsections relating to quarrying activity, including policies and objectives.

5.2. Natural Heritage Designations

- 5.2.1. The closest Natura 2000 site is Red Bog, Kildare SAC approx. 560 metres to the north east. The closest heritage area is Red Bog pNHA approx. 410 metres to the north east.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted by Paul Woods, Wolfestown, Eadestown. Mr. Woods lives on a cul-de-sac leading from the Regional Road, R410, to the Hudson Quarries land adjacent to the west of the applicant's landholding and he is a member of the 'Save Kildare Uplands Action Group'. The main points made can be summarised as follows:

- The existing quarry was granted permission on 26.04.2010 under P.A. Reg. Ref. 07/267 for 10 years. The life of this permission expired on 25.07.2020, three days after the request for further information was sought under P.A. Reg. Ref. 20/532 for the continuation and extension of the existing quarry. Condition 3 of P.A. Reg. Ref. 19/1230 states the shed shall only be used for the maintenance of vehicles and plant associated with the quarry permitted under P.A. Reg. Ref. 07/267. After 25.07.2020, any use of the permitted development would be an unauthorised use as it would be associated with quarrying operations which did not have the benefit of planning permission.
- Permission for P.A. Reg. Ref. 07/267 expired on 27.07.2020 according to the planning authority. P.A. Reg. Ref. 20/532 has yet to be determined. Therefore, the quarry is currently operating as an unauthorised development. It is submitted that the planning authority cannot continue to determine P.A. Reg. Ref. 20/532 as it is accompanied by an EIAR and NIS. The process the applicant will have to follow is that of applying to the Board for leave to apply for substitute consent to regularise the unauthorised quarrying. There is no guarantee leave will be granted and, even if it is, that process itself cannot permit further quarrying. On the basis there is no permitted quarrying on site and no guarantee further quarrying will be permitted, the Board cannot grant permission. To permit it would be to permit development to support and serve an unauthorised development.
- That the applicant had to develop the shed and associated facilities and works in the first instance is a strong indication of intensification of use of quarrying and associated activity beyond that envisaged by P.A. Reg. Ref. 07/267. The impacts of this intensification of use cannot be retrospectively assessed and

will also need to be considered as part of an application for leave to apply for substitute consent.

- The application is a retention application to regularise an unauthorised development and the facilities and service it provides is an integral element of the overall quarry operation. The application site boundary was confined to the precise area of the shed and works. The application boundary for P.A. 20/532 is the entire quarry area of Hudson's northern quarry, minus the current application site. The applicant embarked on project splitting to avoid their proposals for the continuation of quarrying and extension of the quarry being affected by an element of unauthorised development which would have required them to apply for leave for substitute consent directly to the Board.
- The AA Screening Report and the planning authority's AA are flawed. The Screening Report was prepared on the basis the development to be retained was to serve the development permitted under P.A. Reg. Ref. 07/267. There was no reference to P.A. Reg. Ref. 20/532 even though the same ecologist prepared the P.A. Reg. Ref. 20/532 Natura Impact Statement (NIS) which was lodged only a matter of weeks later. There was no reference to cumulative impacts in relation to the continuation and extension of the quarry. Cumulative impacts are defined as, inter alia, 'reasonably foreseeable' actions together with the project. The planning authority's Planning Report did not comment on the AA Screening Report submitted as part of further information. In its AA report dated 21.04.2020 attached to the planning authority planning report dated 15.06.2020, the planning authority did not reference the fact that P.A. Reg. Ref. 20/532 had been lodged. Without taking account of the proposals to continue and extend quarrying, the Screening Report and AA undertaken by the planning authority were flawed and cannot be rectified.
- The planning authority Planning Report initially considered groundwater contamination an issue to be addressed as a result of vehicles travelling to and from the site to the quarry extraction areas. This groundwater contamination was contained outside the site. On the basis P.A. Reg. Ref. 20/532 identified this as an issue requiring an NIS, the current application should have been accompanied by an NIS.

- The initial planning authority Planning Report noted many conditions of P.A. Reg. Ref. 07/267 were relevant to the regulation of the appeal site and would be relevant to the application. This reinforces the interrelationship between the proposal and the quarry and for the overall operation to be considered as one. On this basis the application should have been accompanied by an NIS and EIAR. There is no screening for EIAR on the application file.
- The appellant's house is accessed off a private road which provides rear access into the quarry and truck maintenance and facilities area. It is used on almost a daily basis by quarry management who have access to another shed 200 metres from the end of the private road inside the quarry boundary. There is no record of planning permission for this shed, the use of which is unclear. While not currently a particular nuisance, increased quarrying could intensify activity on the road to the detriment of the appellant. HGVs on this road would be a particular concern in terms of impact on residential property and road safety. The application should be refused on the potential adverse impacts from the proposed development on the private local road.

6.2. Applicant Response

The main points made can be summarised as follows:

- A large part of the grounds of appeal relate to P.A. 20/532 being considered by the County Council. The appeal contains nine references to that application and only three direct references to P.A. Reg. Ref. 19/1230. The appellant has not presented an argument against the subject application on its own merits, rather the grounds of appeal seek to bring the Board's attention to a matter still with the local authority. The grounds for appeal are inappropriate and baseless in the context of the permission on appeal.
- The application for continuation of quarrying sought under P.A. Reg. Ref. 20/532 had long been contemplated because P.A. Reg. Ref. 07/267 is time delimited. Baseline surveys for P.A. Reg. Ref. 20/532 determined that the subject shed did not have planning permission. P.A. Reg. Ref. 19/1230 was made to regularise the shed's status ahead of the application for continued quarrying. Condition 2 of the Council's decision, which requires the removal of the shed as part of cessation of quarrying activities, is considered reasonable

and has regard to its function as a support of the larger extraction and processing site. The shed is tied to the status of the overall operation.

- There is no intensification of use. The further information response to the planning authority clearly states that, while the permission would facilitate the service of site plant and vehicles on site, the quarry operations do not require the maintenance shed. It is not an intrinsic part of the quarry extraction, rather it simply reduces the need for quarry vehicles to be maintained offsite. The need for maintenance would exist regardless of the presence of the shed. An onsite shed creates the least amount of disruption to the surrounding road network and reduces the potential for environmental impact.
- The appellant misunderstands the meaning of project splitting and has misunderstood the nature and function of the maintenance shed. The maintenance shed cannot be considered an integral element. Planning applications and permission relate to 'developments' (works) whereas EIAs relate to 'projects'. It is common that EIAs undertaken by applicants for development will result in an EIAR on an area larger or greater than the works themselves. Project splitting is contrary to the principles of EIA. The current application does not breach the threshold for EIA. The lands within which the shed sits operate as a quarry and processing facility permitted under P.A. Reg. Ref. 07/267 and for which continuation is sought under P.A. Reg. Ref. 20/532. Each application was supported by an EIS and EIAR. The EIAR for P.A. Reg. Ref. 20/532 recognises the applicant's entire operational lands, including the maintenance shed. The accusation of project splitting is inaccurate and groundless. The development is not intrinsic to overall operations, is not a development which would be likely to have significant effects on the environment, is not considered as sub-threshold and does not, in itself, require an EIAR. The environmental reports submitted with the application did not consider the shed in isolation from the overall quarry site, where relevant. While this appeal should not reference an ongoing application with the County Council, though the boundary of P.A. Reg. Ref. 20/532 did not include the boundary of the current application, the EIAR did include it when considering cumulative impacts and baseline conditions. The omission of this development from P.A. Reg. Ref. 20/532 has not avoided an EIAR for that development.

- The AA Screening Report was submitted in March 2020 while P.A. Reg. Ref. 20/532 was submitted in May and therefore there was no planning application number to be referenced. The argument in relation to the AA Screening Report is tenuous at best. The report included the wider quarry operations within the baseline scenario. It is difficult to consider the maintenance shed and ancillary facilities in isolation from an environmental perspective in some regards so there is an inherent degree of cumulative consideration throughout e.g. water abstraction from Pond K. The nature of the application and wider quarry going forward which have the potential to have a cumulative impact are considered to be similar to the baseline established for the retention of the shed. While the appeal should not reference an ongoing planning application, an NIS was submitted with P.A. Reg. Ref. 20/532.
- The subject of the appeal is P.A. Reg. Ref. 19/1230 and any argument put forward should not use a later and ongoing planning application that is still with the local authority as part of their argument to justify what an earlier planning application should have included. The appeal should be on the merits of the planning application and as it is not, it should be dismissed. The appellant considers that an NIS should have accompanied the application on the basis that the planner made a reference to potential groundwater contamination on the wider site which the appellant believes represents a potential significant impact on nearby Natura 2000 sites. It is unclear why the appellant believes the planner was referring to groundwater contamination in the context of haul trucks within the extraction areas when that has not been stated. AA is a matter for the planning authority and the AA undertaken is adequate and correct in the context of the development and its likely impact. It is also maintained that the AA Screening Report considered potential water contaminants under Section 3.4.1. This considered that it was reasonably unlikely that there would be any continuity of flow from the site to Natura 2000 sites either hydrogeologically or hydrologically.
- Schedule 5 of the Planning & Development Regulations, 2001 (as amended) set out very clearly which developments require EIA. The development clearly does not fall within any nature of development under Schedule 5 and it has been demonstrated that it is not likely to have significant effects on the environment. It is not sufficient to argue that a larger project for a different

development that does require an EIAR should inherently result in any smaller development associated with that development also requiring an EIAR, particularly where one is not an integral piece of the overall operation. The submission of a formal EIA Screening Report is not compulsory and is not required for this development.

- The appellant's concern with the road is inappropriate for this application and relates to P.A. Reg. Ref. 20/532. This issue should be fully dismissed by the Board.

6.3. Planning Authority Response

The main points made can be summarised as follows:

- The information submitted is sufficient to demonstrate that the development is not integral to the ongoing use of the overall quarry, particularly in light of the existence of the quarry for numerous decades without the presence of the shed, and therefore the issue of project splitting is not warranted. The shed supports the quarry, but no additional HGV trips or staff numbers etc. are required for its operation. Condition 3 ensures it cannot operate outside the confines of an overall grant of permission for extraction i.e. beyond the appropriate period for P.A. Reg. Ref. 07/267 or any other permission subsequently granted. The fact that the appropriate period for P.A. Reg. Ref. 07/267 was valid/live was integral to the decision to grant permission. The fact that the appropriate period expired soon after is not and cannot be a concern of the planning authority who can only work within the confines of the current dates and statutory timelines for reaching a decision.
- Any works or use of the development following expiry of the appropriate period is a matter for enforcement and does not impact on the decision to grant permission within the appropriate period in the first place.
- The fact that no additional trips will be made to the site, and the shed reduces the number of maintenance related trips to the site, negates the argument of intensification of P.A. Reg. Ref. 07/267.
- The planning authority is satisfied that no negative impact is likely to Red Bog SAC as a result of the maintenance shed development.

- The access close to the appellant's house is a secondary access. There are three quarries adjacent to each other which share an internal access road accessed from the N81. Access to both the subject site and quarry lands subject of P.A. Reg. Ref. 20/532 are only via the southern point close to the applicant's site offices and weighbridge. This is noted on a haul map submitted with the application and Condition 8 seeks to enforce this.
- The planning authority maintains the position that permission should be granted.

6.4. Observations

None.

6.5. Further Responses

None sought.

7.0 Assessment

The main issues are those raised in the grounds of appeal and the Planning Report and I also consider the visual impact of the development and the wastewater treatment element should be considered. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development
- Visual Impact
- Wastewater Treatment
- Environmental Impact Assessment (EIA)

7.1. Principle of Development

- 7.1.1. There is an issue with this planning application in relation to the status of the quarrying activities on site and the maintenance shed development subject of this planning application.

- 7.1.2. The main truck and plant maintenance shed has an area of 325.5sqm and there are also four containers, ranging in floor area between 7.5sqm and 48.2sqm as well as a 5.2sqm staff welfare facility containing a shower and WC; 432sqm in total. It appears the shed was constructed in 2015/2016. The further information response to the planning authority stated that the shed services site plant and vehicles and there is no net increase in traffic movement to and from the overall quarry. While the quarry does not require the shed, its presence reduces the dependence on off-site transport of machinery and other plant and vehicles. The further information response also clarified that the maintenance shed only services the applicant's own vehicles and plant and is not available to third parties. I am satisfied that the maintenance shed development forms part of the overall quarry operations, and while not integral or necessary to the core activity of the quarry, it supports the core activity. If the quarry it served had planning permission, then I consider it would be acceptable.
- 7.1.3. Quarrying activity was permitted on site under P.A. Reg. Ref. 07/267. This related primarily to quarrying to the west and north west of the maintenance shed building. The site boundary for that application included the location of the maintenance shed. The final grant issued from the planning authority on 26.04.2010. Condition 5 stated that the permission was for a period of 10 years from the date of the permission 'unless at the end of this period a further permission has been granted for its continuance on site'. The date of expiration of P.A. Reg. Ref. 07/267 is 18.09.2020, taking into consideration both the 90 no. extra days accumulated over ten years and the 56 no. days associated with the Covid timeline suspension.
- 7.1.4. The applicant sought permission under P.A. Reg. Ref. 20/532 for, inter alia, continuation of aggregate extraction and processing as permitted under P.A. Reg. Ref. 07/267. The Council's planning report states that they could not consider the application because it included the retention of unauthorised development(s) which required EIA and AA. The report noted that development continued on site past the expiry date of the permission in breach of a number of conditions of P.A. 07/267, including Condition 5. Kildare County Council's website contains a warning letter (UD7260) issued to the applicant on 04.11.2020 relating to the operation of a quarry without the benefit of planning permission and non-compliance with certain conditions of P.A. Reg. Ref. 07/267.
- 7.1.5. Therefore, the quarry area within which the development site is located does not have a current planning permission. There is no indication on the planning authority's

website that any subsequent planning application has been made. The site location map submitted with the application outlines other land within the applicant's control, some of which is subject to quarrying. This area is adjacent to the site office within the Wicklow County Council administrative area approx. 1km south east of the truck and plant maintenance shed. This part of the overall landholding is smaller in area than the area in Kildare County Council within which the maintenance shed is located.

- 7.1.6. Having regard to the foregoing, I consider that it would be inappropriate to grant permission for retention of the truck and plant maintenance shed, located within a quarry where there is no valid permission for quarrying activity. The development would support an unauthorised development.

7.2. Visual Impact

- 7.2.1. The site is located within the 'Eastern Uplands' as designated on Map 14.1 (Landscape Character Areas) in the County Development Plan 2017-2023. It is a Class 3 'High Sensitivity' area described in Table 14.2 (Landscape Sensitivity Classification to Landscape Character Areas) as an area with reduced capacity to accommodate uses without significant adverse effects on the appearance or character of the landscape having regard to prevalent sensitivity factors.
- 7.2.2. The building is located within an existing quarry, and where there are other quarries in the immediate vicinity. Quarrying is noted as a land use in the East Kildare Uplands in Section 14.5.5 of the Plan. The maintenance shed is visible outside the quarry boundaries from certain vantage points. However, the maintenance shed is not out of character with the established quarries and I do not consider it to comprise an unduly incongruous or obtrusive feature on the landscape given its position adjacent to quarried stockpiles and a normal quarry backdrop.
- 7.2.3. Therefore, having regard to its location within the boundaries of an established quarry, I do not consider the development would contravene general landscape policies (Section 14.8.1) or policies specific to the East Kildare Uplands Area (Section 14.8.3) of the Kildare County Development Plan 2017-2023.

7.3. Wastewater Treatment

- 7.3.1. An on-site wastewater treatment system has been installed to service the development. Kildare County Council's Environment Section and the EHO recommended further information in relation to the Site Suitability Report.
- 7.3.2. The submitted Site Characterisation Form states that the aquifer category is locally important with high vulnerability. In the 2.8 metres deep trial hole the water table was encountered at a depth of 1.5 metres. The top 1.5 metres of the trial hole was pebbles with silt/clay below 1.5 metres. Table B2 (Response Matrix for On-Site Treatment Systems) of the Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) published by the Environmental Protection Agency indicates that the site falls within the R1 response category where an on-site system is acceptable subject to normal good practice.
- 7.3.3. The T-test result was 0.25, too rapid for treatment or polishing of effluent. No P-test was carried out. The Site Characterisation Report (dated 19.08.2019) states that water moves freely through the upper pebble layer. The silt/clay material below 1.5 metres is very compact and has limited soakage. Any liquid entering the soil is likely to have to move horizontally over the silt/clay layer until a more permeable layer is encountered. The upper layer is unsuitable for treatment or polishing and it is proposed to treat the wastewater in a secondary treatment system, polish it in a tertiary sand polishing filter and discharge to ground via a layer of soil to ensure compliance with the EPA Code of Practice. 750mm of pebble should be removed and a 500mm layer of soil with good soakage placed over the pebble. (The imported soil used had a T-value of 18). 300mm of pebble should be placed over the soil and a sand filter constructed on the gravel.
- 7.3.4. Detail of the wastewater treatment system installed on site, dated 22.08.2019, has been provided. It has a population equivalent of six (the Site Characterisation Report states that there are two workers in the plant, but it is assumed other workers may also use the toilet). A 'Certification of Compliance of an On-Site Wastewater Treatment System with the EPA Code of Practice; Wastewater Treatment and Disposal Systems Serving Single Houses – 2009' was submitted, prepared and signed on 10.10.2019 by Dr. Eugene Bolton, Senior Consultant, Trinity Green Environmental Consultants. This report refers to the treatment unit and the sand filter and states that they have been installed in accordance with the EPA Code of Practice.

7.3.5. Having regard to the foregoing, I consider that the system installed is acceptable subject to a normal ongoing maintenance condition. I note the reports from the County Council's Environment Section and the EHO, based on the further information response, which indicate no objection subject to conditions.

7.4. Environmental Impact Assessment (EIA)

7.4.1. The grounds of appeal consider that the maintenance shed and associated facilities intensifies the use of the quarry and that the maintenance shed is an integral element of the overall quarry operation. The grounds of appeal considers that project splitting occurred with the separation of the development subject to this planning application and the application under P.A. Reg. Ref. 20/532 so the permission for quarrying would not be affected by this retention application for unauthorised development which would have required the applicant to apply for leave for substitute consent directly to the Board.

7.4.2. I do not consider that the truck and plant maintenance shed intensifies the use of the quarry or that it is an integral part of the quarry. The core business of the quarry i.e. extraction and processing, can be carried out without the maintenance shed. The maintenance shed caters for operational support that would otherwise have to be carried out off site. The fact that the structure is located within the curtilage of a quarry which required EIA does not mean that any and all further development associated with that quarry automatically requires EIA. The use and operation of the maintenance shed is very different to the core activity of a quarry.

7.4.3. Notwithstanding, Schedule 5 of the Planning & Development Regulations, 2001 (as amended) sets out development for the purposes of Part 10 (EIA). Development of a class included in Part 1 requires mandatory EIA. Development of a class included in Part 2 is subject to thresholds and may require EIA. As a maintenance shed, or any development which could be considered similar in use, is not a type of development set out, EIA is not required. I also do not consider that Part 2 (13 – Changes, extensions, development and testing) (a) is applicable.

7.4.4. Therefore, as the development does not fall within a class of development under Schedule 5 of the Planning & Development Regulations, 2001 (as amended), it does not require EIA.

8.0 Appropriate Assessment

The requirements of Article 6(3) of the Habitats Directive, as related to screening the need for Appropriate Assessment of a project under Part XAB (section 177U) of the Planning and Development Act 2000 (as amended), are considered fully in this section.

8.1. Background to the application

- 8.1.1. As part of the further information response to Kildare County Council, the applicant submitted a 'Screening for Appropriate Assessment' report. This report was prepared by Golder Associates Ireland Limited and is dated February 2020. The report comprises an appraisal of potential impacts on European designated conservation sites within 15km of the site, which was deemed to be an ecologically relevant buffer zone. A desktop review was carried out, including the original EIS for the quarry on site granted under P.A. Reg. Ref. 07/267 and NPWS, EPA and GSI web-based databases.
- 8.1.2. The Screening for Appropriate Assessment report concluded that 'it is considered reasonably unlikely that the development at the Application Site has a significant impact on the Natura 2000 sites pertinent to this Stage 1 Screening Assessment. There is a high level of confidence in the likely degree of the magnitude of impacts in accordance with the Site and as such it is concluded objectively that significant effects will not be afforded'. The report sets out three key considerations for reaching this conclusion:
- (i) the site is not part of the nearest Natura 2000 site and does not interact with it,
 - (ii) there is sufficient distance between the site and all Natura 2000 sites,
 - (iii) no hydrological impacts on Red Bog, Kildare SAC are expected due to the designation being a perched feature in the landscape, isolated from the water table.
- 8.1.3. Having reviewed the documents, drawings and submissions, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

8.2. Screening for Appropriate Assessment – Test of likely significant effects

- 8.2.1. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development would have any possible interaction that would be likely to have significant effects on a European Site(s).

8.3. Brief description of the development

- 8.3.1. The applicant provides a description of the project on Page 3 of the Screening for Appropriate Assessment report. In summary, the development comprises an application for retention of:

- A single storey truck and plant maintenance shed including staff welfare facilities (approx. 432sqm),
- Underbody truck wash, wastewater treatment system, interceptor and soakaway.

- 8.3.2. The development site is located within an existing sand, gravel and rock quarry. There are also a number of other quarries in the area.

- 8.3.3. Taking account of the characteristics of the proposed development in terms of its location and scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European Sites:

- Construction related pollution
- Habitat loss/fragmentation
- Habitat/species disturbance (construction and/or operational)

8.4. Submissions and observations

- 8.4.1. No submission was received by Kildare County Council, either on receipt of the planning application or after the application was re-advertised. Paul Woods, who lives close to the western boundary of the quarry landholding, was granted leave to appeal the decision of Kildare County Council under ABP Reg. Ref. ABP-307456-20. Among the issues cited by the appellant in the grounds of appeal is the linking of the development subject of the current application and the operation of the wider quarry.

The appellant also considers that the applicant's AA Screening report and the planning authority's Appropriate Assessment were flawed.

- 8.4.2. I do not consider that the truck and plant maintenance shed intensifies the use of the quarry or that the truck and plant maintenance shed is an integral part of the quarry. The core business of the quarry i.e. extraction and processing, can be carried out without the maintenance shed. The maintenance shed caters for operational support that would otherwise have to be carried out off site.
- 8.4.3. I am satisfied that the implications of the development on Natura 2000 sites can be appropriately considered without the quarry operations having to be considered in tandem. I consider the maintenance shed and associated facilities to be a separate development to the quarry activity. The quarry would be considered as part of the 'in combination' issue. I note that P.A. Reg. Ref. 20/532, for the extension of quarry operations, which is referred to repeatedly in the grounds of appeal, was not granted permission by Kildare County Council.

8.5. **European sites**

- 8.5.1. The development site is not located in or immediately adjacent to a European site. The closest Natura 2000 site is Red Bog, Kildare SAC approx. 560 metres to the north east.
- 8.5.2. The European sites that occur within what I consider to be the possible zone of influence of the proposed development are presented in the table below. Having regard to the scale of the proposed development, the separation distances involved, and the absence of identified pathways I do not consider that any other European Sites fall within the possible zone of influence. The applicant included Glenasmole Valley SAC in the Screening for Appropriate Assessment report because it is within 15km of the site. However, I do not consider that SAC, approx. 12.8km to the north east, to be relevant given the nature and scale of the subject development and the distance involved.

Summary of European Sites Within the Possible Zone of Influence of the Development

European Site (Code)	List of Qualifying Interests / Special Conservation Interest	Distance from Proposed Development (km)	Connections (source, pathway, receptor)	Considered Further in Screening?
Red Bog, Kildare SAC (000397)	Transition mires and quaking bogs [7140]	0.56 to the north east	Indirect hydrogeological	Yes
Poulaphouca Reservoir SPA (004063)	Greylag Goose [A043] Lesser Black-backed Gull [A183]	2.4 to the south east	None	No
Wicklow Mountains SAC (002122)	Oligotrophic waters containing very few minerals of sandy plains [3110] Natural dystrophic lakes and ponds [3160] Notrthern Atlantic wet heath with Erica tetralix [4010] European dry heaths [4030] Alpine and Boreal heaths [4060] Calaminarian grasslands of the	4.8 to the east and south east	None	No

	<p>Violetalia calaminariae [6130]</p> <p>Species-rich Nardus grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe [6230]</p> <p>Blanket bogs (* if active bog) [7130]</p> <p>Siliceous scree of the montane to snow levels [8110]</p> <p>Calcareous rocky slopes with chasmophytic vegetation [8210]</p> <p>Siliceous rocky slopes with chasmophytic vegetation [8220]</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</p> <p>Otter [1355]</p>			
Wicklow Mountains SPA (004040)	<p>Merlin [A098]</p> <p>Peregrine [A103]</p>	7.9 to the east and south east	None	No

8.6. Identification of likely effects

- 8.6.1. In relation to construction-related pollution, I note the site is not within or adjacent to any European site. The closest European site, Red Bog, Kildare SAC, is 560 metres from the site. The site is within an existing quarry and there are no watercourses on site that could provide a pathway from this site to the SAC. There are significant quarrying operations between the site and the closest SAC. The next nearest Natura 2000 site is Poulaphouca Reservoir SPA which is over two kilometres away. There are significant quarrying operations between the site and the SPA, and it is on the opposite side of the N81 road. As there are no watercourses there is no possibility of construction-related pollution.
- 8.6.2. In terms of habitat loss/fragmentation, no part of the site is located within or adjacent to a European site and there will be no loss or fragmentation of habitat.
- 8.6.3. I do not consider that any habitat/species disturbance would have arisen at the construction stage given the nature and scale of the development, and its location within a substantial working quarry.
- 8.6.4. During the operational phase of development, water is abstracted from Pond K to serve the development. In addition, wastewater and surface water discharge to groundwater. The applicant's Screening for Appropriate Assessment report states that the site is within a groundwater aquifer unit classified as a locally important sand/gravel aquifer and it appears Red Bog, Kildare SAC lies within the same bedrock aquifer. The report states that the SAC is at an elevation of approx. 260m AOD while the water table contour beneath the SAC is approx. 230m AOD. 'This indicates that Red Bog is likely to be isolated from the water table and a perched feature in the landscape'. The application site lies at approx. 251m AOD. A hydrogeological report on the SAC prepared by Golder Associates in 2008 states that the principal source of water for this type of formation (Red Bog) is precipitation, though there is the possibility of intermittent springs and seepages. The hydrogeological report states that the hydraulic catchment for Red Bog 'is expected to extend little further than its surface expression'. The Screening for Appropriate Assessment report considers it is 'reasonably unlikely' that there would be any continuity of flow from the site to the bog either hydrologically or hydrogeologically. The site is removed from other Natura 2000 sites by distance, green space/agricultural land and road networks and have no apparent interlinking surface waters. Any air quality or noise impacts that may occur, which I consider would

be limited given the nature of the development, would not affect any Natura 2000 sites because of distance.

8.6.5. In relation to cumulative impact, the Screening for Appropriate Assessment report does not refer to the applicant's intention to continue and extend quarrying activity which was proposed under P.A. Reg. Ref. 20/532. Notwithstanding, this was not granted permission by Kildare County Council. Section 4.5 of the report does refer to an application by Shillelagh Quarries Ltd. for the continuation of activities and for a precast concrete facility. However, given the perched nature of Red Bog, Kildare SAC and the distances of the proposed developments from Natura 2000 sites, 'it is considered that no cumulative impacts will be derived from this application and subsequent implementation'. I consider that the subject development is relatively limited in size in the context of the scale of the quarrying operations in the vicinity. As the subject development itself will not have any effects on the conservation objectives of the European sites, there is no potential for any other plan or project to adversely affect the integrity of any European sites in combination with the subject development.

8.7. Mitigation measures

8.7.1. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

8.8. Screening Determination

8.8.1. The proposed development was considered in light of the requirements of section 177U of the Planning and Development Act 2000 (as amended). Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project, individually, or in combination with other plans or projects, would not be likely to give rise to significant effects on any European Sites in view of the sites' conservation objectives, and Appropriate Assessment including the submission of a Natura Impact Statement is not, therefore, required.

8.8.2. This determination is based on the following:

- The site is not part of any Natura 2000 site and it does not require any resources from, or interaction with, any Natura 2000 site.

- The relatively limited nature and scale of the subject development, the distance from the nearest Natura 2000 site and the extent of quarrying activity in the vicinity.
- The absence of any ecological or hydrological corridors between the site and Natura 2000 sites (source-pathway-receptor links).
- The Screening for Appropriate Assessment report which states that Red Bog, Kildare SAC is a perched feature in the landscape, isolated from the water table and where the principal source of water for the Red Bog type of formation is precipitation.

9.0 Recommendation

I recommend that the planning application be refused for the following reasons and considerations.

10.0 Reasons and Considerations

1. The truck and plant maintenance shed relates to a site the use of which is unauthorised for quarrying activity. The development to be retained would facilitate and support this unauthorised use. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of a permission for retention for the development in such circumstances.

Anthony Kelly

Planning Inspector

11.02.2021