



An
Bord
Pleanála

Inspector's Report - Addendum ABP-308792-20

Question

Whether or not the extraction and quarrying at site WH3226 is or is not development and is or is not exempted development.

Location

WH3226, Annascannon, County Westmeath.

Declaration

Planning Authority

Westmeath County Council

Planning Authority Reg. Ref.

S5-17-19

Applicant for Declaration

Eco Advocacy.

Planning Authority Decision

No declaration

Referral

Referred by

Eco Advocacy.

Owner/ Occupier

Keegan Quarries.

Observer(s)

None.

Date of Site Inspection

28th April 2021.

Inspector

Deirdre MacGabhann

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1.0 Site Location and Description

- 1.1. The c.90ha subject site is situated c. 2.5km to the south east of Killucan and c. 3.5km north west of Kinnegad, in the townland of Annascannon, County Meath. Entrance to the site is from a minor county road and via a wide internal haul road. The haul road has embankments on each side of it and, like the quarry, is largely not visible from the surrounding public road network.
- 1.2. At the time of site inspection, the site is split into three areas.
- i. To the east of the site is a quarry, with entrance, small office, weighbridge and processing machinery. The land has been extensively quarried with material removed below water level, leaving a series of large ponds/lakes throughout the site. There was no evidence of the quarry having been worked recently.
 - ii. To the south west of the site is a recycling centre for inert waste. It is an active development, with a portacabin office controlling entry to the site. Working is progressive in a northerly/north-easterly direction filling the void left by previous quarrying activity.
 - iii. To the north of the landholding is a worked area, also now filled with water (photograph 9).

2.0 The Question

- 2.1. The questions asked of the Board are:
- Whether or not the use and operation of quarry, PA ref. EUQY39 (folio WH3226) is or is not exempted development.
 - Whether the extraction of material from below the water table is or is not exempted development.
 - Whether loading operations and exportation of material from the site is or is not exempted development.
 - Whether the processing and export of materials off the site to various other sites in the control of the operator is or is not exempted development.
 - Whether a Stage 2 NIA is required (which would exclude any exempted development).

- Whether EIA or screening for EIA is required for the activities on site (which would exclude any exempted development).
- Whether the import of material for the purposes of remediation (WFP-WH-2018-0102-00) is compatible with unauthorised extraction of material for export off site and whether the latter can be exempted development in such circumstances.

3.0 Planning Authority Declaration

3.1. Declaration

- None.

3.2. Planning Authority Reports

- None.

4.0 Planning History

4.1. The following are relevant to the subject site:

- PA ref. 275/77 (11th July 1977) – Permission granted for extraction and processing of sand and gravel, subject to two conditions (maintenance of silt ponds, landscaping proposals). Application documents refer to a site area of 26 acres (see file), which equates to 10.52ha.
- PA ref. QY39 (17th April 2007) – Quarry registered under section 261. Drawings on file relate to section 261 application area of 92.24ha and extraction area 10.61ha (see Westmeath County Council Memo to Director of Services, Registration of quarry under section 261, dated 21st October 2005). 12 no. conditions imposed under the registration process. These define extent of works (to be confined to the red line boundary shown in Drawing No. QY/39/'07, QY39 history file), access arrangements, environmental management and reinstatement. Condition no. 6 requires a 1 metre buffer zone of undisturbed material above the top groundwater level.

- PA ref. EUQY39 (19th September 2012) – Determination under section 261A that:
 - Environmental impact assessment/screening for environmental impact assessment is not required (development registered under section 261, pre-64 status, permission granted under PA ref. 77/275, no time limit imposed, development pre-dated the directive, development had not extended beyond the boundaries established under PA ref. 77/275).
 - Appropriate assessment is not required (same reasons as above).
- PA ref. 01/590 and PL25.127710 – Permission refused for residual landfill site with a capacity of 175,000 tonnes per annum of non-hazardous waste for 10 years, with ancillary facilities. Grounds (1) contravene regional waste management plan (excessive volume of waste and extended catchment area), (2) inadequate assessment of alternatives, (3) impact on amenities and property values, (4) traffic hazard (increased volume in HGV traffic on LP01015 and inadequate nature of the road and presence of level crossing), and (5) traffic hazard (inadequate stopping sightlines).
- PA ref. WFP-WH-2018-0102-00 – Waste permit granted by Westmeath County Council for importation of inert waste to lands at Annascannon Quarry. Volume not to exceed 24,900 tonnes/per annum, waste recovery activity to be restricted to application boundary.
- Warning letter, dated 10th June 2019, issued under Section 152 of the Planning and Development Act 2000 (as amended) regarding unauthorised development on lands within the quarry (extraction of sand and gravel). Parties requested to identify the location of current works on the site and confirm if these are in accordance with the conditions attached to the section 261 registration, including C1 (extraction area), C6 (1 metre buffer zone above groundwater & groundwater quality monitoring), C7 (slope stability), C8 (wheelwash and maintenance of public road), C10 (weighbridge), C11 (reinstatement and landscaping) and C12 (site management details).
- Subsequent warning letter to parties (23rd March 2020) – Stating that it has come to the attention of the PA that unauthorised development was being carried out at the quarry i.e. that sand and gravel extraction had extended beyond that previously authorised under PA ref. 77/252.

Referrals

- Application to planning authority by Eco Advocacy (4th April 2019) for section 5 declaration, on whether or not activities being carried out at the quarry in January 2019 were exempted development. On the 1st of May 2019, the planning authority advised that there was insufficient information provided to enable the authority to make its decision and that a section 5 referral needed to be accompanied by a completed section 5 application form.
- Application to planning authority by Eco Advocacy (8th May 2012) for section 5 declaration re-submitted with section 5 application form. On the 14th of May 2019, the planning authority advised that there was insufficient information to enable the planning authority to issue a declaration.
- Application to planning authority by Eco Advocacy (19th August 2019) for section 5 declaration, as above. On the 13th of September, the planning authority advised that there was insufficient information to enable the planning authority to issue a declaration. Application submitted to the Board for appeal in October 2019.
- In October 2019, the Board invalidated the referral, ABP-305655-19 on the grounds that it was not accompanied by a completed section 5 application form. The decision was quashed by the Courts and remitted back to the Board for fresh determination.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. Westmeath County Development Plan 2014 to 2020 recognises the essential contribution aggregates make to the construction industry. Policies seek to ensure that the resources can be accessed without significant damage to the environment and amenities.

5.2. Natural Heritage Designations

- 5.2.1. The subject site lies c.750m to the south of the Royal Canal, proposed Natural Heritage Area (site code 002103) and c. 1km to the north west of Mount Hervey Bog

proposed NHA and Special Area of Conservation (SAC), site codes 001584 and 002342, respectively (see attachments).

6.0 The Referral

6.1. Referrer's Case

6.1.1. The referrer submits the following arguments to the Board:

- *Context.* Stream of large trucks hauling sand and gravel into unauthorised operation at Clonard, County Kildare, for processing, were coming from the subject quarry (January 2019). The subject quarry was assessed in 2012, under section 261A, and it was determined that no further quarrying should take place at the location. The quarry was disused at the time. There are now lakes on the site.
- *Operation at the site.* There is no permission for extraction/intensification or industrial operations at the site. Understand from the PA '*quarry owner is deceased & quarry has not operated for many years; financial costs for remediation a possible factor. Site remediation is currently underway*'.
- *Breach of water table.* Extraction of material from below the water table, not for agricultural use within the landholding or in connection with the current permission, is development and not exempted development. Conditions imposed under section 261, require 1m buffer above top groundwater level. Extraction below the water table could have a significant impact on the environment and requires EIA and cannot be exempted development.
- *Loading operations.* Significant loading operations are taking place on the site. These operations and intensification are not regulated by way of any planning permission.
- *Exportation.* Material having been processed on site is systematically being exported off the site to various other sites in the control of the operator.
- *NIA threshold.* No development on the site can be exempted if a Stage 2 NIS is required.
- *EIA.* Folio WH3226, on which the development is situated, has an area of 89.91ha. It is unclear what area of this land is being quarried. The EIA sub-

threshold determination level for extractive developments is 50% of the mandatory EIA threshold i.e. 2.5ha. From roadside observation it would appear that the development is in excess of 2.5h and probably 5ha. This needs to be established as a matter of fact. If the site requires a determination for EIA or EIA, no works can be exempted development.

- *Remediation.* Material is being imported to the site for remediation under waste licence WFP-WH-2018-0102-00. Are the remediation works compatible with unauthorised extraction for export off site.

6.1.2. Submitted with the referrer's case are the following:

- Details of waste permit granted by Westmeath County Council (WFP-WH-2018-0102-00).
- The registration of the quarry under QY39 (2007) and conditions imposed on the operation of the quarry.
- Notice under section 261(A) (2012).
- Warning letters sent to parties on the 11th of June 2019 and 23rd March 2020 under section 152 of the Planning and Development Act 2000 (as amended).

6.2. Responses

6.2.1. There is one response to the referral on file. It is made by the Estate of Patrick Cooney (deceased), of Annascannon House, a property which lies c.450m north of the quarry. It makes the following observations:

- The information in the referral is 16 months out of date. This timelapse, plus the limited evidence submitted in support of the referral, make it difficult for the Board to adjudicate on the case.
- The referral states that the applicant is 'Keegan Quarries'. There is no reference to this party in the referral except for Keegan quarry trucks observed leaving the quarry. If Keegan Quarries are not the applicant, referral must be invalid.
- Under section 5(2) of the Planning and Development Act 2000 (as amended), a planning authority may require any person who made a request for a declaration under section 5 to submit further information to enable the

planning authority to issue a declaration. The section 5 application form did not include the information required by the planning authority and did not state the applicant's interest in the site. Had this information been received, those with an interest in the lands and in the interest of natural justice could have input to the application process. Absence of this information denied the planning authority the opportunity to ensure a complete and valid application to consider.

- The motive of the referral is questionable and may be vexatious and affect the property rights of the observer.
- There is no meaningful evidence, facts or information submitted with the Referral to allow assessment and declarations to be made by the Board. The range of questions posed are very general. There is no quarrying or processing on site currently, or has been for some considerable time. The applicant did not submit information to support or evidence of:
 - The conclusions in respect of the section 261A process.
 - Any link between the truck activity and other site operations, or reason for removal of material from one site to another.
 - Where water bodies were breached, or if they were permitted under planning permission/conditions under section 261.
 - Of complaints about alleged unauthorised activity.
 - Of alleged loading operations (the referrer acknowledges that he has never been on site).
 - No explanation of the act of 'development' that occurs with transport off site.
 - Insufficient evidence of incompatibility of land uses (alleged extraction, processing and transport of materials and importation).
- The purpose of section 5 is to deal with particular cases, not to establish broad principles.
- Screening for appropriate assessment can only undertaken for a specific development.
- No evidence is provided to support assertion that EIA is required.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

- 7.1.1. Sections 2 and 3 of the Planning and Development Act, 2000 (as amended) define development as '*the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land*'. Works are defined as '*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal*'.
- 7.1.2. Exempted development is dealt with in section 4. Provisions include that the Minister may make regulations to provide for any class of development to be exempted development for the purposes of the Act, subject to safeguards (section 2(a)). Section 4(4) states that notwithstanding provisions in respect of exempted development, development shall not be exempted if it requires environmental impact assessment (EIA) or appropriate assessment (AA).
- 7.1.3. Part 10 of the Planning and Development Act deals with environmental impact assessment. Section 172 requires EIA to be carried out in respect of development which:
- Falls within Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 (as amended) (the Regulations) where the development would equal to or exceed the relevant threshold or where there is no limit specified, or
 - For development falling within Part 2, where the development is sub-threshold but likely to have a significant effect on the environment.
- 7.1.4. Appropriate assessment is dealt within Part XAB of the Act. It requires the competent authority carry out screening for appropriate assessment and appropriate assessment of development prior to consent being given (section 177U). Further under section 177V, the competent authority may only grant consent for a proposed development only after having determined that the development shall not adversely affect the integrity of a European site.

7.2. Planning and Development Regulations, 2001

- 7.2.1. Article 6 of the Regulations deals with exempted development. These include under article 8C exemption for land reclamation works (other than the reclamation of wetlands) consisting of recontouring of land, including infilling of soil (but not waste material) within a farm holding.
- 7.2.2. Schedule 5 sets out the following classes of development for the purpose of EIA:
- Part 1:
 - Class 19. Quarries and open cast mining where the surface of the site exceeds 25ha.
 - Class 22. Any change to or extension of projects listed in the Annex, where such a change or extension in itself meets the thresholds set out in the Annex.
 - Part 2:
 - Class 2 (Extractive industry). Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares.
 - Class 13 (Changes, extensions, development and testing). Any change or extension of development already authorised, executed or in the process of being executed which would result in the development being of a Class listed in Part 1 or Class 1 to 12 of Part 2 and result in an increase in size greater than 25% or an amount equal to 50% of the appropriate threshold.

8.0 Assessment

- 8.1. In response to the referral, the Estate of Patrick Cooney question:
- The validity of the case by virtue of the applicant's name (Keegan Quarries) and the referrer's interest in the subject site, and
 - The lack of compliance with the requirements of section 5 of the Planning and Development Act 2000, as amended (no meaningful evidence, facts or information submitted with the Referral to allow assessment and declarations to be made).
- 8.2. On file, the applicant's name in the section 5 application form is stated to be Eco Advocacy and the applicant's interest in the land is stated to be '3rd party –

environmental NGO'. I am satisfied therefore that the application form is correct in this regard. The matter of sufficiency of information is considered below.

8.3. Is or is not development.

8.3.1. The referrer refers to the following activities and asks the Board to determine whether or not these are exempted development:

- Use and operation of the quarry,
- Extraction of material below water table,
- Loading, processing and export of materials from the site

8.3.2. At the time of site inspection, no quarrying activities were evident on the appeal site i.e. no use or operation of the quarry, no extraction, loading, processing or export of materials. However, the western part of the site was in use as a landfill site for inert material. The referrer provides little specificity of information on the activities referred to the Board e.g. where alleged extraction took place, area, depth, context (in terms of permissions granted/section 261 process). As such that the questions before the Board are in effect hypothetical and the matters raised are addressed in this context.

8.3.3. The Planning and Development Act, 2000 (as amended) defines development as *'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'*. Works are defined as *'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'*.

8.3.4. In principle, the extraction of material from the site would comprise an act of 'excavation' and processing would comprise an act of 'alteration', both therefore comprising development. The act of loading and export of material would follow from the use of the land and would comprise development if they arose from a change in the use of land i.e. from agriculture to quarrying.

8.3.5. The quarry at Annascannon has the benefit of permission granted in 1977 under PA ref. 275/77, as modified by the conditions imposed under PA ref. QY39. This permits extraction from an area of 10.61ha (see Drawing No. QY/39/07, QY39). From the site inspection of the site and aerial photography (see attached OSI aerials 1995, 2000, 2005, 2005-2012 and 2013-2018) it is evident that quarrying remains largely

within the confines of the PA ref. 275/77-QY39 boundary, with some quarrying outside of the boundary to the west of the site. However, it is also evident that extraction has taken place at depth, below the water table, exceeding the limit set out in condition no. 6 of QY/39.

- 8.3.6. It is not clear from the information on file, from any party, what area of the site was the subject of alleged quarrying in 2019/2020. However, it is evident from the warning letters issued under section 152 that the planning authority were concerned that activities were taking place beyond the scope of the permission granted under PA ref. 77/725 & QY39. There is no explanation on file from the owners/occupiers of the quarry for the alleged works and therefore no conclusion in respect of unauthorised activity.
- 8.3.7. I can only conclude, therefore, that use and operation of the quarry, extraction of material from below water table, loading operations and export of materials off site on the subject site, would comprise development if these activities fell outside the scope of works permitted under PA ref. 77/725 & QY39.

8.4. Is or is not exempted development.

- 8.4.1. Article 6, 8 and 9 of the Planning and Development Regulations, 2001 (as amended) provide no exemptions in respect of quarrying.

8.5. Environmental Impact Assessment.

- 8.5.1. Schedule 5 of the Regulations requires EIA for any change or extensions to quarries where the increase in area would be greater than 25% of the permitted development (c.10h) or 50% of the appropriate threshold (5ha) i.e. c.2.5ha (both scenarios).
- 8.5.2. As stated it is implied by the planning authority's warning letters, that the activity in 2019/2020 was outside of scope of the 275/77 & QY39 permission. If the area associated with these works was in excess of 2.5ha in area, the development would have triggered a requirement for EIA. Further, if the area that was subject to extraction took place within the confines PA ref. 275/77 & QY39, but extended beyond c.2.5ha in area and at depth (in breach of condition no. 6 of the permission), this would also have triggered a requirement for EIA (comprising a change of the development already authorised).

8.6. Appropriate Assessment

- 8.6.1. The subject site is situated c.1km of Mount Hervey Bog Special Area of Conservation. This is an active raised bog which is dependent on mean water levels being near or above the surface for most of the year (site synopsis).
- 8.6.2. The subject site and SAC are situated in the same groundwater body, with the likelihood of connectivity between the sites. Similarly, the two sites lie within the same river sub-basin (although river flow is away from the bog towards the site, see attachments). Having regard to proximity of the subject site to the European site and potential pathway between the sites, an appropriate assessment screening report is likely to have been required for any works likely to substantially affect or interact with groundwater.

8.7. Whether the export of material off site is compatible with the import of material for the purpose of remediation.

- 8.7.1. In 2018 the planning authority issued a waste permit for the importation of inert material to the appeal site under PA ref. WFP-WH-2018-0102-00. The permit is subject to a number of conditions (see file). There is no information available on file, or on the planning authority's website regarding the extent of area covered by the permit or reference to any planning permission for the activity.
- 8.7.2. Notwithstanding this, at the time of inspection, import of material to the site was limited to the western part of the appeal site within the confines of the PA ref. 725/77 & QY39. Subject to the two developments adhering to the conditions of the parent permission/permit, there is no reason why the two developments could not occur in tandem. However, I note that aerial photography indicates historically ponding/groundwater in this area of the quarry, and implies a lack of adherence to conditions of PA ref. 725/77 & QY39.

9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to:

- Whether or not the use and operation of quarry, including the extraction of material from below water table, processing and loading operations and exportation of material from the site is or is not exempted development.
- Whether stage 2 appropriate assessment is required (which would exclude any exempted development).
- Whether EIA or screening for EIA is required for the activities on site (which would exclude any exempted development).
- Whether the export of material off site is compatible with the import of material for the purpose of remediation.

At Annascannon, Killucan, Co. Westmeath.

AND WHEREAS Eco Advocacy requested a declaration on this question from Westmeath County Council and the Council did not issue a declaration in respect of the matter:

AND WHEREAS Eco Advocacy referred this declaration for review to An Bord Pleanála on the 14th day of October, 2020:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (c) Section 4(1)(a) and (4) of the Planning and Development Act, 2000, as amended,
- (d) article 6, 8 and 9 of the Planning and Development Regulations, 2001, as amended,
- (e) the planning history of the site,

- (f) the absence of current quarrying activity at the subject site, and
- (g) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) Use and operation of quarry, including extraction below the water table, processing and loading operations and exportation of material from the site, outside the confines of the permission granted under PA ref. 77/275 & QA39, would comprise works and/or a change of use and constitute development.
- (b) Quarrying, including extraction below water, processing and loading operations and exportation of material, does not benefit from any exempted development provisions and does not therefore comprise exempted development.
- (c) Extension of quarrying beyond the scope of the permitted development, may trigger the requirement for environmental impact assessment and appropriate assessment and would require screening.
- (d) The export of material off site is not incompatible, in principle, with the import of material for the purpose of remediation, subject to compliance with the relevant parent permission (PA ref. 77/275 & QY39) and waste permit (WFP-WH-2018-0102-00).

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3)(b) of the 2000 Act, hereby decides that use and operation of the quarry, extraction of material below water table, processing and loading and exportation of materials, outside the scope of PA ref. 77/275 & QY39 is development and is not exempted development.

Deirdre MacGabhann

Planning Inspector

26th August 2021