



An  
Bord  
Pleanála

## Inspector's Report ABP308844-20

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<b>Question</b>	Whether ongoing quarrying activities on lands is or is not exempted development.
<b>Location</b>	Kilmainham, Mountmellick, County Laois.
<b>Declaration</b>	
Planning Authority	Laois County Council.
Planning Authority Reference.	10/5
Applicant for Declaration	Eco Advocacy.
<b>Planning Authority Decision</b>	No declaration referred to an Bord Pleanála under Section 5(4) of the Planning and Development Act 2000 (as amended).
<b>Referral</b>	Second Party
<b>Referred by</b>	Laois County Council
<b>Occupier</b>	Nutgrove Sand and Gravel Ltd.
<b>Landowner</b>	Seamus Sherlock
<b>Observer(s)</b>	Seamus Sherlock.
<b>Date of Site Inspection</b>	3 <sup>rd</sup> July 2024.
<b>Inspector</b>	Derek Daly.

## 1.0 Site Location and Description

- The proposed site is located in a rural area to the south east of the town of Mountmellick in County Laois. On the site is a stone quarry in current active use which is accessed via a narrow cul de sac local road which in turn has access onto another local road which provides access to the wider road network.
- The quarry is largely located on the southern side of the cul de sac road but there is also an extraction area onto the northern side of the road.

## 2.0 The Question

- 2..1. The question before the Board relates to the question whether ongoing quarrying activities (specifically extraction below the water table, backfilling, boundary removal, haul road building, making up ground, demolition and crushing of construction materials and other developments) on lands at Kilmainham, Mountmellick, County Laois are not development and are not exempted development.
- 2..2. This question was submitted to the Planning Authority in a submission dated the 25<sup>th</sup> August 2020 with a detailed submission received by the planning authority from Eco Advocacy relating to the past use the lands and activities carried out and which was set out in thirteen parts.
- 2..3. As part of the initial assessment of the referral Laois did request further information and a response was received.
- 2..4. Consequent to the response Laois County Council have requested a determination from the Board under Section 5(4) of the Planning and Development Act 2000 (as amended) in a letter dated 4<sup>th</sup> December 2020 (Ref: 10/5) in relation to whether quarrying activities is development and if so whether same is exempted development. A copy of the section 5 application to Laois County, the questions raised by Eco Advocacy and correspondence relating to further information was submitted by Laois County Council.
- 2..5. The Eco Advocacy letter to Laois County referred to thirteen questions/parts as follows;

Part 1 refers to operation at this site and stated as follows;

Having regard to the area worked. We are concerned that much of it exceeds (in particular the extent of the reinstatement works that included no less than the construction of very significant haul roads, backfilling an extensive quarry void and making up a large amount of ground that falls outside of Folio LS2488F along with several other equally significant items) that permitted under 08/943 and Laois County Council is requested to determine whether this is or is not exempted development.

Part 2 refers to breach of water table and stated as follows;

1. We understand that a very large volume of water existed within Folio LS2488F (covering the entire of the quarry floor and standing over c.78 metres AOD) or a vast section within during dry periods) and the abutting lands. We believe that it relates to the extraction of material from below the permitted level in places it is known to have reached c.71 AOD (permitted being c. 7 metres AOD).
2. Extraction constitutes both works and use. The aggregates were blasted, processed and hauled away from the property. Thus, it follows that such extraction is development and is not exempted development.
3. Extraction from below the water table and permitted level is works “under land” and so is development. This refers to breach of water table and this arises from extraction of material below permitted levels. Extraction constitutes works and use and constitutes development. As above the aggregates were blasted, processed and hauled away from the property. Moreover, extraction below the water table (and that examined in the context of the EIA submitted) and permitted levels requires to be assessed as such activity that could pose a significant impact to the environment, and cannot be screened out using desktop screening; therefore, an EIA is required for such activity, as is accepted practice, and any development which requires EIA cannot be exempted development.
4. An EIA was submitted as part of the planning process; however, it did not address the extensive extraction that occurred below the water table, nor the permitted level and the fact that the high winter table has stood at c.78 metres AOD for all winter/spring periods 2012/2020.

5. The EIA submitted it did not consider nor access the potential impact of the extensive development on either the River Barrow and River Nore SAC nor the Mountmellick SAC, both of which are served by the same aquifer and the latter just c. 2km to the north of the vast extraction.
6. Extraction constitutes both works and use. The aggregates extracted are not for use on the landholding for agricultural use or in connection with any current planning permission. Thus, it follows that such extraction is development and not exempted development.
7. Laois County Council is requested to determine whether extraction below the water table is or is not exempted development.

Part 3 refers to extraction (to include dewatering) below the permitted level, water table and into an extensive quarry void and stated as follows;

Regarding a cross section of ground “reinstated”, which we understand has been exposed and extracted below 77 metres AOD (and at least c.72 metres AOD in places) to the best of our knowledge, neither the removal or restoration formed any part of the planning process, nor did the EIA assess any penetration of the water table which appears to serve no less than c. 2 EU Natura 2000 sites consider nor access the potential impact of the extensive development on either the River Barrow and River Nore SAC nor the Mountmellick SAC, neither were assessed as part of the EIA nor the planning process. Laois County Council is requested to determine whether this is or is not exempted development.

Part 4 refers to re-purposing of agricultural lands in close proximity to Folio LS2488F to store of plant and equipment and that a significant section of neighbouring land Folio LS2488F was used to house plant and equipment serving the development from 2014-2020. Laois County Council is requested to determine whether this is or is not exempted development

Part 5 refers to entrance and that two new and separate entrances (a third, the current was made c.2016 and is further to the east markedly larger than the original entrance to Folio LS2488F) were made by the developer to access/egress from their quarry operation c.2009. Laois County Council is requested to determine whether this is or is not exempted development

Part 6 refers to septic tank and states that a site office/canteen and toilet complete with septic tank has been installed, in and upon made up ground. The ground is clearly subsiding and slipping away. It is sat within Folio LS2488F. Laois County Council is requested to determine whether this is or is not exempted development.

Part 7 refers to the issue of EIA threshold and states that

1. It is noted that FolioLS2488F on which lands part of this development is situate on is stated by the Land Registry to contain an area of 7.97ha.
2. The EIA sub threshold determination for extractive developments is 50% of the mandatory EIA threshold, i.e. 2.5 hectares. It would appear from observation that the development is almost certainly does not accord with what was conducted on the site. Laois County Council will need to establish this as a matter of fact. It does not appear as though the EIA submitted sufficiently covers the conduct of the developer and thus is entirely unfit for purpose and in fact ineffective.
3. Regarding the EIA suitability Laois County Council is requested to determine whether this is or is not exempted development.

Part 8 refers to NIA threshold and states that Laois County Council is requested to determine whether Stage 2 NIA is or is not required as nothing on the site can be exempted if Stage 2 NIA is required. Laois County Council is requested to determine whether this is or is not exempted development.

Part 9 refers to the construction and demolition of a significant hard standing to also include drive on/off ramps, an office, canteen and toilet area complete weighbridge and states that

1. A significant hard standing to also include drive on/off ramps, an office, canteen and toilet area complete weighbridge complete with hardcore and ancillary dressing was situate to the east of the existing wheel wash (which falls entirely outside of the lands pertaining to Folio LS2488F and does not appear to have landowner consent) up until c.2019.
2. The developer since has demolished the previous concrete construction, broken up and process all construction waste (which was hauled away from the site).

3. The area exists in a severely compromised manner.
4. The planning permission sought, obtained and granted does not address either the building or the removal of this construction at Kilmainham.
5. Laois County Council is requested to determine whether this is or is not exempted development.

Part 10 refers to exportation of the construction waste and states that;

1. As in Part 9 a significant hard standing to also include drive on/off ramps, an office, canteen and toilet area complete weighbridge was constructed and is since demolished.
2. Neither the planning application made to Laois County Council nor the EIA address the removal of any construction waste from the property.
3. Laois County Council is requested to determine whether this is or is not exempted development.

Part 11 refers to exportation of top soil and states that;

1. Topsoil (up to 2012) having been stripped from the site was systematically exported from the site to various other sites, which the develop sold instead of using it as described in the planning application sought, obtained and granted.
2. The EIA address the removal of topsoil from the property.
3. Laois County Council is requested to determine whether this is or is not exempted development.

Part 12 refers to overburden and states that;

1. There is a large mountainous and several other lunar like mounds around the lands to the north which existed from c.2009.
2. Given that the pile existed from 2009-2016, it is difficult to see how it could be a temporary structure.
3. Laois County Council is requested to determine whether this is or is not exempted development.

Part 13 refers to undermining and or removal of boundaries pertaining to Folio LS2488F to include significant lands outside of Folio LS2499F and states that;

1. Re the lands to the north and eastern boundaries, they appear to have been severely compromised.
2. A vast section of lands along the north west of Folio LS2488LS were wholly removed and extended some several metres into the adjoining land (extending several metres in depth).
3. We are unable to locate any geotechnical assessments confirming the intactness and structural stability of all relevant quarry faces prior to any backfilling taking place.
4. It would appear that all of the material to the west of the eastern boundary of Folio LS2488F was removed and the void extended several metres in depth.
5. We understand that the two roads, which are currently visible to the west of the boundary are made up. We further understand that neither the removal or restoration formed any part of the planning process.
6. The EIA does not address the building of any roads, extensive backfilling nor making up of ground at Kilmainham.
7. Laois County Council is requested to determine whether this is or is not exempted development.

### **3.0 Planning Authority Reports and documentation submitted by Eco Advocacy.**

- Planning Report of the 21<sup>st</sup> September 2020 refers to the submission dated the 25<sup>th</sup> August 2020 and addresses the thirteen points referred to in the submission indicating in general there is a lack of detail in this application; no maps, drawings and factual information is included; and it is therefore not possible to determine whether the developments questioned are development or exempted. Further information was recommended in relation to all thirteen points referenced and this was requested. The submission of the 25<sup>th</sup> August 2020 refers to maps attached.
- A further planning report dated the 27<sup>th</sup> October 2020 indicates the applicant has not submitted any technical details in relation to the further information. Reference is made to a response that as a third party that they cannot survey the lands and to photographs submitted. (It is noted that this submission would

appear to be 6<sup>th</sup> October 2020 and was submitted as part of a submission made to the Board on the 14<sup>th</sup> January 2021 which also has aerial photographs, and maps). A further information request was made on the 28<sup>th</sup> October 2020.

- Eco Advocacy in a response dated the 15<sup>th</sup> November 2020 indicated that they are neither the developer or landowner and have submitted detailed information and have sought a S.5 declaration in relation whether the issues raised are exempted development.
- The planning report in response notes the party requesting the declaration is requesting the council to undertake the survey required to undertake the survey required to determine this Section 5. The report notes that the Planning Authority can only consider the documentation before it in determining this section 5 which is inadequate in this instance. The report recommended that should be referred to An Bord Pleanála under Section 5(4).
- This request was submitted to the Board in a letter dated the 4<sup>th</sup> December 2020.

## 4.0 Planning History

4.1. There is planning application relating to the lands in question.

4.1.1. P.A Reference No. 08/943.

Permission was granted on the 20<sup>th</sup> January 2009 to extract a limestone rock quarry on c. 4.5ha, use of existing access road, provision of portacabin (45m<sup>2</sup>) with canteen, office and washroom; weighbridge, wheelwash, septic tank and percolation area, bunded fuel oil storage and screening berms with a total quarry extraction area of c. 4.5ha within a total planning application area of 8.2ha. An Environmental Impact Statement (EIS) was submitted.

The grant of permission was subject to 18 (eighteen) conditions which outlined a range to requirements in relation to the ongoing extraction operations including ongoing monitoring and implementation of an environment management plan. Conditions specific to site levels for extraction and the water table were also included (condition 10).



The development was the subject of correspondence in relation to compliance with conditions.

4..1.2. The site was also the subject of quarrying registration P.A. Ref. No. QY05/36

4..1.3. The correspondence on the file also refers to enforcement.

Enforcement file UD 15/09

## **5.0 Policy Context**

5..1. Local Planning Policy

The relevant plan is the Laois County Development Plan and successive development plans outline policies and objectives in relation to extraction. The county development plans also outline provisions in relation to the protection of the environment, natural heritage, water and the landscape.

5..2. Natural Heritage Designations

The site is not within a Natura site but may have a potential hydrological connection to the River Barrow and River Nore SAC and the Mountmellick SAC.

## **6.0 The Referral**

6..1. The planning authority in a letter dated the 4<sup>th</sup> December 2020 have sought a determination under section 5(4) following a submission dated the 25<sup>th</sup> August 2020 by Eco Advocacy relating to the use of lands for quarrying related activities carried out and the questions to the planning authority are stated in section 2.5 of this report.

## **7.0 Eco Advocacy Owner/Occupier Responses**

7..1. Eco Advocacy in a response to the Board dated the 14<sup>th</sup> January 2021 in summary refer to;

- The Planning Authority had more than enough information to decide the questions and kept asking for material which was impossible to provide and in any case was unnecessary.

- The submission also makes reference to additional information Enclosure 1 which includes photographs of the site purporting to be 2021.
- Submissions made to the Planning Authority on the 25<sup>th</sup> August 2020 and 6<sup>th</sup> October 2020 are submitted.

7..1. Eco Advocacy in a response to the Board dated the 6<sup>th</sup> April 2021 in summary refer to;

- The Planning Authority has not addressed the matter and the Act provides for referrals to the Board.

## 8.0 Owner Response

8..1. In summary the landowner (Seamus Sherlock) response dated 13<sup>th</sup> January 2021 indicates,

- The response refers to an enforcement notice (UD 15/09).
- Reference to section (condition?) 10 of the planning permission and not to excavate within two metres of the highest water table on-site. A vast portion of the site rests in water.
- The developer carried out works including haul roads, building new boundaries, built a new entrance and worked both in and under water.
- Condition no. 1 of the permission was contravened.
- Reference is made to water quality.
- The landowner support the submission of Eco Advocacy.
- Comments are made in relation to the thirteen parts raised in the referral.
- Photographs are also submitted.

8..2. In summary the owner (Seamus Sherlock) response dated 6<sup>th</sup> April 2021 indicates,

- There is nothing misleading in the Eco Advocacy submissions.
- Reference is made to legal proceedings arising in relation to the development.

## 9.0 Occupier Response

9..1. The occupier/developer Nutgrove Sand and Gravel Ltd response dated the 12<sup>th</sup> January 2021 in summary refers to;

- The referral is not a valid referral and the local authority has no jurisdiction to refer this matter to the Board.
- Reference is made to current District Court proceedings which refer to matters raised in the referral and it is a matter for the Court to determine if the Enforcement Notices arising have been complied with or not.
- Copies of the Enforcement Notice under Ref. No. UD 15/09 dated 5<sup>th</sup> November 2015 are submitted.

9..2. A further response dated the 2<sup>nd</sup> April 2021 in summary refers to;

Reference is made to the incomplete nature of documentation submitted and the developer cannot be expected to address matters when the information was not furnished.

Reference is made to submissions by Eco Advocacy as received.

- The planning history as submitted is misleading.
- There is no reference to the High Court Proceedings and the Judgement in those proceedings a copy of which is enclosed with the submission.
- Reference is made to an appeal of the High Court decision to the Court of Appeal.
- There is no reference to Circuit Court proceedings by the developer against Mr Sherlock and the interim orders against Mr Sherlock and copies of the Court are submitted.
- Reference is made to current Enforcement proceedings.
- Reference is made to the High Court proceedings and that Mr Sherlock is attempting to use the Section 5 to circumvent the Orders of the Court.

## 10.0 Planning Authority Response

- 10..1. The Planning Authority in a response to the Board dated the 7<sup>th</sup> May 2021 noted the request from the Board on the 30<sup>th</sup> March 2021 for a location map indicated that there is a map on the planning application for the quarry but the area referenced in the section 5 reference is far greater than the planning application and do not have a map which encompasses all areas referred to in the section 5.

## 11.0 Statutory Provisions

- 11..1. Planning and Development Act, 2000

- 11..2. Section 2(1) – Interpretation

“quarry” means an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or bore-hole or a well and bore-hole combined, and shall be deemed to include—

(i) any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on;

(ii) any place occupied by the owner of a quarry and used for depositing refuse from it but any place so used in connection with two or more quarries, and occupied by the owner of one of them, or by the owners of any two or more in common, shall be deemed to form part of such one of those quarries as the Minister may direct;

(iii) any line or siding (not being part of a railway) serving a quarry but, if serving two or more quarries shall be deemed to form part of such one of them as the Minister may direct;

(iv) a conveyor or aerial ropeway provided for the removal from a quarry of minerals or refuse.

- 11..3. Section 3(1) – Development

In this Act, except where the context otherwise requires, "development" means—

(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land,

#### 11..4. Section 4 – Exempted Development

Section 4 outlines provisions in relation to exempted development and in subsection (1) what are exempted developments for the purposes of this Act.

Subsection (2) provides that the Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act.

#### 11..5. Section 5 Declaration and referral on development and exempted development.

11..5.1. Subsection (1) Any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

11..5.2. 2(b) A planning authority may require any person who made a request under subsection (1) to submit further information with regard to the request in order to enable the authority to issue the declaration on the question.

11..5.3. (4) Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

#### 11..6. Planning and Development Regulations, 2001

##### 11..6.1. Article 6 (1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

#### 11..6.2. Article 9 (1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.

Schedule 2, Part 1: Exempted Development outlines development which is considered to be exempted development subject to conditions and limitations.

### 12.0 **Assessment**

12..1. The purpose of this referral is not to determine the acceptability or otherwise of the development referred to in the question but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development. It is proposed to address the questions as stated in turn.

12..2. Is or is not development.

12..2.1. In relation to the issue of development section 3 of the Planning and Development Act as the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land.

Section 2 interprets a quarry and related activities which include an excavation or system of excavations made for the purpose of, or in connection with, the getting of

minerals whether in their natural state or in solution or suspension, any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such minerals.

12..2.2. The operation on the site and the use is a quarry as defined in Section 2 of the Planning and Development Act 2000 as amended and which is also within the definition of development as it involves the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land.

12..2.3. The operation of the site as a quarry therefore constitutes development.

12..3. Is or is not exempted development

12..3.1. In relation to exempted development there are no exemption provisions as defined in Article 6 and Schedule 2, Part 1 of the Planning and Development Regulation 2001 as amended which are considered to be exempted development subject to conditions and limitations in relation to the use of the site as a quarry and activities related to a quarry which would apply in relation to this quarry.

12..4. Restrictions on exempted development

12..4.1. In relation to Article 9 this Article relates to development to which article 6 relates shall not be exempted development for the purposes of the Act. Notwithstanding that the development on the site it is not provided for in Article 6 it is noted that Article 9(a)(i) refers to development shall not be exempted development for the purposes of the Act if the carrying out of such development would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act. The relevance of this provision is that it applies in the case of a development which has a development which has the benefit of a planning permission as granted under the planning act.

12..4.2. In this regard therefore, it is noted that the site has the benefit of a planning permission P.A Reference No. 08/943 where permission was granted on the 20<sup>th</sup> January 2009 to extract a limestone rock quarry on c. 4.5 hectares and also provided

for related activities including the use of existing access road, provision of portacabin (45m<sup>2</sup>) with canteen, office and washroom; weighbridge, wheel wash, septic tank and percolation area, bunded fuel oil storage and screening berms within a total planning application area of 8.2ha. The application also included an Environmental Impact Statement.

The use of the site as a quarry was therefore authorised by a grant of planning permission and the conditions of the permission outlined requirements to be adhered to in relation to compliance with the grant of permission. The site, therefore, is or was authorised for use as a quarry notwithstanding the issue of development or exempted development raised in the questions presented initially to the planning authority and the declaration requested by the planning authority under Section 5 of the Planning and Development Act 2000.

- 12..4.3. It is also noted specific to the questions raised it is noted that the planning authority under Section 5 2(b) exercised the provision to require the person who made a request to submit further information with regard to the request in order to enable the authority to issue the declaration on the question and the initial referrer responded partially to this request.
- 12..4.4. In relation to the questions as submitted, the questions although raising matters in terms of asking questions referring to development and exempted development largely raise matters which relate the processing and assessment of a planning application which was granted planning permission and not the subject of an appeal. The questions raised also generally refer to the issue of compliance with the grant of planning permission and the conditions attached and whether the matters raised in the questions more specifically refer to matters of enforcement which is a matter for the planning authority rather than the Board.
- 12..4.5. As a general position development which is compliance with the grant of planning permission would be authorised development in effect in this case authorising works which are deemed to be development. Development deemed not to be in compliance with the grant of planning permission would be unauthorised development and where



the development breaches the grant of permission and conditions attached to the grant of permission would not be considered exempted development.

12.5. Consideration of questions.

- 12.5.1. The first question refers to having regard to the area worked that the works falls outside of the area permitted under 08/943. The details submitted with the application include mapping delineating the site and specify conditions in the grant of permission and if the works contravene the conditions of the permission these works if it is determined that this have occurred it is not exempted development but is a matter for the planning authority in its role as an enforcement authority to determine this.
- 12.5.2. The second question refers to breach of water table and water management issues generally. The application as submitted included detail relating to extraction to certain levels and conditions were included in relation to finished levels. Similarly to the first question the details submitted with the application and conditions of the permission required compliance with details submitted and also specified levels relative to the water table. If the works contravene the conditions of the permission and if it is determined this this has have occurred it is not exempted development but is a matter for the planning authority in its role as an enforcement authority to determine this.
- 12.5.3. The third question also refers to extraction including dewatering below the permitted level, water table and into an extensive quarry void and also to restoration works. The position in relation to this question is as stated in response to the second question.
- 12.5.4. The fourth question refers to use of lands outside of the lands and the area permitted under 08/943 the details submitted with the application and conditions of the permission and if the works referred to contravene the conditions of the permission and if it is determined that this have occurred it is not exempted development but is a matter for the planning authority in its role as an enforcement authority to determine this.

- 12..5.5. The fifth question refers to the entrance and that two new and separate entrances were made by the developer to access/egress from their quarry operation circa 2009. Similarly in relation to this matter should the works referred contravene the details submitted as part of the planning application and the conditions of the permission and if it is determined that this have occurred it is not exempted development but is a matter for the planning authority in its role as an enforcement authority to determine this.
- 12..5.6. The sixth question refers to a site office/canteen and toilet complete with septic tank has been installed, in and upon made up ground. It is noted that the documentation submitted with the application included details relating to these developments including site suitability tests. Similarly in relation to these matters if the works referred to contravene the details submitted and the conditions of the if it is determined that these works which have occurred are not in compliance it is not exempted development but is a matter for the planning authority in its role as an enforcement authority to determine this.
- 12..5.7. The seventh question refers to the issue of EIA threshold and it is noted that an EIS accompanied the planning application which was considered in the assessment of the planning application. It is not a matter under section 5 to consider or assess that the EIA submitted sufficiently covers the conduct of the developer and thus is entirely unfit for purpose and in fact ineffective.
- 12..5.8. The eight question refers to NIA threshold and states that Laois County Council is requested to determine whether Stage 2 NIA is or is not required as nothing on the site can be exempted if Stage 2 NIA is required. This matter would appear to refer to a Natura Impact Statement (NIS). It is not a matter under section 5 to consider or assess that an NIS should have been submitted. The planning application it is noted was submitted in 2008 was assessed by the planning authority and not the subject of an appeal.
- 12..5.9. The ninth question refers to the construction and demolition of a significant hard standing to also include drive on/off ramps, an office, canteen and toilet area complete with weighbridge and occurred in part or otherwise on lands outside of the

area relating to the planning application. In relation to these matters if the works referred to contravene the details submitted and the conditions of the if it is determined that these works which have occurred are not in compliance it is not exempted development but is a matter for the planning authority in its role as an enforcement authority to determine this.

12..5.10. The tenth question refers the exportation of the construction waste. In relation to these matters if the works referred to contravene the details submitted and the conditions of the if it is determined that these works which have occurred are not in compliance it is not exempted development but is a matter for the planning authority in its role as an enforcement authority to determine this.

12..5.11. The eleventh refers to exportation of top soil. It is noted that the details submitted with the planning application does provide for restoration of the site and included drawings and cross sections. In relation to these matters if the works referred to contravene the details submitted and the conditions of the if it is determined that these works which have occurred are not in compliance it is not exempted development but is a matter for the planning authority in its role as an enforcement authority to determine this.

12..5.12. The twelfth question refers to overburden. It is noted that the details submitted with the planning application does provide for restoration of the site including retaining overburden for use in restoration. In relation to these matters if the works referred to contravene the details submitted and the conditions of the if it is determined that these works which have occurred are not in compliance it is not exempted development but is a matter for the planning authority in its role as an enforcement authority to determine this.

12..5.13. The thirteenth question refers to undermining and or removal of boundaries and works which include significant lands outside of the permitted site. it is noted the details submitted with the planning application does provide for restoration of the site including retaining existing boundaries. It is noted reference is made in the question that the EIS which was submitted did not address the building of any roads, extensive backfilling nor making up of ground at Kilmainham. It is not a matter under

section 5 to consider or assess that the EIA submitted sufficiently the matters referred to. In relation to the of removal of boundaries and workings carried outside of the matters if the works referred to contravene the details submitted and the conditions of the if it is determined that these works which have occurred are not in compliance it is not exempted development but is a matter for the planning authority in its role as an enforcement authority to determine this.

#### 12..6. Summary

- 12..6.1. It is not a matter for the Board to consider compliance and enforcement relating a grant of planning permission subject to 18 (eighteen) conditions in considering a declaration requested under Section 5 in which the conditions as outlined relate to a range to requirements in relation to the ongoing extraction operations including ongoing monitoring and implementation of an environment management plan.
- 12..6.2. Specific to the question of what is or is not development the operation of the quarry is development and a planning application was submitted and granted by the planning authority. In relation what is or is not exempted development the Act and Regulations do not provide within their provisions for exempted development. Matters raised in the questions relate to matters of compliance with a grant of planning permission which relate to enforcement and are not matters to be addressed under Section 5.

### 13.0 **Appropriate Assessment**

- 13..1. The site has been the subject of extensive quarrying and extraction and conditions on the site have altered from the commencement of quarry activities. Historic mapping of the site and area does not indicate the presence of surface watercourses on the site. It is noted that the River Barrow and River Nore SAC site code 002162 and Mountmellick SAC Site Code 002141 are within five kilometres of the site but there would not appear to have direct hydrological connection and any connection would be sub terranean and in this regard the submitted EIS and associated EMS addressed discharges to ground water and conditions in the grant of planning permission also specifically address discharge to ground water. Having regard to the distance and lack of connections to the nearest European sites, it is concluded that

no Appropriate Assessment issues arise as the development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 14.0 Recommendation

14..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 ongoing quarrying activities on lands is or is not exempted development: AND

WHEREAS Laois County Council requested a declaration on a number of questions in relation to a request for a declaration from Eco Advocacy from the Board under Section 5(4) of the Planning and Development Act 2000 (as amended) in a letter dated 4<sup>th</sup> December 2020 in relation to whether quarrying activities is development and if so whether same is exempted development. 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 of the Planning and Development Act, 2000,
- (c) Section 4 of the Planning and Development Act, 2000, as amended,
- (d) articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (e) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the ongoing quarrying activities on lands constitutes development as defined under section 3(1)(a) of the Planning and Development Act 2000 (as amended),
- (b) constitutes a material change of use of these lands and is development and is not exempted development as it does not come within the scope of the provisions of

Section 4 and the provisions of the Planning and Development Regulations, 2001 (as amended),

(c) there are no exemptions provided for in the said Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended) where the works are not provided for in any grant of planning permission or where the works are not in compliance with a grant of planning permission.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act (as amended), hereby decides that the ongoing quarrying activities on the lands is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Derek Daly  
Planning Inspector

13<sup>th</sup> August 2024