



An
Bord
Pleanála

Inspector's Report ABP-309419-21.

Development	Leave to apply for substitute consent under Section 177C.
Location	Ballynahallia, Moycullen, Co. Galway.
Planning Authority	Galway Council.
Applicant(s)	M&M Caireal Teoranta.
Date of Site Inspection	26/05/2021 & 20/11/2021.
Inspector	A. Considine.

1.0 Introduction

- 1.1. This is an application for leave to apply for substitute consent pursuant to section 177C(2)(b) of the Planning and Development Acts, 2000-2014.

2.0 Site Location and Quarry Operation

- 2.1. The subject appeal site is located within an existing quarry in the townland of Ballynahallia, approximately 2.5km to the north of Moycullen, Co. Galway. The wider area in the vicinity of the subject site is rural in nature with a number of one-off houses noted along the access roads. The Moycullen Nursing Home lies approximately 200m to the south-east of the site while the Moycullen GAA Pitch is located a similar distance to the south. The area is also characterised by a mix of wooded areas and extensive areas of rocky outcrop. Access to the site is over a minor county road which runs along the south and western sides of the site. This road connects with the N59 at Moycullen.
- 2.2. The entrance to the site is set back from the public road at a bend in the road and the quarry itself is extensively hidden from public view through planting and fencing. Within the quarry site, which covers a total area of approximately 5.1ha within a landholding of 8.3ha, I noted a small office building, weighbridge and wheel wash area close to the entrance. Access to the quarry floor is over an established internal road, which was gated and locked on the date of my site inspection. I noted a number of mobile machinery and equipment present on the quarry floor, but none were in use.
- 2.3. Limestone rock has been extracted from a single bench across the extraction site of 5.1ha to the north of the office and weighbridge. Rock was extracted from the quarry by blasting and is subsequently crushed, screened and stockpiled on the quarry floor. The quarry appears to have been generally worked dry but surface water within the quarry floor was evident within the south-eastern area of the quarry floor.
- 2.4. The quarry lies immediately south of a smaller limestone quarry (PA ref. QSP27, Board file 07.QV0071, attached) and the Board granted a Substitute Consent, 07.SU.0084 refers, for the subject site. Following this decision, the applicant sought permission for a small area of further extraction, 0.69ha, and to import inert soil and

stone, to give effect to the restoration conditions of the Substitute Consent over 2.6ha. In the course of that application to Galway County Council, a third-party indicated to the Planning Authority that a small amount of extraction had occurred post the grant of Substitute Consent, and therefore not in accordance with the permission and required regularisation. A subsequent application was made to the PA under Section 34 of the Planning and Development Act solely to retain the offending extraction which was quantified at 400m² in an overall extraction area of approximately 51,000m². The area is contained in two blasts which occurred in August 2015 and January 2016 with a total yield of just over 10,000 tonnes of rock. The PA refused to validate the application on the basis that it was adjudged to require Stage 2 AA. It is noted that no extraction or quarrying has occurred at the site since the last of the two small blasts. The quarry remains in place but unused.

- 2.5. The current application to the Board under Section 177C for Leave to Apply for Substitute Consent is the result of the applicant unable to give effect to the restoration requirements of the grant of Substitute Consent under the provisions of S34.

3.0 Planning History

- 3.1. The Board will note that there is an extensive history associated with this quarry site which extends all the way back to the 1950s, including a referral to An Bord Pleanála, 07.RF.1044 refers, where the specific question of whether or not the quarrying activity on the site is or is not development or exempted development. The Board in this instance concluded as follows:

- (a) The use of part of the land for the quarrying of rock commenced prior to the appointed date (1st October 1964).
- (b) The use of the land during the period from the appointed day to the early 1990's was on a limited scale and intermittent in nature.
- (c) The use of the land since the late 1990's for the quarrying of rock involved intensification of use to a degree which resulted in the making of a material change in the use of the land relative to the use on or before the appointed day having regard to the proper planning and development of the area.

- (d) The change in the use of the land since the late 1990's comes within the scope of the meaning of "development" in Section 3(1) of the 1963 Act being a material change of use.

The Board decided therefore that the said quarrying activity is development and is not exempted development.

- 3.2. **ABP ref: QV07.QV0057 (PA ref: QV33):** The quarry was registered under PA ref: QV 33 and had conditions imposed under Section 261(6) as a pre-63 site. The Planning Report prepared in relation to Section 261A noted that the quarry was registered under the provisions of Section 261. M&M Caireal Teoranta requested a review in respect of the determination by Galway County Council under the provisions of Section 261A of the Planning and Development Act 2000, as amended by the insertion of Section 75 of the Planning and Development (Amendment) Act 2010 and as further amended by the European Union (Environmental Impact Assessment and Habitats) Regulations 2011 and European Union (Environmental Impact Assessment and Habitats) Regulations 2012. Full details of the Board decision are included in the file, and it is noted that it was determined that both EIA and NIA offences existed, and the applicant was directed to apply for Substitute Consent with a rEIS and rNIS.
- 3.3. **ABP ref: 07.SU0084:** The current applicant brought forward an application for substitute consent under Section 177E of the Planning and Development Act 2000, as amended pursuant to the notice under Section 261A of the Act. The application included a remedial EIS and remedial NIS as required. The Board granted the substitute consent subject to conditions.
- 3.4. **PA ref: 17/448:** Permission was sought for further extraction on 0.69ha within a 2.6ha designated quarry area, and the importation of soil onto the site to give effect to the restoration conditions of the Substitute Consent. In the course of this application to Galway County Council, a third-party indicated to the Planning Authority that a small amount of extraction had occurred post the grant of Substitute Consent, and therefore not in accordance with the permission and required regularisation. The application was withdrawn to correctly identify and address the identified offending item.

In relation to the above, and by way of explanation of development post the granting of the substitute consent, the applicant indicates that two small boundary edge areas

of rock were extracted, with a cumulative area of 400m² using two blasts. It is submitted that these blasts were required for Health and Safety reasons and that the nature of the areas blasted, and discrete locations is supportive of non-commercial need for the blasts as they do not follow an operational plan, covering approximately 0.79% of the overall site extraction area. The finished level was no deeper than the positively assessed quarry floor level in the substitute consent application, with rEIS and rNIS.

4.0 Policy and Context

4.1. Development Plan

- 4.1.1. The Galway Development Plan 2015 – 2021, is the relevant policy document relating to the subject site. The site is located within a rural area and Chapter 6 of the CDP deals with services, including Section 6.20 deal with Mineral Extraction and Quarries and Section 6.21 which sets out the policies and objectives relating to mineral extraction and quarries. Section 6.20 of the Plan notes that:

‘Quarrying and other extractive industries are recognised as important to the local rural economic development of the County in terms of generating employment and providing raw material to the construction industry. The Plan further states that the Council will facilitate harnessing the potential of the area’s natural resources while ensuring that the environment and rural and residential amenities are appropriately protected.’

- 4.1.2. Section 6.21 sets out the policies and objectives for quarrying which include protections for Natura 2000 sites as well as encouraging the sustainable reuse of quarries.
- 4.1.3. Chapter 13 of the Plan deals with Development Standards and DM Standard 37 deals with Extractive Development.

4.2. Natural Heritage Designations

- 4.2.1. The site is not located within any designated site. The closest Natura 2000 site is the Ross Lake and Woods SAC (Site Code: 001312) which is located approximately 1.2km to the west of the site. Lough Corrib SAC (Site Code: 000297) lies

approximately 700m to the north of the site (at its closest point) while the Lough Corrib SPA (Site Code: 004042) is located approximately 1.7km to the south-east. The Connemara Bog Complex SAC (Site Code: 002034) lies approximately 5.5km to the south-west of the site.

4.2.2. Other sites within 15km of the site include as follows:

- Gortnandarragh Limestone Pavement SAC (Site Code: 001271) (4.3km NW)
- Connemara Bog Complex SPA (Site Code: 004181) (12km SW)
- Galway Bay Complex SAC (Site Code: 000268) (11.5km SE)
- Inner Galway Bay SPA (Site Code: 004031) (12.3km SE)
- Cloughmoyne SAC (Site Code: 000479) (13.7km North)

5.0 Legislative Context

5.1. The basis for substitute consent is set out in Part XA (Section 177A – O) of the Planning and Development Act, 2000, as amended.

5.2. Planning and Development Act 2000 as amended 177C—

- (1) A person who has carried out a development referred to in subsection (2), or the owner or occupier of the land as appropriate, to whom no notice has been given under section 177B, may apply to the Board for leave to apply for substitute consent in respect of the development.
- (2) A development in relation to which an applicant may make an application referred to in subsection (1) is a development which has been carried out where an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required, and in respect of which—
 - a) the applicant considers that a permission granted for the development by a planning authority or the Board may be in breach of law, invalid or otherwise defective in a material respect, whether pursuant to a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union, or otherwise, by reason of—

- (i) any matter contained in or omitted from the application for permission including omission of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or inadequacy of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or
 - (ii) any error of fact or law or a procedural error, or
- (b) the applicant is of the opinion that exceptional circumstances exist such that it may be appropriate to permit the regularisation of the development by permitting an application for substitute consent.

5.3. Planning and Development Act 2000 as amended 177D.—

- (1) Subject to section 261A(21), the Board shall only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required in respect of the development concerned and where it is further satisfied—
 - (a) that a permission granted for development by a planning authority or the Board is in breach of law, invalid or otherwise defective in a material respect whether by reason of a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union, or otherwise, by reason of—
 - (i) any matter contained in or omitted from the application for the permission including omission of an environmental impact statement or a Natura impact statement or both of those statements as the case may be, or inadequacy of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or
 - (ii) any error of fact or law or procedural error, or
 - (b) that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

5.4. In considering whether exceptional circumstances exist, Section 177D(2) sets out the following criteria to which the Board should have regard:

- (a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;
- (b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;
- (c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;
- (d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;
- (e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;
- (f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;
- (g) such other matters as the Board considers relevant.

5.5. Planning and Development Regulations 2001 as amended, SCHEDULE 7 –

Criteria for determining whether a development would or would not be likely to have significant effects on the environment¹.

- 1. Characteristics of the development including the size and cumulation with other existing development.
- 2. Location of proposed development including the environmental sensitivity of geographical areas likely to be affected by proposed development, having regard in particular to:
 - a) existing and approved land use,

¹ To determine if EIA is required

- b) the abundance, availability, quality of natural resources,
- c) the absorption capacity of the natural environment, including areas classified or protected under legislation, including Natura 2000 areas designated pursuant to the Habitats Directive and Birds Directive.

- 3. Type and characteristics of potential impacts including magnitude, nature, intensity and complexity, duration, frequency and reversibility, and cumulation of impact.

5.6. Planning and Development Regulations 2001 as amended, SCHEDULE 7A in terms of screening sub-threshold developments for EIA.

6.0 The Application

6.1. Applicants Submission

- 6.1.1. The submission sets out the history of the subject site and arrival to the decision to seek leave to apply for substitute consent for two small areas of the wider quarry site. The application for leave to apply for Substitute Consent came about following a Section 34 application to Galway County Council for permission to extract a small area (0.69ha) and to import soil and stone to give effect to the restoration conditions of the Substitute Consent (SC) over 2.6ha. In the course of the application, a third-party advises the Council that a small amount of extraction had occurred post the granting of the SC, and therefore, was not in accordance with said permission and required regularisation. The offending development related to a combined area of 400m² contained in two blasts which occurred in August 2015 and January 2016 with a total yield of 10,500 tonnes of rock. The PA refused to validate the application on the basis that the development required a Stage 2 Appropriate Assessment.
- 6.1.2. It is submitted that no extractive or quarrying development has taken place at the site since the last of the two blasts and dispatch of the yield. The quarry plant remains on site but unused and the site is effectively de-commissioned. All fuel was removed from the site. The applicant submits that he is unable to give effect to the restoration requirements of the grant of SC using the provisions of S34 and as such, has submitted this application to the Board under Section 177C for leave to apply for SC.

6.1.3. The applicant requests, however, that the Board refuse leave to apply for substitute consent in respect of the works carried out on the site on the basis that no actual NIA offence exists as a result of the development complained of and thus, Section 177C of the Act does not apply in this case. A refusal by the Board would overturn the decision of the PA to invalidate the most recent application and allow for the re-submission of the application to retain the offending development under Section 34.

6.1.4. The case put forward by the applicant can be summarised as follows:

- The applicant does not believe that an NIA offence exists on the site given the limited development and based on established decisions by the Board.
- The long-term desire to import soils was previously stated in the SC application and was part of the long-term site treatment as assessed in that application.
- The operator believed that the completion of the development was permitted subject to compliance with the s261 conditions.
- The SC application included a rEIS and rNIS for the 5.1ha extracted area. The current area of 400m² is not alleged to have infringed the EIA Directive.
- The area the subject of the development post SC relates to two small boundary edge areas of rock which were required for Health & Safety reasons. It is considered that this is reasonable given that most quarries cannot suddenly stop everything indefinitely without due regard to the existing faces, including overhangs.
- The nature of the areas blasted, and discrete locations is supportive of non-commercial need for the blasts as they clearly do not follow an operational plan.
- The 400m² site area amounts to an extension of the SC site of just 0.78% of the overall extraction area. The finished level was no deeper than the positively assessed quarry floor level in the SC application with rEIS and rNIS.
- The miniscule unauthorised extension did not raise EIA issues, with NIA the only potential issue arising.

- The PA refused to validate the application for retention for the 400m² area, on the basis that the application required a Stage 2 AA in their view. It is submitted that the PA did not have regard to the documents submitted with the application or the scale of the development and was merely following a policy to seek a Stage 2 AA for all developments of the general nature in Connemara.
- In terms of S177C, it is the submitted opinion that the evidence presented supports a finding that no NIA offence has been committed and that the Board may decide as such. However, should the Board reject the evidence offered and decide that S177C applies in this instance, then the very limited nature and scale of the development, the good faith nature of the error made, and other factors relevant to the decision should result in a finding that exceptional circumstances exist, and the applicant may apply for Substitute Consent under Section 177E.
- The submission presents a summary of the assessment under 07.SU.0084, and noted that the application to Galway County Council, 17/448 refers, included proposals to give effect to the conditions of the SC.
- It is noted that the Inspector in the SC application carried out a thorough assessment and produced a comprehensive report on the application with regard to environmental assessment and noted the details of the application for the adjacent small quarry, 07.QV0071.
- The submission also seeks, without prejudice to the arguments made that the post consent development did not give rise to an NIA offence, to set out the exceptional circumstances to support the view that the applicant could not reasonably have known that the unauthorised development was offensive to the Habitats Directive.

6.1.5. The submission concludes as follows:

- The unauthorised development has not actually offended the Habitats legislation and the requirement by Galway County Council for Stage 2 AA is erroneous. Therefore, the application should be refused as Section 177C is not applicable.

- In the event that the Board decides an offence does exist, it is submitted that the applicant should not have reasonably known that such minor development was capable of causing such offence for the following reasons:
 - Past assessments of the larger development
 - Legal doubt as to the extent of Substitute Consent at the time of the offence
 - The unauthorised development had not continued before it was complained of, supportive of the assertion that it was required for reasons of face stability, supported by the nature and locations of the two small blasts.

The submission includes a number of enclosures.

6.2. Planning Authority Submission

None.

7.0 Assessment

7.1. Introduction

- 7.1.1. The basis for substitute consent is set out in Part XA (Section 177A – O) of the Planning and Development Act 2000 (as amended). This is an application for leave to apply for Substitute Consent under section 177C of the Act. Section 177C(2) is in two parts - (a) a permission granted for development by a planning authority, or the Board is in breach of law, invalid or otherwise defective in a material respect whether by reason of a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union, or otherwise defective and (b) exceptional circumstances.
- 7.1.2. The Board will note that it is the Applicants submission that Section 177C does not apply on the basis that no actual NIA offence exists as a result of the development and therefore the application should be refused. The application submits that should the Board decide that an NIA offence does exist, the documentation includes grounds that support the view that any offence was accidental, and the applicant

could not reasonably have believed that such limited development to be an offence, based on the established decisions by the Board.

- 7.1.3. Section 177D(1) of the Act specifies that the Board can only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment was or is required in respect of the development concerned and (per s177D(2)(b)) where it is further satisfied that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent. Section 177D(4) provides that the Board shall decide whether to grant leave to apply for substitute consent or refuse to grant such leave.

7.2. History

- 7.2.1. This application for leave to apply for substitute consent has arisen following the submission of a Section 34 application to Galway County Council for further quarrying at the site and for soil importation to the site in order to restore the 2.6ha of the quare quarry floor (Galway Co. Co. ref: 17/448 refers). In the course of the PAs assessment of this application, which included a stage 1 AA Screening Report, an objector indicated that an amount of unauthorised extraction had taken place at the site which was not in accordance with the Bords grant of substitute consent (ABP ref: 07.SU0084 refers). The applicant withdrew this application for permission.
- 7.2.2. Following the granting of substitute consent by ABP for an area of 5.1ha within a larger working quarry area of 8.3ha, two small boundary edge areas of rock, with an accumulative area of 400m² were extracted using two blasts, one in August of 2015 and January of 2016, yielding approximately 10,500 tonnes of stone. It is submitted by the applicant that these blasts were required for health and safety reasons, are supportive of non-commercial need, and that no further work has taken place at the site. The finished levels of this 400m² area (amounting to 0.78% of the overall extraction area) are no deeper than the permitted quarry floor.
- 7.2.3. An application to retain the 400m² area to Galway County Council was not validated based on the PAs view that the application required a Stage 2 AA. On foot of the

PAs refusal to validate the S34 application for retention, the only option remaining was to apply to ABP under Section 177C for leave to apply for substitute consent.

7.3. Requirement for Environmental Impact Assessment or EIA Determination

7.3.1. Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) sets out the class of developments which provide that mandatory EIA is required. With respect to the extraction activities, Schedule 5, Part 2, Class 2(b) sets out the following applicable threshold:

Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares.

7.3.2. Galway County Council determined under Section 261A of the Planning and Development Act, 2000 as amended (PA Ref. QSP33 refers) that development was carried out within the wider quarry site after the 1st day of February 1990, which would have required an environmental impact assessment or a determination as to whether an environmental impact assessment was required. An application for Substitute Consent under Section 177E of the P & D Acts was determined by the Board, ABP ref SU07.SU0084 refers, and included a remedial EIA. The area of the quarry under the permitted Substitute Consent application was 5.1ha while the area of the subject application amounts to 400m². As such, alone, the proposed development is not of a scale or nature which would trigger the need for a statutory EIAR.

7.3.3. In addition to the above, I note the provisions of Part 13 of Schedule 5 of the Planning and Development Regulations which deals with changes, extensions, development and testing of development already authorised. Having regard to the nominal size of the area of development the subject of this application for leave to apply for Substitute Consent, it is clear that the works undertaken has not resulted in an increase in the quarry size greater than 25% of the existing quarry and is substantially below 50% of the relevant 5ha threshold.

7.3.4. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a

significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

- 7.3.5. Schedule 7 of the of the Planning and Development Regulations, 2001 (as amended) sets out three criteria for determining whether a development would or would not be likely to have significant effects on the environment. I consider each criteria as follows:

Characteristics of the Proposed Development

- The subject development occurred immediately adjacent to a permitted quarry and within the quarry face. The Board will note that the area of the quarry is generally confined due to the presence of the internal road to the south and west which facilitates access to the quarry floor as well as the other smaller quarry area to the north (ABP ref: 07.QV0071 (PA ref. QSP27) refers).
- The subject area comprises an area which occupies less than 1% of the overall approved quarry area and within the landholding.
- The works carried out comprised two blasts which are indicated as having been necessary from a health and safety perspective. It is submitted that they nature of the areas blasted and the discrete locations, is supportive of non-commercial need.
- There is no evidence of any further operations occurring at the site since the

Location of the Proposed Development

- The quarry is located within a rural area, in the townland of Ballynahallia, approximately 2.5km to the north of Moycullen, Co. Galway.
- Access to the site is over a minor county road which runs along the south and western sides of the site. This road connects with the N59 at Moycullen. The entrance to the site is sect back from the public road at a bend in the road and the quarry itself is extensively hidden from public view through planting and fencing.

- The site is located within a Class 3 landscape which has a medium sensitivity and high landscape value rating as per the current Galway County Development Plan 2015-2021.
- The site is not located within any designated site. The context of the site is within an area which includes quarries and I note areas of exposed calcareous rock or limestone pavement, a priority habitat listed in Annex I of the EU Habitats Directive. This area of exposed rock is located to the west of the site and within the townland of Baile Doite.
- As part of the Substitute Consent application for the wider quarry, the Board carried out a robust EIA in cumulation with other quarry developments in the vicinity and concluded that the development was not and would not be likely to have significant effects on the environment.

Characteristics of potential Impacts

- Having regard to the nature of the works the subject of this leave to apply for substitute consent, I would accept that the areas are removed from any designated site and are of a small scale.
- Having regard to the minimal scale of the are the subject of this application for leave to apply for SC, I do not consider that the works gave rise to significant impacts in terms of habitats or species. I further note that applicant has indicated that there was no further loss of Annex I habitats due to the extraction of the already bare 400m² post consent development.
- With regard to species using the quarry, the previous rEIS noted that both Ravens and Peregrine Falcons breed on the site and both species are listed in Annex I of the EU Birds Directive. In terms of impact, the previous rEIS recommended mitigation measures to limit the impact of blasting on these species which were deemed reasonable.
- Given the tree cover in the area, I am satisfied that no visual impacts arise.
- I note the proximity of Moycullen Nursing Home and the GAA Pitch to the south-east and south of the site. However, I do not consider that significant impacts arise due to the presence of woods between the site and these sensitive receptors.

- I do not consider that roads and traffic issues arise in terms of the 400m² area the subject of this application.
- I note that the subject area is described as having been already bare ground and was lowered to the existing quarry floor level at 6mOD. It is further submitted that when the post consent development was carried out, the protective measures with regard to water discharges were still in place.
- The removal of plant and unused machinery at the site will be part of the site restoration but its continued presence in a non-operational state, is not an environmental risk.

Conclusion

- 7.3.6. The primary objective of the EIA directive is to ensure that projects which are likely to have significant effects on the environment (by virtue of their nature, size or location) are subject to an assessment of their likely impacts. In terms of the subject application, the post substitute consent extraction at the quarry at Ballynahallia extends over a very small area, of 400m². The extraction, which is submitted as having been necessary in terms of health and safety, was from above the water table and is in line with the level of the wider quarry floor. I further note that the two areas are not located within or adjacent to any protected sites and is unlikely to have given rise to a significant risk of pollution of groundwater or related waterbodies.
- 7.3.7. I am further satisfied that the site is adequately removed from any sensitive receptor, including the houses and the nursing home along the public roads in the vicinity of the site. Overall, I do not consider these potential impacts are significant or that they would extend over a large geographical area.
- 7.3.8. In light of the above, I conclude that there is no real likelihood of significant effects on the environment arising from the post consent development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.4. Requirement for Appropriate Assessment

- 7.4.1. The EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of

designated conservation areas collectively referred to as Natura 2000 (or 'European') sites. Under Article 6(3) of the Habitats Directive, the Board, as the competent authority and prior to granting a consent must carry out an Appropriate Assessment for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The proposed development is not directly connected with or necessary to the management of a European site.

7.4.2. The site is not located within any designated site. The closest Natura 2000 site is the Ross Lake and Woods SAC (Site Code: 001312) which is located approximately 1.2km to the west of the site. Lough Corrib SAC (Site Code: 000297) lies approximately 700m to the north of the site (at its closest point) while the Lough Corrib SPA (Site Code: 004042) is located approximately 1.7km to the south-east.

7.4.3. Other sites within 15km of the site include as follows:

- Gortnandarragh Limestone Pavement SAC (Site Code: 001271) (4.3km NW)
- Connemara Bog Complex SAC (Site Code: 002034) (5.5km SW)
- Connemara Bog Complex SPA (Site Code: 004181) (12km SW)
- Galway Bay Complex SAC (Site Code: 000268) (11.5km SE)
- Inner Galway Bay SPA (Site Code: 004031) (12.3km SE)
- Cloughmoyne SAC (Site Code: 000479) (13.7km North)

7.4.4. The Board will note the planning history of the site where an application for Substitute Consent, ABP ref: SU07.SU0084 refers, was submitted and determined by the Board in June 2015. This application included a remedial natura impact statement. The Boards decision included an Appropriate Assessment whereby it was determined that

'the quarry would have no adverse impacts on the conservation objectives of the Connemara Bog Complex SAC, Gortnandarragh Limestone Pavement SAC or Galway Bay Complex SAC/SPA, which all lie outside of the catchment of the water body. However, pollution of surface water or groundwater on site could be transported off site and impact on water quality in the Lough Corrib

SAC or the Ross Lake and Woods SAC (although this water body is likely to be 'up groundwater flow' of the quarry site).'

7.4.5. Following further assessment and consideration of the information available by the Inspector, including mitigation measures proposed within the rNIS, the Boards AA concluded that no residual impacts remained and that the quarry, by itself or in combination with other plans and projects, including the neighbouring quarry, would not be likely to have adversely affected and would not be likely to adversely affect the integrity of any European Sites, including the Ross Lake and Wood SAC (site code 001312) and the Lough Corrib SAC and SPA (site code 000297 and 004042 respectively) in light of their conservation objectives.

7.4.1. In terms of the subject application, the Board will note the nominal size of the area to be assessed. Having regard to the previous AA carried out by the Board, I would consider that the following Natura 2000 sites, located within 15km of the subject site, can be identified as being within the zone of influence of the project, for the purposes of AA Screening, as follows:

- Ross Lake and Woods SAC (Site Code: 001312)
- Lough Corrib SAC (Site Code: 000297)
- Lough Corrib SPA (Site Code: 004042)

7.4.2. The above sites are considered on the basis of potential hydrological connection as the quarry lies within the Corrib Catchment, with the underlying groundwater connected to both Lough Corrib and the Ross Lake water body. While the extraction on the site, including the subject areas, has not occurred below the watertable, due to the karstified nature of the bedrock, together with the level of the winter groundwater, there is potential for pollution of surface or groundwater to occur.

Relevant Natura 2000 Sites:

7.4.3. Ross Lake and Woods SAC (site code 001312).

Ross Lake and Woods SAC lies approximately 1.2km to the west of the quarry. The SAC is designated for its lake, which provides a good example of a hard water lake, and due to the presence of a breeding colony of Lesser Horseshoe Bat, which occur in an out-building beside Ross House. Otter and a small colony of Common Gull are also present on the site.

7.4.4. Lough Corrib SAC and SPA (site codes 000297 and 004042 respectively). Both the SAC and SPA are located approximately 700m and 1.7km to the east of the subject site. These large sites are centred on Lough Corrib. The SAC is designated for a number of habitats and species listed in Annex I and II of the EU Habitats Directive. The SPA is designated for 13 breeding and/or wintering birds which utilise the site.

Qualifying Interests for Natura 2000 Sites within Zone of Influence

7.4.5. The following table sets out the qualifying interests for each of the identified Natura sites:

European Site	Qualifying Interests
<p>Ross Lake and Woods SAC (site code 001312) Located approx. 1.2km to the west of the site</p>	<ul style="list-style-type: none"> • Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. [1365] • Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]
<p>Lough Corrib SAC (Site Code: 000297) Located approx. 0.7km to the east of the site.</p>	<ul style="list-style-type: none"> • Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110] • Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea [3130] • Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. [3140] • Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260] • Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210] • Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410] • Active raised bogs [7110] • Degraded raised bogs still capable of natural regeneration [7120] • Depressions on peat substrates of the Rhynchosporion [7150] • Calcareous fens with Cladium mariscus and species of the Caricion davallianae [7210]

	<ul style="list-style-type: none"> • Petrifying springs with tufa formation (Cratoneurion) [7220] • Alkaline fens [7230] • Limestone pavements [8240] • Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] • Bog woodland [91D0] • Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] • Austropotamobius pallipes (White-clawed Crayfish) [1092] • Petromyzon marinus (Sea Lamprey) [1095] • Lampetra planeri (Brook Lamprey) [1096] • Salmo salar (Salmon) [1106] • Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303] • Lutra lutra (Otter) [1355] • Najas flexilis (Slender Naiad) [1833] • Hamatocaulis vernicosus (Slender Green Feather-moss) [6216]
<p>Lough Corrib SPA (Site Code: 004042) Located approx. 1.7km to the east of the site.</p>	<ul style="list-style-type: none"> • Gadwall (Anas strepera) [A051] • Shoveler (Anas clypeata) [A056] • Pochard (Aythya ferina) [A059] • Tufted Duck (Aythya fuligula) [A061] • Common Scoter (Melanitta nigra) [A065] • Hen Harrier (Circus cyaneus) [A082] • Coot (Fulica atra) [A125] • Golden Plover (Pluvialis apricaria) [A140] • Black-headed Gull (Chroicocephalus ridibundus) [A179] • Common Gull (Larus canus) [A182] • Common Tern (Sterna hirundo) [A193] • Arctic Tern (Sterna paradisaea) [A194] • Greenland White-fronted Goose (Anser albifrons flavirostris) [A395] • Wetland and Waterbirds [A999]

Conservation Objectives:

7.4.6. The Conservation Objectives for the relevant designated sites are as follows:

European Site	Conservation Objectives
<p>Ross Lake and Woods SAC (site code 001312)</p> <p>Located approx. 1.2km to the west of the site</p>	<ul style="list-style-type: none"> • The NPWS has identified a site-specific conservation objective to restore the favourable conservation condition of the following habitat and species listed as a Qualifying Interest, as defined by a list of attributes and targets: <ul style="list-style-type: none"> ○ Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. [1365] ○ Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]
<p>Lough Corrib SAC (Site Code: 000297)</p> <p>Located approx. 0.7km to the east of the site.</p>	<ul style="list-style-type: none"> • The NPWS has identified a site-specific conservation objective to maintain the favourable conservation condition of the following habitat and species listed as a Qualifying Interest, as defined by a list of attributes and targets: <ul style="list-style-type: none"> ○ Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation [3260] ○ Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210] ○ Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410] ○ Calcareous fens with Cladium mariscus and species of the Caricion davallianae [7210] ○ Petrifying springs with tufa formation (Cratoneurion) [7220] ○ Alkaline fens [7230] ○ Limestone pavements [8240] ○ Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] ○ Bog woodland [91D0] ○ Austropotamobius pallipes (White-clawed Crayfish) [1092] ○ Lampetra planeri (Brook Lamprey) [1096] ○ Salmo salar (Salmon) [1106] ○ Lutra lutra (Otter) [1355] ○ Hamatocaulis vernicosus (Slender Green Feather-moss) [6216]

	<ul style="list-style-type: none"> • The NPWS has identified a site-specific conservation objective to restore the favourable conservation condition of the following habitat and species listed as a Qualifying Interest, as defined by a list of attributes and targets: <ul style="list-style-type: none"> ○ Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110] ○ Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea [3130] ○ Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. [3140] ○ Active raised bogs [7110] ○ Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] ○ Petromyzon marinus (Sea Lamprey) [1095] ○ Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303] ○ Najas flexilis (Slender Naiad) [1833] • Degraded raised bogs still capable of natural regeneration [7120] <p>The long-term aim for Degraded raised bogs still capable of natural regeneration is that its peat-forming capability is re-established; therefore, the conservation objective for this habitat is inherently linked to that of Active raised bogs (7110) and a separate conservation objective has not been set in Lough Corrib SAC</p> • Depressions on peat substrates of the Rhynchosporion [7150] <p>Depressions on peat substrates of the Rhynchosporion is an integral part of good quality Active raised bogs (7110) and thus a separate conservation objective has not been set for the habitat in Lough Corrib SAC</p>
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<p>Lough Corrib SPA (Site Code: 004042) Located approx. 1.7km to the east of the site.</p>	<ul style="list-style-type: none"> • To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA. • To maintain or restore the favourable conservation condition of the wetland habitat at Lough Rea SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.
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Potential Significant Effects

7.4.7. In terms of an assessment of Significance of Effects of the proposed development on qualifying features of Natura 2000 sites, having regard to the relevant conservation objectives, I would note that in order for an effect to occur, there must be a pathway between the source (the development site) and the receptor (designated sites). As the proposed development site lies outside the boundaries of the European Sites, no direct effects are anticipated. With regard to the consideration of a number of key indications to assess potential effects, the following is relevant:

- **Habitat loss / alteration / fragmentation:** The subject site lies at a remove of some 0.7km from the boundary of any designated site. As such, there shall be no direct loss / alteration or fragmentation of protected habitats within any Natura 2000 site.
- **Disturbance and / or displacement of species:** The site lies within a longstanding quarried environment. No qualifying species or habitats of interest, for which the designated sites are so designated, occur at the site. The Board will note that the previous application for Substitute Consent included a remedial EIA and remedial NIS which considered the impact of the quarry on protected species associated with Natura 2000 sites within the zone of influence, and in particular the Lesser Horseshoe Bat, a QI of both Ross Lake and Woods SAC and Lough Corrib SAC. The rNIS also noted that Ravens and Peregrine Falcons are noted to nest within the existing quarry. As the subject site is not located within or immediately adjacent to any Natura 2000 site and having regard to the history of the site, the nature and limited scale of the area of quarrying to be considered here, together with the

distance of the site from the designated sites, there is little or no potential for disturbance or displacement impacts to species or habitats for which the identified Natura 2000 sites have been designated.

- **Water Quality:** Extraction has been undertaken at the site above the water-table level. In the context of the planning history and having regard to the nominal scale of the proposed development in the context of the wider quarry, I am generally satisfied that there is little likelihood of significant environmental effects on the conservation objectives of the nearby Natura 2000 sites. I also note mitigation measures were in place at the time of the works.

Cumulative Impacts

- 7.4.8. Noting the location of the site in the context of the wider quarry, together with the smaller quarry to the north, I do not consider the issue of cumulative effects arises as a consequence of the quarry operating.

Conclusion

- 7.4.9. Having regard to the nature and limited scale of the quarrying operation, the distance of the site from Natura 2000 sites and the low risk of groundwater pollution arising, I conclude that the extraction which took place following the granting of Substitute Consent at the site is unlikely to have had a significant effect on a European site and in particular the Lough Corrib SAC and Ross Lake and Woods SAC in view of the sites' conservation objectives. The need for appropriate assessment can, therefore, be excluded.

7.5. EIA / AA Conclusion

- 7.5.1. Having regard to the provisions of section 177D(1), together with the planning history of the quarry, I am generally satisfied, given the very limited area and scale of the post substitute consent development, at 400m², that it would be unreasonable to determine that an environmental impact assessment or appropriate assessment was required. As such, I conclude that the application for leave to apply for Substitute Consent should be refused. The small area of quarry development comprising 400m² beyond the area of 5.1ha permitted under the Substitute Consent, ABP ref: 07.SU0084 refers, would more appropriately be dealt with by way of an application

for retention under section 34 of the Planning and Development Act 2000, as amended.

7.6. Exceptional Circumstances

- 7.6.1. Should the Board disagree with my above conclusions, I propose to consider the matter of exceptional circumstances in accordance with the provisions of Section 177D of the Planning and Development Act as amended.
- 7.6.2. Section 177D(1)(b) of the Planning and Development Act 2000 as amended, provides that the Board may grant leave to apply for substitute consent where exceptional circumstances apply. In considering whether exceptional circumstances exist, the Board is required to have regard to the matters set out under the criteria as set out in Section 177 D(2) as follows:
- (a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;**
- 7.6.3. It is submitted by the applicant that the comparatively miniscule development which has occurred beyond the scope of the grant of Substitute Consent did not give rise to any offence against the Habitats legislation or might reasonably have been anticipated by the applicant carrying out the development. It is further submitted that the regularisation of the development would not be likely to circumvent the purpose and objectives of the Habitats Directive. The applicant concludes that as the unauthorised development has not actually offended the Habitats legislation, the requirement by Galway County Council for Stage 2 Appropriate Assessment is erroneous and based on policy, not the reasonable assessment of the project. The provisions of Section 177C are therefore considered not to be applicable.
- 7.6.4. In the context of the legislation, I would consider that the very limited area identified within the red line boundary of the application site, in the context of the wider permitted quarry area, would substantially restrict the area to be assessed in terms of likely significant impacts. Having regard to the planning history of the site, the location of the site outside any designated Natura 2000 site, together with the limited scale of the area of unauthorised quarrying the subject of this application and the information presented by the applicant, I am satisfied that an application for

substitute consent in this instance, which would include a remedial Environmental Impact Statement (rEIS) and a remedial Natura Impact Statement (rNIS), would not circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive.

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

7.6.5. It is submitted by the applicant that as the two blasts were barely of a commercial scale (resulting in 10,500 tonnes over an 8 month period) it is reasonable that the applicant could not have known such works would offend the Habitats directive. In addition, I note the submission that the blasts were wholly or partially required to make the rock faces stable in the two areas.

7.6.6. I note that consent was granted for the wider quarry area. On the 30th June 2015, the Board granted substitute consent subject to 6 conditions. Condition 1(b) states that the grant of substitute consent relates only to past quarrying and does not authorise any future development on this site including excavation, unless authorised by a prior grant of permission. The Board will note that the first of the two offending blasts at the site, and the subject of this application, is stated to have occurred on the 19th August 2015, 6 weeks after the Boards decision and clear indication that no further excavation is authorised without the benefit of a grant of permission.

7.6.7. As such, it might be considered that the applicant should have had awareness that any further extraction required the benefit of planning permission and therefore, might have known that the two offending blasts were unauthorised. However, I do acknowledge that the blasts are indicated as having been required for health and safety reasons, and I note that all quarrying had ceased for a number of years before the unauthorised nature of the works were discovered. In this context, I am inclined to accept the submission of the applicant in this regard.

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

7.6.8. If leave to apply for substitute consent is permitted in this instance a rEIS and rNIS would be submitted with the application that would follow. This application would

allow for public participation within the process. The assessment of same would not be substantially impaired in such an event.

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

7.6.9. Having regard to the very limited scale and area of the development the subject of this application, together with the planning history of the site and the relevant documentation presented in those files, I am satisfied that there is no indication that the quarrying as described here has resulted in any direct or indirect significant effects on the conservation objectives of any Natura 2000 site in the vicinity. I further note that the development site is not located within any such designated site. In the event of a decision to grant leave to apply for substitute consent in this case, a rNIS would be required to be submitted with any substitute consent application.

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

7.6.10. I note that the application for Substitute Consent for the wide quarry in the area was the subject of a rEIA and rNIS which set out mitigation measures to be implemented in the interests of the conservation of the environment. Condition 2 of the Boards decision, 07.SU0084 refers, requires that said measures be implemented in full. I further note that the conclusion of the Boards previous AA and EIA was that the quarry, either by itself or in combination with other plans and projects including the neighbouring quarry, would not be likely to have adversely affected and would not be likely to adversely affect the integrity of European Sites in view of their conservation objectives. In addition, it was concluded that the quarry was not and would not be likely to have significant effects on the environment.

7.6.11. In the event of a decision to grant leave to apply for substitute consent in this case, a rNIS would be required to be submitted with any substitute consent application.

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

7.6.12. The applicant is in receipt of permission for the quarry works undertaken up to the granting of the substitute consent for the wider quarry. I have noted the inclusion of Condition 1(b) in the Boards decision to grant substitute consent and note that the

area the subject of this application was quarried following the receipt of that grant. As such, the applicant has carried out unauthorised development.

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

7.6.13. In terms of the arguments submitted by the applicant, I would consider that the following is relevant in terms of determining this application:

- The area of the subject site is approximately 0.78% of the overall permitted quarry area, and substantially below the threshold for statutory EIA.
- The submission by the applicant that the said works, at two specific locations, were required for health and safety reasons relating to stabilising the quarry face.
- The works at the quarry ceased long before they were complained of.
- All mitigation measures associated with the quarry were in place at the time of the works.
- There is no evidence to indicate that previous quarrying caused any environmental damage.
- No offence under the Habitats legislation occurred.

7.6.14. In the context of the above, leave to apply for substitute consent should be allowed.

8.0 Recommendation

8.1.1. Section 177 D(1)(a) of the Planning and Development Act 2000 as amended provides that the Board shall only grant leave to apply for substitute consent where it is satisfied that an EIA, a determination as to whether an EIA is required, or an AA, was or is required in respect of the development concerned. Having regard to these provisions, together with the planning history of the quarry, I am generally satisfied, given the very limited area and scale of the post substitute consent development, at 400m², that

- (a) An Environmental Impact Assessment, or determination for same, was not required, and
- (b) An Appropriate Assessment was not required.

- 8.1.2. As such, I conclude that the application for leave to apply for Substitute Consent should be refused under section 177D(4) of the Planning and Development Act, 2000, as inserted by section 57 of the Planning and Development (Amendment) Act 2010 based on the reasons and considerations set out below.
- 8.1.3. In the event the Board does not concur with this conclusion, I consider that exceptional circumstances exist that would permit the making of an application for substitute consent.

9.0 Reasons and Considerations

Having regard to the limited size and scale of the extraction area outside the permitted quarry area (An Bord Pleanála Reference PL.07.SU0084) which was carried out subsequent to 1st February 1990 and which is significantly below the mandatory threshold for Environmental Impact Assessment, together with the nature of the receiving environment, it is considered that an environmental impact assessment, or determination for same, would not have been necessary or warranted in this instance.

Furthermore, having regard to the separation distance between the quarry operation and the Ross Lake and Woods SAC (Site Code: 001312), Lough Corrib SAC (Site Code: 000297) and Lough Corrib SPA (Site Code: 004042), the lack of direct effects thereon resulting from the quarry operations, and the lack of any known pathways linking potential pollutants arising from the quarry operations that could indirectly effect the SACs or SPA, it is considered that an appropriate assessment arising from development that was carried out on this 400m² quarry site subsequent to 26th February 1997 would not have been necessary or warranted in this instance. In these circumstances a need for substitute consent does not apply

A. Considine

Planning Inspector

13/01/2022