



An  
Bord  
Pleanála

## Inspector's Report ABP309662-21

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**Reference Case**

ABP309662-21.

**Details of Reference**

Whether the continuation of quarrying, including extraction, processing and sale of material of pre-63 existing quarry at Glenmakee, Carndonagh, County Donegal is or is not development and is or is not exempted development.

**Referred by**

Donegal County Council.

**Occupier**

John O'Donnell

**Applicant**

Tolan Plant Limited

**Planning Authority Reference**

Ud2023

**Planning Inspector**

Paul Caprani

**Date of Site Inspection**

9<sup>th</sup> June, 2021.

## **Contents**

1.0 Introduction .....	3
2.0 Site Location and Description .....	3
3.0 The Question .....	4
4.0 Planning History.....	4
5.0 The Referral.....	5
6.0 Appeal Responses.....	6
7.0 Legislative Provisions Planning and Development Act 2000 .....	8
8.0 Planning Assessment .....	9
9.0 Conclusions and Recommendation .....	11

## 1.0 Introduction

ABP309662-21 relates to a Referral to the Board by Donegal County Council as to whether or not the continuation of quarrying on a site outside Carndonagh is or is not development and is or is not exempted development. Donegal County Council argue in the referral that the quarry has not extant planning history and the fact that there was some general quarrying in the wider area does not confer an extent or authorisation to continue quarrying indefinitely on the subject site.

## 2.0 Site Location and Description

- 2.1. The subject site is occupied by a quarry which is located approximately 3 kilometres due west of the village of Carndonagh on the Malin Head Peninsula in North Donegal. The site is accessed via a local road which runs northwards from the R244 which links Carndonagh with Buncrana to the south. The quarry is located on the western side of the local road L5661 approximately 1.3 kilometres north of the R244. The quarry is located amongst exposed bogland with some pastoral agricultural fields further west around the small settlement of Craignahorna a half a kilometre further west. The surrounding area along the local access road accommodates sparse amount of development. The quarry is located on the lower slopes of Glenmakee Hill further east.
- 2.2. The quarry is accessed by a recessed and splayed gated entrance. An unsurfaced roadway leads west along the southern boundary of the site before swinging north to provide access to the quarry floor. A wheel wash is located close to the entrance gate with some old machinery and plant present. A small number of stockpiles of stone are dispersed throughout the quarry. There are two benches at the northern end of the quarry each c.5 metres in height. A berm runs along the eastern boundary of the site adjacent to the roadway made up of spoil from the quarry.

### **3.0 The Question**

- 3.1. The question which is the subject of the referral before the Board is whether or not the continuation of quarrying, including extraction, processing and sale of material of a pre-63 existing quarry at Glenmakee is or is not development or is or is not exempted development.

### **4.0 Planning History**

- 4.1. No appeal files are attached. However, reference is made in the Donegal County Council submission to a Section 261A (quarry registration which was determined by the Board on the 29<sup>th</sup> May, 2013 under QV05-E0009). This decision set aside the determination by Donegal County Council which determined under subsection 4(a) that the said quarry commenced operation on or after the 1<sup>st</sup> day of October, 1964 and that no permission was granted in respect of the quarry under Part 3 of the Planning and Development Acts 2000 to 2011 or Part 4 of the Local Government Planning and Development Act 1963. The Board in setting aside the above decision had regard to the following:

- (a) the documentation on the review file (Planning Authority Reg. Ref. EUQY110), including the historic mapping, aerial photography and details of the site registration under Section 261 of the Planning and Development Act, as amended;
- (b) the quarry's limited extraction area and the long established nature of the quarrying activity on site;
- (c) the distance of the site from any European site;
- (d) the provisions of the Planning and Development Acts 2000 to 2011 and in particular Part XA and Part 261A;
- (e) the European Communities (Environmental Impact Assessment) Regulations 1989; and
- (f) the Department of the Environment, Community and Local Government – Section 261A of the Planning and Development Act 2000 and related provisions Supplementary Guidelines for Planning Authorities, July 2012;

it is considered that the scale and nature of operations carried out on this quarry are consistent with, and are of a similar nature to, the historic operations at this quarry, which were established prior to the coming into operation of the Planning Acts and the introduction of the EIA Directive.

The Board is therefore satisfied that the development has not been carried out after the 1<sup>st</sup> February, 1990 which would have required an Environmental Impact Assessment (or determination for same).

- 4.2. In deciding not to accept the inspector's recommendation that an Environmental Impact Assessment was required, the Board had regard to the quarry's limited extraction area, the long established nature of quarry activity, the distance of the site from any European site and in the absence of any environmental sensitivity. It is considered that the operations in place since 1990 have been consistent with those established at this location in the proceeding decades, and not material change of use has arisen in terms of the scale or nature of the operations.

## **5.0 The Referral**

- 5.1. A referral was submitted under the provisions of Section 5 by Donegal County Council which seek clarity from the Board in respect of the works undertaken in relation to quarry activity on site.
- 5.2. It states that the development is currently being investigated as unauthorised development under Planning Enforcement Case Ref. UD2023. It states that the quarry has no extant planning history but was registered in 2006 under the provisions of Section 261 of the Planning and Development Act 2000. It notes that the Planning Authority issued a Section 4(a) Notice of Determination on 29<sup>th</sup> June, 2012 stating that the quarry had commenced operation on or after the 1<sup>st</sup> October, 1964 and no permission was granted in respect of the quarry and it was noted that the requirements in relation to registration under Section 261 were fulfilled. It was stated that the owner/operator is therefore notified that the Planning Authority intends to issue an enforcement notice in relation to the quarry under Section 154 of the Planning and Development Act requiring the cessation of the quarry and the taking of such steps as the Planning Authority considers appropriate. It is noted however that on the 29<sup>th</sup> May, 2013 the Board set aside the Planning Authority's

determination noting that the scale and nature of the operations carried out at this quarry are consistent with and are of a similar nature to the historical operations at this quarry which were established prior to the coming into operation of the Planning Acts and prior to the introduction of the EIA Directive. While it was accepted by the Board that this was a pre-63 quarry and Donegal County Council's determination was set aside it is noted that no references are made on the 6 inch maps from the 1800s nor the 25 inch maps on the early 1900s that a quarry was located in this location. It is noted that from the early 1900s a sandpit c.0.5 kilometres to the south-east was located.

- 5.3. The quarry operator stated that the quarry as a pre-63 quarry without intensifying or expanding the operations constitutes an extent use which is authorised.
- 5.4. The Planning Authority issued a warning letter to the developer in accordance with the provisions of Section 151 of the Planning and Development Act in respect of the continuation of the quarry. It is Donegal County Council's opinion that some form of pre-existing quarrying in the general area does not in fact confer a consent to continue a quarry to an unknown depth. There are no other applicable exemptions and the Planning Authority is of the view that the continuation of quarrying without the benefit of planning permission constitutes development which is not exempted development. Consequently the Planning Authority is seeking confirmation that the continuation of quarrying in a pre-63 quarry is development and is not exempted development and therefore requires planning permission.

## 6.0 **Appeal Responses**

- 6.1. A response was received on behalf of the applicant by Michael Friel Architects and Surveyors.
- 6.2. It is contended that the Council have accepted a number of principle with regards to quarrying at this location.

That the quarry constitutes a proper and functioning quarry.

That the quarry has been in existence prior to 1963.

That the quarry has been registered under Section 261 of the Planning and Development Act 2000.

That the Board have concluded that historical operations at this quarry were established prior to the commencement of the Planning Acts and the EIA Directive.

- 6.3. It is stated that under the 261(A) process affidavits were produced that testified that a local man worked in the quarry as far back as 1938 and that a local councillor worked in the quarry in 1958.
- 6.4. It is stated that the quarry operates on a small scale and will continue to operate on a small scale in order to meet the needs of local people.
- 6.5. The applicant has made every effort over the years to ensure that the quarry is not visually intrusive. The area around the quarry is very sparsely populated and the nearest house is over 350 metres away. The road serving the site (L5561-1) is in relatively good condition. There are virtually no dwellinghouses along the road alignment between the quarry and the R244 which would be affected by quarry traffic. The only processes which take place on the site is extraction and screening which grades the aggregate into three sizes. The process has remained exactly as it would have prior to 1963. Only a small number of loads are leaving the quarry on a weekly basis and has not materially differed since pre-1963. The quarry has not been abandoned since its early commencement in the 1900s.
- 6.6. Donegal County Council placed a number of conditions on the quarry in 2012 all of which have been adhered to. The development is operated with best practice.
- 6.7. The works are essentially the same as those which commenced in 1963. There has been no material change in the footprint of the quarry or the intensification of use at the quarry and this has been accepted by the Board in its previous decision in 2013. It is stated that the footprint has in no way been altered since 2013.
- 6.8. No material change of use has taken place and the aggregate being sold has remained steady over the years but would have reduced somewhat during the recessionary years of 2008 to 2015. The volume of stone sold from the quarry is relatively modest.
- 6.9. The quarry has not been abandoned at any stage on site.
- 6.10. Finally, it is stated that there are no circumstances which would require a Natura Impact Statement or an EIAR associated with the development. No new designations have been enacted with regard to European sites since the

determination was made in 2013 by An Bord Pleanála. The site of the development at just over 2 hectares which effectively deems the site to be subthreshold for the purposes of EIAR.

## **7.0 Legislative Provisions Planning and Development Act 2000**

### **7.1. Section 2: Definitions**

7.1.1. Quarry means the excavation or system of excavations made for the purposes of, or in connection with, the getting of minerals, whether in their natural state or in solution or suspension) or other products or minerals being neither a mine nor merely well or borehole or well or borehole combined and shall be deemed to include:

- (i) Any place on the surface surrounding or adjacent to quarrying occupied together with the quarry for the storage or removal of minerals or for the purposes of a process ancillary to getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such materials but, subject thereto, does not include any place of 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 face 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 the quarry of minerals or refuse.

### **7.2. Works**

7.2.1. 'Works' include any Act or operation of construction, excavation, demolition, extension, alteration, repair or renewal in relation to a protected structure or proposed protected structure, includes any Act, part or operation involving the



application or removal of plaster, paint, wallpaper, tile or other materials to or from the surfaces of the interior to exterior of the structure.

### 7.3. Section 3(1): Development

7.3.1. In this Act development means except where the context otherwise requires, the carrying out of works on, in, over or under the land or the making of any material change in the use of any structure or other land.

### 7.4. Section 175(aa)

7.4.1. Notwithstanding paragraph (a) a warning letter or enforcement notice may issue at any time or proceedings for an offence under this part may commence at any time in respect of unauthorised quarrying development or unauthorised peat extraction development in the following circumstances:

(i) Where no permission for the development has been granted under Part 3 and the development commenced not more than 7 years prior to the date on which the paragraph comes into operation.

7.4.2. Section 157(4)(ab): Notwithstanding paragraph (a) or (aa) a warning letter or enforcement notice may issue at any time to require any unauthorised quarry development or unauthorised peat extraction development to cease and proceedings for the offence under Section 154 may issue at any time in relation to an enforcement notice so issued.

### 7.5. Planning and Development Regulations 2001

## 8.0 **Planning Assessment**

8.1. There can be no doubt that the activity of excavation associated with quarrying falls within the definition of works and therefore by extension constitutes development under Section 3 of the said Act. The question now before the Board is whether or not the development in question can be regarded as exempted development and the planning history associated with the site is an important consideration in determining this question.

- 8.2. Donegal County Council appear to be requesting that the Board reconsider its view in respect of the pre-63 status of the quarry. The Board have already determined under QV0009 that sufficient evidence was presented to the Board which enabled it to conclude that the quarry was operational prior to 1963. It is my considered opinion that the matter of pre-1963 commencement of works has already been determined by the Board in its previous decision.
- 8.3. The Board clearly and unambiguously determined that the determination by the Planning Authority under QV0009 be set aside on the basis that, inter alia, “the historical operations at this quarry, which were established prior to the coming into operation of the Planning Acts and prior to the introduction of the EIA Directive”. The Board clearly came to the conclusion that the quarry in question was an established use at the time of the commencement of the Planning Acts and therefore enjoys pre-1963 status. The Board further determined that neither restrictions in respect of EIA and AA would apply to the quarry in question.
- 8.4. It is reasonable to conclude therefore on the basis of the Board’s previous decision that the Board adjudicated that the quarry was in fact an established pre-1963 use. Furthermore, the Board considered that operations since 1990 have been consistent with the established use at this location in the preceding decades and that no material change of use has arisen in terms of the scale or nature of operations on site.
- 8.5. The question which the Board must now determine is whether or not a material intensification of use has taken place subsequent to the Board’s above determination under QV0009 in May, 2014.
- 8.6. I inspected the site and noted that the quarry was not in operation at the time of my site inspection. This suggests that the quarry is not in constant use or in full time operation and is used occasionally when demand arises as suggested in the owner/occupier’s response to the referral submission.
- 8.7. I would also refer the Board to the historical aerial photos attached to this report. These two aerial photos relate to the period subsequent to the Board’s decision in 2013. The first photo dates from the period 2011 to 2013 and was copied from the OSI website. The second photo was copied from Google maps and is dated September, 2019. The Board are requested to agree that in the 6 years between

both photographs there is no discernible or material difference in the morphology of the quarry boundary. This would further suggest that subsequent to the Board's decision there has been no material expansion of operations or intensification of use on the subject site.

- 8.8. If the Board accept that there is no material change in the operation of the quarry since its decision in 2013, it can in my view reach a similar decision to its previous conclusion under QV0009 in respect of appropriate assessment. In its determination of QV0009 in 2013 the Board's decision stated that "the Board had regard to the quarry's limited extraction area, the long established nature of the quarrying activity, the distance of the site from any European site and the absence of any other environmental sensitivity". The nearest Natura 2000 site to the quarry is the Trawbreaga Bay SPA (Site Code: 004034) which is c.3 kilometres to the north of the subject site.
- 8.9. If the Board accept that there has been no material change in the scale and nature of operations in the period subsequent to its previous decision, it is in my view reasonable to conclude that the continued limited operations on site will similarly not give rise to any appropriate assessment issues.

## 9.0 **Conclusions and Recommendation**

The Board have already determined that quarry operations on site are an established pre-1963 use and are therefore authorised. It is my considered opinion having carried out a site inspection and consulted aerial photography subsequent to the Board's decision in 2013, that there has been no material change in the scale and nature of operations on site in terms of intensity and quarry morphology and therefore the proposal constitutes development which has the benefit of an established use and is therefore exempted development. I therefore recommend that the Board determine the referral case as follows:

**WHEREAS** a question has arisen as to whether or not the continuing quarrying activities at Glenmakee, Carndonagh, County Donegal constitute development which is exempted development

**AND WHEREAS** Donegal County Council requested a declaration on this question under the provisions of Section 5(4) of the Planning and Development Act 2000 (as amended) on the 8<sup>th</sup> day of March, 2021

**AND WHEREAS** An Bord Pleanála in considering this referral had particular regard to

- (a) Section 2 and 3 of the Planning and Development Act 2000 (as amended),
- (b) The Board's previous decision under Reg. Ref. QV0009 in May, 2013,
- (c) The nature and scale of activities undertaken at the quarry site subsequent to the Board's decision in 2013.

**AND WHEREAS** An Bord Pleanála concluded that the nature of the operations on site have been consistent with those operations which took place prior to 2013.

**AND NOW THEREFORE** An Bord Pleanála in exercise of the powers conferred on it by Section 5(4) of the 2000 Act, hereby decides that the continuing operation of the quarry constitutes development which is exempted development.

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Paul Caprani,  
Senior Planning Inspector.

XX June, 2021.