



An
Bord
Pleanála

Inspector's Report ABP-310041-21

Development	Quarry
Location	Tinney's Quarry, Trentaghmucklagh, St. Johnstown, County Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	EU QY44 (UD2061)
Applicant(s)	Ian Tinney
Type of Application	Leave to appeal for substitute consent under Section 177C of the Planning and Development Act 2000, as amended
Type of Appeal	First-Party Direct Application
Date of Site Inspection	27 th September 2021
Inspector	Colm McLoughlin

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1.0 Introduction

- 1.1. This application for leave to apply for substitute consent for a quarry is made under section 177C of the Planning and Development Act 2000, as amended (hereinafter referred to as 'the Act').

2.0 Site Location and Description

- 2.1. The area subject of this application is stated to measure 9.9 hectares and relates to an operational quarry known as Tinney's Quarry that is located in the rural townland of Trentaghmucklagh, which is situated approximately 3.5km to the west of the village of St. Johnstown and 12km to the east of Letterkenny in northeast County Donegal. The character of the surrounding area is largely defined by a patchwork of rectilinear fields overlying undulating hills. The subject quarry area is situated approximately between the 110m and 140m ordnance datum (OD) levels on the southern slopes of Dooish Mountain, which rises to 266m OD. Vehicular access to the quarry is available from the L-5414-1, a single-lane local road and a quarry access track that connect into another local road L-1264-4 to the south of the quarry. The L-5414-1 local road previously connected to the L-5394-1 local road to the northeast, but this route appears no longer to be accessible to vehicular traffic. Glentown quarry is located adjoining to the northeast of the subject quarry.
- 2.2. The quarry features a gated access from the southern side leading to a levelled area that appears to be used for the manoeuvring and parking of vehicles and machinery associated with the quarry operation and features a weighbridge facility and a steel container. Moving northeast into the quarry there is single-storey mono-pitch structure that may have previously served as staff facilities. Beyond and below this area to the northeast is the main operational extraction area of the quarry, which is accessed via a series of access tracks winding through the quarry void. Various machinery operates from these extraction areas, including moveable screening and crushing plant, excavators and loaders. Drainage on site is dominated by a lagoon elevated above and to the north of the main operational quarry void. The site is understood to drain northwestwards into a tributary of St. Johnstown Burn. The boundaries along the former local road (L-5414-1) feature gorse bushes and banked materials. The enforcement file investigating the quarry development refers to

evidence of blasting having been undertaken at the site as part of the extraction processes.

- 2.3.** There is a watercourse running along the northern boundary of the quarry lands, which flows off Dooish Mountain in a southwest direction towards a stream known as St. Johnstown Burn, which in turn discharges to the River Foyle approximately 4km to the east of the quarry.

3.0 Planning History

3.1. Quarry Site

Planning Applications

- 3.1.1. The following planning application relates to the subject Tinney's quarry development:

- Donegal County Council (DCC) reference (ref.) 04/6411 – in April 2005 the Planning Authority granted retention permission for an alternative access road to the quarry from the L-1264-4 local road to the south of the quarry, subject to conditions, including the payment of €10,000 towards county road upgrades facilitating the development.

Effluent Discharge Licence

- 3.1.2. The following effluent discharge licence relates to the subject quarry:

- DCC ref. Lwat 67 – in May 2009 the Planning Authority issued an effluent discharge licence to Tinney Quarries Ltd. in relation to a quarry at Trentaghmucklagh, St. Johnstown, discharging up to 20m³ per day into St. Johnstown Burn river water body. This was reviewed by the Planning Authority in September 2016.

Section 261 & 261A Registrations/Applications

- 3.1.3. The following references provided by the Planning Authority relate to the registration of the subject quarry under sections 261 and 261a of the Act:

- DCC ref. EU QY44 – in October 2008 a quarry was registered with the Planning Authority and the quarry featured an overall area of 11ha and a

stone extraction area of 4.1ha, while the quarrying processes were stated to comprise digger extraction, crushing and grading;

- DCC ref. EU QY44 – the Planning Authority’s determination under section 261a of the Act in June 2012 advised Ian Tinney that substitute consent should be applied for the quarry;
- ABP ref. QB05E.QB0024 (DCC ref. EU QY44) – the duration for the lodgement of a substitute consent application for the quarry was extended to January 2013.

Substitute Consent Application

3.1.4. The following substitute consent application was lodged to the Board in January 2013:

- ABP ref. 05E.SU0010 – following a request for further information and the lack of a response from the applicant, in December 2015 An Bord Pleanála refused substitute consent for a quarry with an overall area of 13.1ha, including associated site office, store, weighbridge and gravel screening unit. This application was accompanied by a remedial Environmental Impact Statement (EIS) and a remedial Natura Impact Statement (NIS).

Planning Enforcement History

3.1.5. Copies of the following enforcement file relating to the subject quarry have been forwarded by the Planning Authority:

DCC ref. UD 2061 (EU QY44) – in July 2020 the Planning Authority issued an enforcement notice with respect to the subject quarry and the Planning Authority subsequently issued an instruction in February 2021 for their legal representative to commence prosecution proceedings.

3.2. Other Sites

3.2.1. Applications in the immediate vicinity of the subject quarry primarily relate to one-off housing proposals and agricultural developments. The following substitute consent application relates to the adjoining Glentown quarry to the northeast of the subject quarry:

- ABP ref. 05E.SU0006 (DCC ref. EUQY 42) – in April 2015 An Bord Pleanála granted substitute consent for a slate stone quarry with an overall area of 6.2ha. The application was accompanied by a revised remedial EIS and a NIS.

4.0 Policy and Context

4.1. Legislation

4.1.1. Section 177C(1) of the Act states the following:

A person who has carried out a development referred to in subsection (2), or the owner or occupier of the land as appropriate may apply to the Board for leave to apply for substitute consent in respect of the development.

4.1.2. Section 177D of the Act states the following:

(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 assessment report or a Natura impact statement or both that report and that statement, as the case may be, or inadequacy of an environmental impact assessment report or a Natura impact statement or both that report and that statement, 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.

(2) In considering whether exceptional circumstances exist the Board shall have regard to the following matters:

(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.

4.2. Natural Heritage Designations

4.2.1. The distance and direction to the nearest European sites to the subject quarry, including Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), are listed in table 1 below.

Table 1. European Sites

Site Code	Site Name	Distance	Direction
002301	River Finn SAC	3.8km	east
UK0030320	River Foyle and Tributaries SAC	4.5km	east

5.0 The Application

5.1. Applicant's Submission

5.1.1. The applicant requests that the Board grant leave to apply for substitute consent in respect of the overall quarry development due to the exceptional circumstances arising. The application was accompanied by maps of the quarry and extracts from various applications, registrations and decisions relating to the quarry, including land registry documentation. The case put forward by the applicant can be summarised as follows:

- a quarry existed in this location since the 1840s, as shown on historical ordnance survey mapping for the area;
- when considering the 2004 planning application to retain a road serving the quarry, the Planning Authority did not flag any concerns regarding the authorisation of the subject quarry;
- following registration of the quarry in 2008 under the section 261 process, the applicant was not made aware of the development being unauthorised;
- the Planning Authority's section 261a determination in 2012 concluded that the quarry had been commenced prior to 1964, that the requirements with respect to section 261 registration had been met and that a substitute consent application should be submitted;
- since the section 261a determination for the quarry in 2012, the footprint of the quarry has not changed. The overall quarry area for the purposes of a future substitute consent application would extend to 9.9ha with an extraction area of 7.7ha;
- the previous substitute consent application relating to this quarry (ABP ref. 05E.SU0010) was accompanied by a remedial EIS and a remedial NIS;

- the Inspector assessing the substitute consent application (ABP ref. 05E.SU0010) noted various shortcomings in the submitted remedial EIS and required further information to address specific inadequacies in the EIS relating to human beings, ecology, soils and geology, water, noise, air, traffic, materials assets, the landscape and visual impacts;
- the Board did not technically refuse the substitute consent application, as they stated that they were precluded from giving further consideration to the granting of consent;
- the adjoining quarry to the northeast, which in contrast to the subject quarry does not feature any water discharge, was also required to submit a substitute consent application (ABP ref. 05E.SU0006), which the Board granted following an EIA, including consideration of the quarry alongside the cumulative impacts with the subject Tinney's Quarry;
- regularisation of the quarry would not circumvent the EIA Directive or the Habitats Directive;
- the applicant was not aware of the implications in not responding to the Board's request for further information in March 2015 for the substitute consent application (ABP ref. 05E.SU0010);
- the applicant's advisors did not appear to be aware of the actual planning status of the quarry, therefore, the applicant, who is not a planning expert himself, believed that the quarry was not unauthorised;
- the exceptional circumstances noted by the Board with respect to leave to apply for substitute consent applications under ABP references PL06S.LS0025 (Belgard quarry, Tallaght) and PL19.LS0033 (Clonfinlough, County Offaly) provide similar scenarios to the subject case, as well as precedent to allow for a grant of leave to apply for substitute consent in the subject case;
- it would be possible for the likely significant effects of the quarry on the environment to be considered and addressed via mitigation, if necessary. The cumulative effects can also be considered as was the case under the Board's determination of the adjacent quarry substitute consent application

(ABP ref. 05E.SU0006) and the adverse impacts of Tinney's quarry on European sites was not an issue when considering the substitute consent application (ABP ref. 05E.SU0010);

- there have been no applications for the retention of the actual quarry development;
- the manner in which the previous substitute consent application was handled on behalf of the applicant left him at a disadvantage and a lack of appreciation of the complex legislation surrounding quarries made it difficult for the applicant to comprehend the situation with regard to the status of the subject quarry.

5.2. Planning Authority's Submission

5.2.1. The submission of the Planning Authority was accompanied by copies of a concurrent enforcement file (DCC ref. UD 2061) relating to the quarry and also raised the following:

- apart from the retention permission for the quarry access road (DCC ref. 04/6411), there are no planning applications relating to this quarry;
- the quarry was initially registered under section 261 of the Act (DCC ref. EU QY44);
- following a review of the section 261 notice, in June 2012 the Planning Authority determined that the applicant needed to apply for substitute consent for the quarry;
- the Board refused a substitute consent application relating to the quarry as the information submitted was considered inadequate to allow an assessment of the effects of the development on the environment.

6.0 Assessment

6.1. Introduction

6.1.1. 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, firstly, where it is

satisfied that an environmental impact assessment (EIA), a determination as to whether an EIA is required, or an appropriate assessment (AA) was or is required in respect of the development concerned and, secondly, where the applicant concludes that a permission that has been granted by a Planning Authority or the Board is invalid pursuant to a decision in an Irish Court or the Court of Justice of the European Union, or where 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.

- 6.1.2. Notwithstanding the retention permission for an access road off the L-1264-4 local road (DCC ref. 04/6411) and the refusal of a substitute consent for the quarry (ABP ref. 05E.SU0010), permission has not been granted for this quarry by the Planning Authority or the Board, and based on the application details submitted it would appear that the applicant is seeking a grant of leave to apply for substitute consent and regularise the development under the 'exceptional circumstances' criteria.

6.2. Requirement for EIA

- 6.2.1. The thresholds concerning the requirement for EIA of a project are set out in the Planning and Development Regulations 2001-2021. With respect to extraction activities, Class 2(b) of Part 2 to Schedule 5 of these Regulations sets out that projects comprising the 'extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares' would require EIA.
- 6.2.2. According to the Planning Authority, the original registration form for the subject quarry (DCC ref. EU QY44) identified the overall quarry area in 2006 as amounting to 11 hectares with an extraction area of 4.1 hectares. When considering the substitute consent application for the quarry (ABP ref. 05E.SU0010) in 2013 it was stated that the area of the quarry amounted to 13.2 hectares according to the applicant. The applicant now asserts that the area of the subject quarry would more accurately read as 9.9 hectares with an extraction area of 7.7 hectares. The extraction area of the quarry exceeds the 5 hectare threshold, which therefore requires EIA for the subject quarry development. The quarry development was previously subject of a remedial EIS submitted with a substitute consent application for the quarry (ABP ref. 05E.SU0010), and the Board found this EIS to be inadequate and I am satisfied that the broad scope and purpose of the EIA Directive

has not been met. Any future application to regularise the quarry development would have a requirement for EIA.

- 6.2.3. In conclusion, having regard to the scale and nature of the development that has taken place, and for which leave to appeal for substitute consent is sought, I am satisfied that there is a requirement for an EIA of this project under Part X of the Act, and that the likelihood of significant effects on the environment cannot be excluded for the purposes of EIA.

6.3. Requirement for AA

- 6.3.1. The second issue to address is whether or not the quarry development would have required or requires AA. The site location, including a high-level overview of the drainage serving the site and the quarry facility, is described in section 2 of this report above, and expanded upon below where relevant. The quarry is also subject of an effluent discharge licence (DCC ref. Lwat 67).

Relevant European Sites

- 6.3.2. Relevant European sites proximate to the quarry site and in the wider area are listed in table 1 of section 4.2 above.

Is the Project necessary to the Management of European sites?

- 6.3.3. The project is not necessary to the management of a European site.

Likely Effects

- 6.3.4. The potential direct, indirect and secondary impacts that could arise as a result of the quarry and which could have a negative effect on the qualifying interests of European sites, include the following:

- alterations to water quality, for example, through accidental spills or the release of suspended solids to ground and / or surface water;
- alterations to the hydrological regime;
- the loss of habitat and species or disturbance or fragmentation;
- the spread of invasive species.

Potential Effected Sites

6.3.5. Having regard to the information and submissions available, the nature, size and location of the quarry and its likely direct, indirect and cumulative effects, the source-pathway-receptor principle and the sensitivities of the ecological receptors, the European Sites listed in table 2 were considered relevant to include for the purposes of initial screening. All other European sites can be discounted by virtue of their substantive distance from the appeal site and the lack of a pathway to the appeal site.

Table 2. Details of European Sites considered for Stage 1 Screening

Site Name	Qualifying Interests	Source-pathway-receptor	Consider further in Screening
River Finn SAC	<ul style="list-style-type: none"> • Oligotrophic waters containing very few minerals of sandy plains; • Northern Atlantic wet heaths with Erica tetralix; • Blanket bogs (* if active bog); • Transition mires and quaking bogs; • Salmo salar (Salmon); • Lutra Lutra (Otter). 	Hydrological link via surface water drainage to St. Johnstown Burn connected to River Foyle.	Yes - Potential for significant effects arising from contaminated surface water runoff.
River Foyle and Tributaries SAC	<ul style="list-style-type: none"> • Lutra Lutra (Otter) • Salmo salar (Salmon) • Water courses of plain to montane levels with the Ranunculus fluitans and Callitriche-Batrachium vegetation 	Hydrological link via surface water drainage to St. Johnstown Burn connected to River Foyle	Yes - Potential for significant effects arising from contaminated surface water runoff.

6.3.6. Conservation objectives for the sites connected with the appeal site, the River Finn SAC and the River Foyle and Tributaries SAC, are listed in tables 3 and 4 respectively below.

Table 3. Conservation Objectives for River Finn SAC

To restore the favourable conservation condition of Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>)
To restore the favourable conservation condition of Northern Atlantic wet heaths with Erica tetralix

To restore the favourable conservation condition of Blanket bogs (*if active bog)
To restore the favourable conservation condition of Transition mires and quaking bogs
To maintain the favourable conservation condition of Salmon
To maintain the favourable conservation condition of Otter

Table 4. Conservation Objectives for River Foyle and Tributaries SAC

To maintain (or restore where appropriate) the otter to favourable condition
To maintain (or restore where appropriate) Atlantic salmon to favourable condition
To maintain (or restore where appropriate) the water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation to favourable condition

6.3.7. Based on the information available, in light of the conservation objectives for European sites and the separation distance over land to European sites, direct effects as a result of the loss, disturbance or fragmentation of habitat and/or species would not be likely to arise. Based on the source-pathway-receptor model, there is potential for indirect effects via surface water discharge from the quarry on the downstream waters in the St. Johnstown Burn, which is within the drainage catchment of the River Foyle. Notwithstanding the effluent discharge licence for Tinney’s quarry (DCC ref. Lwat 67), quarrying operations could present uncertainty regarding the significance of the effects on the receiving surface waters, which could potentially be to the detriment of the ecological status of local waterbodies, including those forming part of the River Finn SAC and River Foyle and Tributaries SAC. Consequently, the proposals could be to the detriment of water quality in the SACs and the maintenance of the favourable conservation condition of salmon and otter reliant on these waters. Given the proximity of the historical quarry activity relative to the drain close to the north western boundary of the quarry, indirect effects via alterations to the hydrological regime and hydromorphology of waters discharging to the River Finn SAC and River Foyle and Tributaries SAC cannot be excluded either.

In-combination Impacts

6.3.8. In the AA screening conclusion as part of the granting of substitute consent (under ABP ref. 05E.SU0006) for the adjoining quarry, noting that this adjoining quarry did not feature water discharges and was sufficient separation distances from European sites, the Board concluded that the quarry, by itself or in combination with other

development in the vicinity, was not likely to have had and would not be likely to have a significant effect on European sites. I am satisfied that in combination impacts would not arise.

Stage 1 – Screening Conclusion

- 6.3.9. The quarry development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually, could have a significant effect on the River Foyle and Tributaries SAC (Site Code: UK0030320) and the River Finn SAC (Site Code: 002301), in view of the sites' Conservation Objectives, and Appropriate Assessment and submission of a Natura Impact Statement is therefore required.

6.4. Exceptional Circumstances

- 6.4.1. As EIA and AA would be required for the quarry development, it must be determined whether or not exceptional circumstances exist such that it would be appropriate to permit the opportunity to regularise the quarry development by permitting leave to make an application for substitute consent.

Would regularisation of the development concerned circumvent the purposes and objectives of the EIA Directive or the Habitats Directive?

- 6.4.2. The applicant previously had an opportunity to regularise the development with respect to the EIA Directive and the Habitats Directive as part of a substitute consent application (ABR ref. 05E.SU0010), but they failed to respond to a request of An Bord Pleanála which sought inadequacies in the EIS to be addressed. Should leave to apply for substitute consent be granted, any subsequent application would need to be accompanied by a remedial EIA report and a NIS. Thus the regularisation of the development in this instance would not circumvent the purpose and objectives of the EIA Directive or the Habitats Directive and would provide a means to formally address same.

Whether the applicant has or could reasonably have had a belief that the development was not unauthorised.

- 6.4.3. In the continuing operation of the subject quarry, the applicant would appear to have been reliant on their belief that the quarry was authorised by virtue of the historical evidence that the quarry had existed prior to 1963. The historical evidence and status of the quarry is not contested by the Planning Authority and I am satisfied that there is sufficient information to demonstrate that a quarry did exist in this location prior to the formal enactment of planning legislation in 1964.
- 6.4.4. In April 2005, the Planning Authority granted the retention of a vehicular road to specifically serve the quarry (DCC ref. 04/6411), despite there being no record of a planning permission for the quarry. When initially requesting information as part of the section 261 registration process in correspondence dated the 11th day of November, 2005, details of which were included as part of a substitute consent application ABP ref. 05E.SU0010, the Planning Authority advised the applicant that failure to comply within a set period would result in the registration application being withdrawn and the quarry being deemed to be unauthorised. The applicant subsequently did respond to the Planning Authority within the set period. Subsequent to this the Planning Authority advised the applicant that there is no current planning permission authorising the quarry operation and that they may take enforcement action.
- 6.4.5. In reviewing the quarry registration in June 2012, the Planning Authority determined that the subject quarry would require substitute consent from An Bord Pleanála to regularise the development and the applicant was formally advised of same (DCC ref. EU QY44). The applicant subsequently lodged a substitute consent application to the Board (ABP ref. 05E.SU0010) in January 2013, which they state was in order to attempt to regularise the quarry development. This substitute consent application was refused by the Board in October 2015 primarily due to the inadequacies in the remedial EIS submitted. The quarry has continued to operate in the interim and the applicant asserts that the footprint of the quarry was not extended since the Planning Authority's determination of the section 261 notice in June 2012. Based on aerial photographic imagery held by Ordnance Survey Ireland dating from 2011 – 2013 and Google earth images for 2021, there has not been a noticeable increase in the worked extraction area of the quarry over this period, but there would appear to have been some alterations to ground and lagoons within the extraction area. According to the Planning Authority a record of a complaint with respect to the quarry was

made in May 2020 and this resulted in an enforcement notice being issued to the applicants in July 2020 (DCC ref. UD 2061).

- 6.4.6. While the registration of the quarry had prevailed and the regularisation failed, the quarry continued to operate. It was not until July 2020 that the applicants became aware of formal enforcement proceedings relating to the quarry (DCC ref. UD 2061). While the submission of the substitute consent application points to the applicant acknowledging that the quarry required a permission to regularise its status, I am satisfied that the applicant could reasonably have had a belief that the quarry was not unauthorised until July 2020, given the undisputed pre-1963 existence of the quarry and the failure of the Planning Authority to formally commence enforcement action against the quarry development until this time.

Whether the ability to carry out EIA or AA and to provide for public participation in such an assessment has been substantially impaired.

- 6.4.7. The process of EIA and AA involves research and the provision of information to the public and consenting authorities in relation to the likely significant effects of a development on the environment. The ability to provide such information has not been substantially impaired as part of the subject quarry development and there would be scope to address matters raised previously by the Board in their further information request dated the 17th day of February, 2015 (ABP ref. 05E.SU0010), when considering a substitute consent application relating to the quarry. The provision of such information would facilitate public participation in the assessment/consent process. In conclusion, I am satisfied that the ability to carry out EIA or an AA for the quarry has not been substantially impaired nor has the capacity for public participation in the process been substantially impaired.

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.

- 6.4.8. Having regard to my site visit and the information available, there may be significant effects on groundwater, surface water and the wider hydrological regime in the surrounding area via pollutants and sediment associated with the quarrying activity. The actual or likely significance of the effects on the visual and residential amenities of the area may also need to be addressed as part of the quarry development.

6.4.9. Based on my assessment above (section 6.3), reasonable scientific doubt cannot be dispelled at this juncture with regards to the significant direct or indirect effects of the quarry on the qualifying features of the River Foyle and Tributaries SAC (Site Code: UK0030320) and the River Finn SAC (Site Code: 002301) in view of the conservation objectives for these European sites.

6.4.10. An opportunity to address actual or likely significant effects on the environment or adverse effects on the integrity of a European site arising as part of the continued operation of the quarry would be facilitated by a substitute consent application.

The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated.

6.4.11. The initial assessment of the quarry development as part of the Board's consideration of the substitute consent application (ABP ref. 05E.SU0010) resulted in a request for further information dated the 17th day of February, 2015, including information with respect to the effects of the quarry development on the environment. An application for substitute consent could provide information, as well as a viable means, to remediate to a substantive extent the actual or likely significant effects on the environment by the inclusion of measures to avoid, prevent or reduce aspects of the development that may have significant adverse effects on the environment or adverse effects on the integrity of a European site.

Whether the applicant has complied with previous permissions granted or has previously carried out unauthorised development.

6.4.12. A road development was previously constructed to serve the quarry, despite there being no permission for same, however, I am not aware of enforcement notice with respect to same and retention planning permission was received for this road in April 2005 (DCC ref. 04/6411), subject to conditions. The Planning Authority has not advised whether or not the conditions attached to this permission have been complied with.

6.4.13. As referred to above, there are no other permissions relating to the quarry and the only enforcement proceedings issued with respect to the quarry are those subject of the enforcement notice dated July 2020 (DCC ref. UD2061). Asides from this, I have not been made aware of the applicant undertaking other development that is unauthorised. It is reasonable to conclude that the applicant may only have been

made aware of the planning status of the quarry been unauthorised as a result of the enforcement notice in July 2020 and, by virtue of this application to the Board, they would now appear to be making reasonable efforts to regularise the subject quarry development.

Such other matters as the Board considers relevant.

6.4.14. I consider that no further matters need be considered by the Board in this case.

6.5. Conclusion

6.5.1. Both EIA and AA is required for the quarry development and the applicant has demonstrated that exceptional circumstances exist in this case, so as to permit the opportunity for the regularisation of the development in question.

7.0 Recommendation

7.1. Having regard to the information furnished by the applicant and the Planning Authority, I recommend that the Board grant leave to apply for substitute consent under section 177D of the Act, based on the reasons and considerations set out below.

8.0 Reasons and Considerations

Having regard to sections 177C and 177D of the Planning and Development Act, 2000, as amended, the Board is satisfied that an environmental impact assessment and an appropriate assessment are required in this case.

Furthermore, the Board examined whether or not exceptional circumstances exist such that it would be appropriate to allow the opportunity for regularisation of the development by granting leave to apply for substitute consent.

In this regard, the Board considered that

- this application for leave to apply for substitute consent has demonstrated that the regularisation of the quarry would not circumvent the purposes and objectives of the Environmental Impact Assessment Directive or of the Habitats Directive, because it would allow for the provision of information and

an analysis of the likely significant environmental effects of the development and the effects of the development on the integrity of European sites,

- notwithstanding submission of a substitute consent application (ABP ref. 05E.SU0010) inferring that the applicant acknowledged that there was no planning permission for the quarry, prior to receipt of the Planning Authority's enforcement notice under reference UD 2061 dated the 3rd day of July, 2020, the applicant could reasonably have had a belief that the quarrying development that took place was not unauthorised, particularly as the Planning Authority had failed to take enforcement action following the initial registration of the quarry and as the retention of an access road to specifically serve the quarry had been granted by the Planning Authority in 2005 (DCC ref. 04/6411),
- the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment and to carry out an appropriate assessment has not been substantially impaired, and that public participation in such assessments has not been substantially impaired,
- a remedial environmental impact assessment would allow for the remediation of actual or likely significant effects on the environment and a remedial Natura Impact Statement would allow for the remediation of any adverse effects on the integrity of a European site,

Having regard to the foregoing it is considered that exceptional circumstances do exist such that it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent in relation to the site outlined in this application.

Colm McLoughlin
Senior Planning Inspector

30th September 2021