



An
Coimisiún
Pleanála

Memorandum:

ABP-310466-21

To: Mary MacMahon, Assistant Director of Planning

From: Robert Speer, Senior Planning Inspector

Date: 7th May, 2026

Re: ABP Ref. No. ABP-310466-21

Development: Section 37L Application for Further Development of a Quarry

Location: Windmillhill, Rathcoole, Co. Dublin.

Applicant: Laurence Behan

At the outset, the Commission is advised that the contents of this memorandum should be considered in tandem with that prepared in respect of ABP Ref. No. ABP-310461-21 (i.e. the corresponding application for Substitute Consent).

Following a review of ABP Ref. Nos. ABP-310461-21 (Substitute Consent) & ABP-310466-21 (Section 37L), and having undertaken a site inspection, a number of issues have arisen which could influence the manner in which the Commission opts to consider the subject Section 37L application. These issues relate to the validity of the application having regard to Section 37L(1) of the Planning and Development Act, 2000, as amended, and in the context of Article 268(4) of the Planning and Development Regulations, 2001, as amended, which states the following:

'Where, on inspection of the land to which the application for permission relates, the Board considers that the requirements of articles 263(1)(b), 265 or 266 have not been complied with, or the information submitted in the application is substantially incorrect or substantial information has been omitted, the application shall, notwithstanding the fact that an acknowledgement has been sent to an applicant in accordance with sub-article (2), be invalid and the Board shall return the application to the applicant with a notice stating that the application is invalid and stating the reason or

reasons that the application is invalid and shall return to the applicant any fee paid with the application’.

N.B. By way of background, a broad chronology of the planning history and registration process relevant to the existing quarrying operations on site has been appended to this report (please be advised that although several further planning applications have been lodged and / or determined on site, these are not immediately relevant to the assessment of the subject application and thus have been omitted in the interests of conciseness).

Issue No. 1:

Section 37L of the Planning and Development Act, 2000, as amended, refers to quarry substitute consent applications and sets out the primary legislative provisions as regards the Board’s jurisdiction in relation to simultaneous applications for further development. In this regard, Section 37L(1) of the Act states the following:

‘Where a person applies for substitute consent in respect of development of land under section 177E, the person may also apply for permission for the following:

- (a) development of the land the subject of the application for substitute consent;*
- (b) development of land adjoining the land the subject of the application for substitute consent’.*

Section 37L(8) further states that:

‘Where the Board receives an application for permission under subsection (1), it shall consider that application in conjunction with the application for substitute consent referred to in subsection (1) and it shall be the duty of the Board to take all such steps as are open to it to ensure that the decision under section 37N is made as soon as possible after the decision on the application for substitute consent’.

Although the subject application (i.e. ABP Ref. No. ABP-310466-21) was lodged in accordance Section 37L of the Act and was subsequently validated on receipt, I would refer the Commission to my memo dated 7th May, 2026 with respect to the corresponding application lodged for Substitute Consent (ABP Ref. No. ABP-

310461-21) wherein it was recommended that said application be invalidated. In the event the Commission directs that the application for Substitute Consent be declared invalid, it follows that the Section 37L application must also fall given that it is contingent on the valid lodgement of an application for Substitute Consent. Subsections 37L(1) & 37L(8) serve to confirm that the lodgement of an application for Substitute Consent is a precondition for any related Section 37L application and, therefore, should the application for Substitute Consent under ABP Ref. No. ABP-310461-21 be declared invalid there can be no valid application made under Section 37L for '*development of land adjoining the land the subject of the application for substitute consent*' (Subsection 37L(1)(b)).

Issue No. 2:

While it is acknowledged that the subject application has been awaiting a determination by the Commission since 2021 and that it would be reasonable to expect that some changes will have occurred on site over the intervening period, I would have significant concerns as regards the nature, scale and extent of the changes observed during the course of my site inspection and the deviation from the 'existing' information provided with the application.

It has been established from a site inspection and an examination of the available information, including aerial photography, that considerable changes have occurred to the 'existing' baseline conditions on site which have implications for the assessment of both the Substitute Consent and Section 37L applications.

Most notably, these include a significant expansion of the quarrying activities undertaken at the site since the lodgement of the applications. Firstly, extraction works have continued within the confines of the registered quarry through the deepening of the pit floor with the result that the site topography has been altered significantly from that shown on the now redundant 'existing' site layout plans provided with ABP Ref. No. ABP-310466-21. Secondly, the quarry has been extended laterally in a number of directions with extraction works having been undertaken beyond the limits of the Substitute Consent application and into those lands the subject of the Section 37L application.

The Expansion of the Quarrying Activities:

From a review of the available information, including aerial photography, and having conducted a site inspection, it is apparent that the quarrying activities and the associated extraction works have expanded considerably beyond those shown in the application for Substitute Consent. In this regard, there has been a lateral extension of the quarry north-westwards from within its westernmost extent with significant extraction works having already been carried out which clearly encroach into the 'future' works area proposed by the subject Section 37L application (ABP Ref. No. ABP-310466-21). It should also be noted that topsoil stripping etc. (accessed via the existing quarry) is also underway within neighbouring fields to the northwest (beyond the aforementioned lateral extension of the quarrying activities) which also fall within that area subject to the Section 37L application. Additionally, it would appear that the quarry floor has been deepened across much of the western / southwestern extent of the site area with the result that the existing situation on the ground does not correspond with the details provided in the Section 37L application.

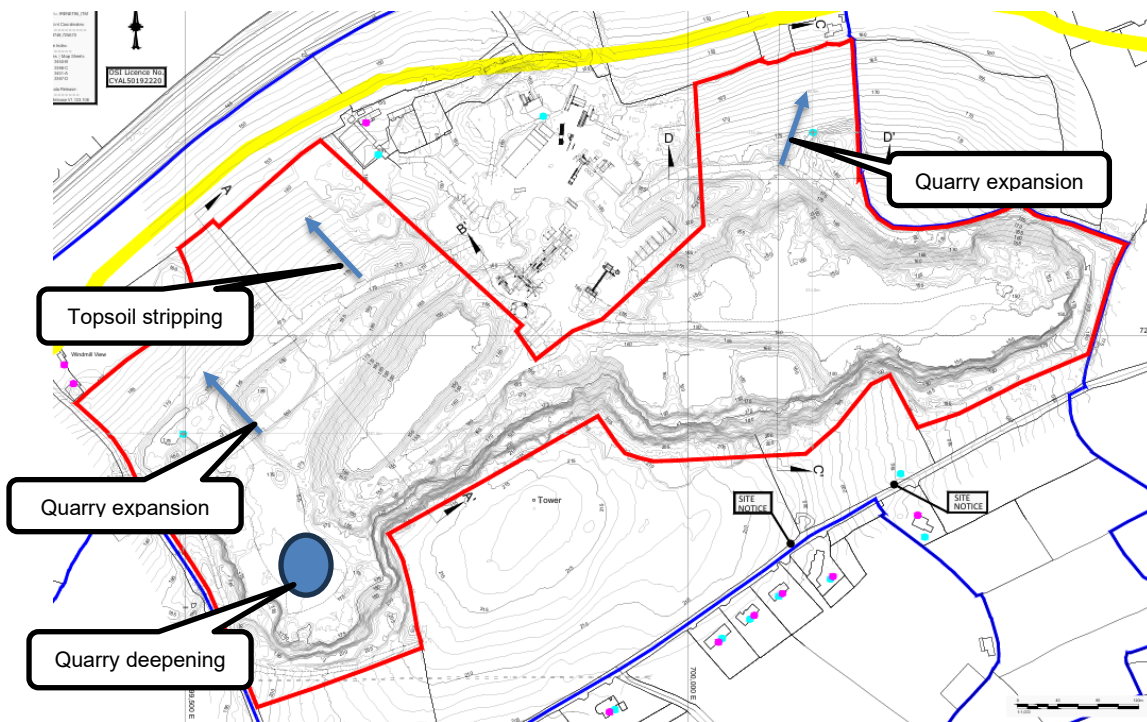


Fig. 1: ABP-310466-21: Drg. No. 03 Rev. A: 'Existing Site Layout'



(Sample view of progression of extraction works north-westwards)



(Sample view of topsoil stripping presently underway on site)



(Sample view of deepening of quarry floor)

The quarry has also been extended in a second location without the necessary planning approval to the northeast / north beyond the limits of the Substitute Consent application so as to encompass an area of land 'proposed' to be quarried by the Section 37L application. The area in question is situated to the east of the administration & processing area with considerable extraction works having been undertaken within the site boundary of the Section 37L application.



(Sample view of progression of extraction works north-eastwards)



(Sample view of progression of extraction works north-eastwards)



Fig. 2: OSI MapGenieImagery2013to2018ITM

By way of further illustration, the above imagery (Figure 2) shows the site boundary of the Section 37L application (ABP Ref. No. ABP-3101466-21) overlain on aerial photography obtained from Ordnance Survey Ireland dated 2013-2018 and can be used as a reference point for comparison purposes with the aerial imagery set out in

Figure 3 dated 7/11/2025 (Google Earth), however, it should be emphasised that the aerial imagery shown in Figure 2 does not reflect Drg. No. 03 Rev. A: 'Existing Site Layout' as submitted with ABP Ref. No. ABP-3101466-21 given the changes which will have occurred on site during the intervening period leading up to the lodgement of the application.

The overview of the application site shown in Figure 3 confirms that by 2025 the physical extent of the quarrying activities and associated extraction works undertaken within the applicant's landholding had surpassed those detailed in the application for Substitute Consent (ABP Ref. No. ABP-310461-21). The expansion of the quarry to the northeast and northwest (as identified in Figure 1) is particularly evident. Furthermore, in light of my on-site observations, and considering that quarrying activities are ongoing on site, it is apparent that the extraction and excavation works etc. carried out to date have progressed beyond those shown in Figure 3. Therefore, it can be confirmed that quarrying activities have expanded considerably beyond those shown in the application for Substitute Consent with significant extraction works having already been carried out within the works area proposed by the Section 37L application (ABP Ref. No. ABP-310466-21).



Fig 3: Google Earth: Imagery Date: 7/11/2025

Beyond the issue of the extended quarrying activities, there are several other instances of development on site that are unrelated to the quarrying operation and which impact on the assessment of Section 37L application.

a) Car / Motor Vehicle Sales:

Having conducted a site inspection and a review of the available information, it is apparent that part of the site area contained within the boundaries of the Section 37L application (as well as a considerable extent of the site area included in the application for Substitute Consent under ABP Ref. No. ABP-310461-21) is currently in use as a car / motor sales operation (seemingly trading as 'Clover Cars') without the benefit of planning permission. The area in question has been regraded to accommodate the parking of several hundred motor vehicles (including cars and vans) and neither its use nor the associated construction works (including the alteration of site levels) would appear to correspond with those detailed in ABP Ref. Nos. ABP-310461-21 & ABP-310466-21.



(Sample view of the car sales area)

b) The Storage of Shipping Containers, Truck Trailers and Clothes Banks / Recycling Pods:

The area atop a raised mound located within the western extent of the quarry site is presently being used for the storage of a considerable number of shipping containers, lorry trailers, and clothes banks / recycling pods. This usage is entirely unrelated to the functioning of the quarry and there is no planning permission or exemption in place which would allow for such storage.



(Sample views of the shipping container, lorry trailer & clothes pod storage)

Therefore, on the basis of the foregoing, and having undertaken a site inspection, I am of the opinion that the 'on the ground' conditions have significantly and materially changed from those depicted in the submitted plans and particulars and, therefore, the subject Section 37L application as lodged under ABP Ref. No. ABP-310466-21 should be invalidated and returned to the applicant pursuant to Article 268(4) of the Regulations for the following reason:

- Given the nature and extent of development evident on site, with particular reference to the lateral and vertical expansion of the quarrying activities undertaken both within the confines of the site boundary of the subject application as lodged under Section 37L of the Planning and Development Act, 2000, as amended, in addition to the use of a significant proportion of the site area for purposes unrelated to the quarrying activities, the plans and particulars submitted with the subject application are considered to be substantially incorrect with substantial omissions as they fail to provide for an accurate depiction and description of both the development site and the development for which permission has been sought.

Issue No. 3:

In addition to the foregoing, I would refer the Commission to the Order of the High Court as perfected on 28th August, 2020 in respect of *Behan v. An Bord Pleanála*

[2018 No. 929 JR] which ordered the lodgement of a new application for Substitute Consent pursuant to *'the Record of Executive Business and Managers Order of South Dublin County Council dated 9th August 2012 in respect of the determination made and notice issued under section 261A(2)(a), 261A(3)(a) and 261A(7) of the Planning and Development Act 2000 as amended'*. It was pursuant to the aforementioned 'Record of Executive Business and Manager's Order' that South Dublin County Council issued notice on 13th August, 2012 of its determination under subsections 261A(2)(a) & 261A(3)(a) in respect of unauthorised quarrying on the subject lands which directed that an application be made to An Bord Pleanála for substitute consent under Section 177E of the Act with a Remedial Environmental Impact Statement and a Remedial Natura Impact Statement. However, a review of that decision (PA. Ref. No. SDQU05A/4) was subsequently sought by the applicant with the Board deciding on 31st May, 2013 (ABP Ref. No. QV06S.QV0090) to confirm the determinations of the Planning Authority made under Sections 261A(2)(a)(i) & 261A(3)(a) the Planning and Development Act, 2000, as amended, while setting aside the determination made under Section 261A(2)(a)(ii) of the Act. The intended effect of this decision was that the application to An Bord Pleanála for Substitute Consent under Section 177E of the Act was to be accompanied by a Remedial Environmental Impact Statement only (with no need for the lodgement of a Remedial Natura Impact Statement).

The application for Substitute Consent lodged under ABP Ref. No. ABP-310461-21 has been accompanied by a Remedial Environmental Impact Assessment Report only and does not include a Remedial Natura Impact Statement. While this submission would accord with the determination made under ABP Ref. No. QV06S.QV0090 (with the application having been accepted to be valid), it is to be noted that the High Court Order directs that the application be made pursuant to South Dublin County Council's *'Record of Executive Business and Manager's Order'* dated 9th August 2012 i.e. without reference to the determination made by the Board under ABP Ref. No. QV06S.QV0090. In effect, if the Planning Authority's Order is assumed to be the 'starting point' for the lodgement of the application for Substitute Consent then the application itself should have been accompanied by a Remedial Environmental Impact Assessment Report and a Remedial Natura Impact Statement.

By extension, if a RNIS is deemed to be required for the Substitute Consent application (ABP Ref. No. ABP-310461-21), it is reasonable to conclude that the Section 37L application (ABP Ref. No. ABP-310466-21) should also be accompanied by a Natura Impact Statement.

Conclusion:

On the basis of the foregoing, I am seeking a direction from the Commission that the application be considered invalid by reference to Section 37L of the Planning and Development Act, 2000, as amended, as follows:

- 1) Having regard to the provisions of Section 37L of the Planning and Development Act, 2000, as amended, whereby the lodgement of an application for Substitute Consent is a precondition for any related Section 37L application, and in the absence of a valid application for Substitute Consent, it is considered that the subject application for 'development of land adjoining the land the subject of the application for substitute consent' must be deemed to be invalid.

I am also seeking a direction from the Commission that the application be considered invalid pursuant to Article 228(4) of the Regulations for the following reason:

- 2) Given the nature and extent of development evident on site, with particular reference to the lateral and vertical expansion of the quarrying activities undertaken within the confines of the site boundary of the subject application as lodged under Section 37L of the Planning and Development Act, 2000, as amended, in addition to the use of a significant proportion of the site area for purposes unrelated to the quarrying activities, the plans and particulars submitted with the application the subject application are considered to be substantially incorrect with substantial omissions as they fail to provide for an accurate depiction and description of both the development site and the development for which permission has been sought.

Additionally, it is recommended that the Commission consider invalidating the application for the following further reason:

- 3) The Order of the High Court perfected on 28th August, 2020 in respect of *Behan v. An Bord Pleanála [2018 No. 929 JR]* directed that any application for

Substitute Consent be made pursuant to South Dublin County Council's 'Record of Executive Business and Manager's Order' dated 9th August 2012 for PA. Ref. No. SDQU05A/4 which required the submission of a Remedial Natura Impact Statement. The related Section 37L application for further development has not been accompanied by a Remedial Natura Impact Statement.

Signed: _____
Senior Planning Inspector

Date: _____

Approved by: _____
Assistant Director of Planning

Date: _____

Appendix 1: Relevant Planning History:

- PA. Ref. No. A.14. Was granted in June, 1968 permitting L. Behan permission for stone quarrying at Windmill Hill, Rathcoole.
- PA. Ref. No. SDQU05A/4 (Quarry Registration). On 23rd April, 2007 notice was given by South Dublin County Council in accordance with Section 261 of the Planning and Development Act, 2000, as amended, of its decision to modify the grant of planning permission issued for PA Ref. No. A.14 by deleting the 5 No. conditions imposed in 1968 and by adding 36 No. new conditions in respect of a quarry at Windmill Hill, Rathcoole, Co. Dublin.
- ABP Ref. No. QV06S.QV0090 (PA. Ref. No. SDQU05A/4). On 13th August, 2012 South Dublin County Council issued notice pursuant to Section 261A(3) of the Planning and Development Act, 2000, as amended, of its determination under subsections 261A(2)(a) & 261A(3)(a) in respect of unauthorised quarrying on lands at and known as Behan's Quarry, Windmill Hill, Rathcoole, Co. Dublin (registered as a quarry in accordance with Section 261 of the Act under Ref. No. SDQU05A/4) which directed that an application be made to An Bord Pleanála for substitute consent under Section 177E of the Act with a Remedial Environmental Impact Statement and a Remedial Natura Impact Statement. A review of this decision was subsequently sought by the applicant with the Board deciding on 31st May, 2013 to confirm the determinations of the Planning Authority made under Sections 261A(2)(a)(i) & 261A(3)(a) the Planning and Development Act, 2000, as amended, while also setting aside the determination made under Section 261A(2)(a)(ii) of the Act (the effect of which was that the application to An Bord Pleanála for substitute consent under Section 177E of the Act was to be accompanied by a Remedial Environmental Impact Statement only and not a Remedial Natura Impact Statement).
- ABP Ref. No. PL06S.SU0068. On 21st September, 2018 the Board refused substitute consent for the quarry at Windmill Hill, Rathcoole, Co. Dublin, in accordance with section 177K of the Planning and Development Act, 2000, as amended (Quashed by Order of the High Court on 27th August, 2020).
- ABP Ref. No. PL06S.QD.0003. On 21st September, 2018 the Board refused permission for the further development of a quarry having a total site area of

40.875 hectares, including reinstatement of worked out quarry to agricultural use by the means of importation of inert subsoil and topsoil amounting to a total of 11,151,570m³, at Windmillhill, Rathcoole, Co. Dublin, in accordance with Section 37N of the Planning and Development Act, 2000, as amended (Quashed by Order of the High Court on 27th August, 2020).

- High Court Case Ref. 2018 No. 929 JR. The aforementioned decisions on both ABP Ref. Nos. PL06S.SU0068 & PL06S.QD.0003 were subsequently quashed on judicial review with the judgment of the High Court delivered on 12th March, 2020 while the terms of the High Court Order were perfected on 27th August, 2020. In addition to quashing the decisions, the Order included the following:

‘AND BY CONSENT IT IS ORDERED that a fresh application for substitute consent submitted by the Applicant to the Respondent pursuant to the Record of Executive Business and Managers Order of South Dublin County Council dated 9th August 2012 in respect of the determination made and notice issued under section 261A (2)(a), 261A(3)(a) and 261A(7) of the Planning and Development Act 2000 as amended in relation to the quarry at Windmill Hill Rathcoole County Dublin shall be deemed to have been made within the time limits prescribed therein where the application is made not later than twelve weeks from the date of perfection of this Order or such further period as the Board may allow.

AND BY CONSENT IT IS ORDERED that a fresh application to the Respondent for continued development in relation to the site at Windmill Hill Rathcoole County Dublin pursuant to the notice dated 11 August 2015 issued by the Respondent in respect of section 37L of the Planning and Development Act 2000 as amended shall be deemed to have been made within the time limits prescribed therein where the application is made not later than twelve weeks of the date of perfection of this Order or such further period as the Board may allow’.

- ABP Ref. No. ABP-308313-20. On 16th November, 2020 the Board agreed to grant an extension of the period for the making of an application for substitute consent under section 177E(4) of the Planning and Development Act, 2000,

as amended, for a further period of 16 weeks from the date of its order (with the final date for the making of said application being 22nd March, 2021).

- ABP Ref. No. ABP-308315-20. Request to enter into pre-application consultations pursuant to Section 177E(1A) of the Planning and Development Act, 2000, as amended, with respect to the preparation of an application for substitute consent for the quarry at Windmill Hill, Rathcoole, Co. Dublin. This request was withdrawn on 16th August, 2021
- ABP Ref. No. ABP-309671-21. On 22nd March, 2021 the Board agreed to grant a further extension of the period for the making of an application for substitute consent under section 177E(4) of the Planning and Development Act, 2000, as amended, for a further period of 12 weeks from the date of its order.
- ABP Ref. No. ABP-310461-21. Application lodged by Laurence Behan on 9th June, 2021 for substitute consent under section 177E of the Planning and Development Act, 2000, as amended, with respect to the development of a quarry at Windmillhill, Rathcoole, Co. Dublin:

'The development consists of a quarry over an area of 28.8 ha with a current average working depth of approximately 173mAOD and final floor of approximately 150mAOD. The reserve consists of sandstone (greywacke) and is extracted by blasting and mechanical means. The excavated material is crushed at the working face by mobile plant and transported to a central plant area for washing, grading and processing. The quarry is accessed at a single location from the N7 and holds a centrally located existing administration and processing plant area over approximately 5 ha that currently holds 2 no. office buildings, 4 no. portacabins, 4 no. containers, 2 no. storage / maintenance sheds, a storage / drying shed, water recycling unit and silt press, an asphalt plant, a concrete plant and washing, crushing, screening and bagging plants. Also, within this plant and administration area are 2 no. weighbridges, 4 no. wheel washes, fuel storage and refuelling area, 1 no. operations water well and sewage holding tank. The concrete plant and the storage / drying shed within this central administration and processing plant area have been erected within the last three years and are not part of

this application. They will be the subject of a separate planning application process.

The application site is contained within a quarry area registered in 2005 under S.261 and assessed in 2012 under S.261A (ref. no. SDQU05A/04) by the local planning authority. The S.261A notice was reviewed under An Bord Pleanála ref. 06S.QV.0090 resulting in a requirement for application for substitute consent accompanied by remedial Environmental Impact Assessment Report (rEIAR). That application (ref. no. PL06S.SU0068) was made in 2013 and has been superseded by High Court Order (2018 No. 929 JR) that inter alia ordered the making of this application. This application is made concurrent with an application to further develop the quarry at this location, also part of that Order.

The application is accompanied by a remedial Environmental Impact Assessment Report (rEIAR). The rEIAR is for an EIA project unit over 46.14 ha. that encompasses the area of the substitute consent application, the concurrent further development of the quarry application under S.37L and the quarry as registered under S.261'.

- ABP Ref. No. ABP-310466-21. Application lodged by Laurence Behan on 9th June, 2021 for permission under section 37L of the Planning and Development Act, 2000, as amended, for the further development of a quarry at Windmillhill, Rathcoole, Co. Dublin, as follows:

'The development consists of further development of a quarry over an area of 26.87 ha. that largely coincides with an existing operational quarry void currently at an average working depth of approximately 173 mAOD and final floor of approximately 150 mAOD. It is proposed to laterally extend the existing quarry void to the north by approximately 4.1 ha. over a total of 5.16 ha. to accommodate screening berms and to also further extract the existing quarry void to a final average depth of 150 mAOD, east and west of a centrally located existing administration and processing plant area. A restoration plan to return the application site and existing administration and processing plant area to agricultural and amenity use upon completion of proposed extraction has been prepared and is proposed to be implemented

upon cessation of extraction. The proposal duration is 20 years to reflect anticipated extraction of remaining reserve within 10 – 15 years depending on market conditions, and a further 2 - 5 years for restoration.

The existing quarry is accessed at a single location from the N7. The reserve consists of sandstone (greywacke) and is currently extracted by blasting and mechanical means. The excavated material is crushed at the working face by mobile plant and transported to a central plant area for washing, grading and processing. The further development of the quarry relates to further extraction only and is to utilise the extant existing administration and processing plant area and quarry access that are included in a concurrent application for substitute consent.

The application site is contained within a quarry area registered in 2005 under S.261 and assessed in 2012 under S.261A (ref. no. SDQU05A/04) by the local planning authority. The S.261A notice was reviewed under An Bord Pleanála ref. 06S.QV.0090 resulting in a requirement for application for substitute consent accompanied by remedial Environmental Impact Assessment Report (rEIAR). That application (ref. no. PL06S.SU0068) was made in 2013 and an application to further develop that quarry (ref. no. PL06S.QD0003) was made in 2015. Those applications have been superseded By High Court Order (2018 No. 929 JR) that inter alia ordered the making of this application. This application is made concurrent with an application for substitute consent for quarrying at this location, also part of that Order.

The application is accompanied by an Environmental Impact Assessment Report (EIAR). The EIAR is for an EIA project unit over 46.14 ha. that encompasses the area of the further development of the quarry application under S.37L, the concurrent substitute consent application and the quarry as registered under S.261'.