



An
Bord
Pleanála

Inspector's Report ABP-310605-21.

Development	Leave to apply for substitute consent for quarrying under Section 177C.
Location	Ballysheedy, Gort, Co. Galway.
Planning Authority	Galway County Council.
Applicant(s)	John Madden & Sons.
Date of Site Inspection	20/10/2021 & 18/01/2022.
Inspector	A. Considine.

1.0 Site Location and Background to Quarry Operation

- 1.1. The subject site is located within an existing quarry in the townland of Ballysheedy, approximately 2.5km to the south-west of Gort, Co. Galway. The wider area in the vicinity of the subject site is rural in nature with a small number of one-off houses noted along the access roads. The site is located approximately 580m to the west of the M18 motorway. Access to the site is over a county road which runs to the south of the site.
- 1.2. The entrance to the site is set back from the public road, adjacent to an existing house with stables to the rear and is accessed via a right of way which extends to approximately 530m in length before the wider quarry site in this area opens up. The area the subject of this application lies to the west of the wider landholding and is substantially hidden from any public view through planting and fencing. The application covers an area of approximately 8.782ha within a total landholding of 12.6894ha. The quarry was not operating on the date of my site inspections. I could not gain access on the date of my first inspection and an appointment was made for access on the 18th January 2022.
- 1.3. I note that the existing quarry at this location, as well as the subject site area, was previously owned and operated by Goode Concrete Limited and that permission for the quarry was established in 1994. Various permissions to continue quarrying were granted by Galway County Council including permission 09/415 which was granted in 2010. It is submitted by the applicant that the valid permission formed the basis of the site purchase in 2014, and the current applicant had a reasonable belief that the subject area was dormant and so was not unauthorised. The area was identified as a stockpile area in the 2009 application, and it is noted that the duration of the 2009 permission was extended 2015 under PA ref: 15/724 for a further 5 year period.
- 1.4. The site had also been assessed under Section 261A Determination process in 2012 (QSP46 refers), whereby Galway County Council determined that substitute consent was not required at that time. The current SC site area has not been subject to any further extraction since purchased in 2014 and has remained as a natural regeneration area since approximately 2012. As part of the proposed remediation measures, it is indented that the entirety of the subject area including the original

dormant area and the additional sections will be allowed to continue to regenerate naturally into the future.

- 1.5. At a meeting with the PA in October 2020, it is submitted that this was the first time a concern was raised with respect to the planning status of the subject site area. The concern arose based on aerial photographs presented, a greater area has been extracted than the planning permission covered under the 1994 permission. The applicant submits that the bulk of the quarrying took place between 2005-2012 – before the site was purchased by the current applicant in 2014 – and that the extent of the quarry has remained the same since the aerial photo of 2012. The dormant area has been fenced off and it is submitted that the fencing has been maintained, and the site insured. The current application to the Board under Section 177C for Leave to Apply for Substitute Consent arises so that the applicant can continue to insure the lands, which have significant hazards.

2.0 Planning History

- 2.1. **PA ref: 70238:** Planning permission in respect of rock extraction activity was first granted in 1994. A dedicated access was constructed to connect at the south to the existing road network.
- 2.2. **PA ref: QY46 Section 261 Quarry Registration:** An application to register the quarry was made under PA ref: QY46 in 2005. The Council reviewed the planning permission and decided to amend / modify the original conditions imposed on the quarry operations. This decision issued in in March 2007.
- 2.3. **PA ref: 09/415:** Planning permission was granted to Goode Concrete Ltd to further develop its established operations at Gort with a 9.9 hectare eastern extension to the quarry. The application was accompanied by an EIS.
- 2.4. **PA ref: QR/046 Section 261A Review:** A review of the planning status of the quarry was undertaken in 2012 in accordance with the requirements of Section 261A. The review determined that no further action was required in order to regularise the planning status of extraction related activities at the facility and /or to ensure compliance with the EU EIA and Habitats Directive.

2.5. **PA ref: 15/724:** Permission was granted for a time extension for the PA ref: 09/415 planning permission.

3.0 Policy and Context

3.1. Development Plan

3.1.1. 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.’

3.1.2. 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.

3.1.3. Chapter 13 of the Plan deals with Development Standards and DM Standard 37 deals with Extractive Development.

3.2. Natural Heritage Designations

3.2.1. The site is not located within any designated site. The closest Natura 2000 site is the East Burren SAC (Site Code: 001926) which is located approximately 560m to the west of the site. Termon Lough SAC (Site Code: 001321) lies approximately 650m to the south-west of the site.

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

- Coole Garryland Complex SAC (Site Code: 000252) (1.1km N)
- Coole Garryland Complex SPA (Site Code: 004107) (1.6km N)

- Lough Cultra SAC (Site Code: 000299) (4.1km E)
- Lough Cultra SPA (Site Code: 004056) (4.1km E)
- Caherglassaun Turlough SAC (Site Code: 000238) (5.6km NW)
- Slieve Aughty Mountains SPA (Site Code: 004168) (6.1km E)
- Carrowbaun, Newhall & Ballylee Turloughs SAC (Site Code: 002293) (6.9km NE)
- Cahermore Turlough SAC (Site Code: 002294) (7.1km N)
- Ballinduff Turlough SAC (Site Code: 002295) (7.3km N)
- Gortacarnaun Wood SAC (Site Code: 002180) (7.3km E)
- Lough Coy SAC (Site Code: 002117) (7.7km NE)
- Drummin Wood SAC (Site Code: 002181) (7.7km E)
- Ballyogan Lough SAC (Site Code: 000019) (8.1km SW)
- Moyree River System SAC (Site Code: 000057) (8.4km S)
- Peterswell Turlough SAC (Site Code: 000318) (9.8km NE)
- Inner Galway Bay SPA (Site Code: 004031) (11.1km NW)
- Galway Bay Complex SAC (Site Code: 000268) (11.1km NW)
- Ardahan Grassland SAC (Site Code: 002244) (11.5km N)
- Dromore Woods & Loughs SAC (Site Code: 000032) (12.5km SW)
- Lough Fingall Complex SAC (Site Code: 000606) (12.9km N)
- Gleendree Bog SAC (Site Code: 001912) (13km SE)
- Corofin Wetlands SPA (Site Code: 004220) (13km SW)
- Kiltiernan Turlough SAC (Site Code: 001285) (13.4km N)
- Castletaylor Complex SAC (Site Code: 000242) (14.2km N)

4.0 Legislative Context

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

4.2. 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.

4.3. 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.

4.4. 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.

4.5. 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.

Location of proposed development

The environmental sensitivity of geographical areas likely to be affected by proposed development, having regard in particular to:

the absorption capacity of the natural environment, paying particular attention to the following areas:

- (e) areas classified or protected under legislation, including special protection areas designated pursuant to Directives 79/409/EEC and 92/43/EEC².

5.0 The Application

5.1. Applicants Submission

- 5.1.1. The submission sets out the history of the subject site and arrival to the decision to seek leave to apply for substitute consent for the subject site and I note that the current applicant purchased the quarry site in 2014. The applicant requests that the Board grant leave to apply for substitute consent in order that the issues raised by Galway County Council be addressed and the planning status of the dormant areas

¹ To determine if EIA is required

² Birds Directive & Habitat Directive

can be resolved so that they can continue to maintain and insure them in terms of health and safety. The applicants case is summarised as follows:

- The site was previously owned and operated by Goode Concrete Limited and that permission for the quarry was established in 1994.
- Galway County Council granted permission to continue quarrying under PA ref. 09/415, granted in 2010. When the site was purchased in 2014, the current applicant had a reasonable belief that the subject area was dormant and so was not unauthorised.
- The subject site was included in the above permission being identified as a stockpile area.
- The permission associated with PA ref. 09/415 was extended in 2015 for a period of 5 years.
- The site had also been assessed under Section 261A Determination process in 2012 (QSP46 refers), whereby Galway County Council determined that substitute consent was not required at that time.
- The current site area has not been subject to any further extraction since purchased in 2014 and has remained as a natural regeneration area since approximately 2012.

5.1.2. It is submitted that no extractive or quarrying development has taken place at the site since approximately 2012 and not within the period the current applicant has had ownership. The area has been fenced off and allowed to regenerate naturally. No quarry plant remains on site, within the subject application area. Two pieces of machinery was present with the wider quarry site area.

5.1.3. The applicant requests that the Board grant leave to apply for substitute consent on the basis that there are exceptional circumstances existing which would permit the regularisation of the development under S177 of the Act. In this regard, the following matters are submitted by the applicant:

- The regularisation of the site would not circumvent the purpose and objectives of the EIA Directive or the Habitats Directive. This is based on the draft NIS and site survey work conducted at the site. Should leave to apply for SC be granted, the SC application will include a rNIS and rEIAR.

- The applicant has set out the basis for the reasonable belief that the site had a valid and live planning permission at the time of purchase and that the area was not unauthorised.
- The subject site is not located within a Natura 2000 site and the site has a long planning history which allowed for substantial public participation. Any further application will involve the preparation of an EIAR and AA Screening Report, processes which will involve public consultation and opportunities for public participation.
- The nearest Natura 2000 site is Termon and the East Burren SAC, located approximately 0.56km from the site. The site was assessed in the 1994, 2009 and 2015 planning applications as part of the wider landholding. Given the location of the site and the separation distances from European Sites, it is considered reasonable to expect emissions and discharges from the activities can be managed effectively so as to minimise the potential of an adverse impact arising. Groundwater monitoring at the site has indicated that the site is disconnected to the regional groundwater regime and water levels in the site show limited variation.
- The applicant is committed to detailed site rehabilitation plans which will cover measures to be implemented on the worked-out areas of the quarry sites.
- The applicant has a long history of engaging with and complying with planning conditions. The activity was carried out either in accordance with the law as a matter of fact, or in the reasonable belief that planning permission / substitute consent was not required for the dormant area. It is not considered that any unauthorised development has been undertaken.
- Ongoing management of the site will allow for the implementation of agreed post closure and rehabilitation plans and the applicant has already made financial provision to cover the costs of after-use.

5.1.4. The submission concludes that environmental monitoring at the site is in compliance with the regulatory limits and if granted leave to apply for substitute consent, the applicant will submit a remedial EIAR and remedial AA Statement.

5.1.5. The submission includes a number of enclosures.

5.2. **Planning Authority Submission**

None.

6.0 **Assessment**

6.1. **Introduction**

- 6.1.1. 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.
- 6.1.2. 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.

6.2. **History**

- 6.2.1. This application for leave to apply for substitute consent has arisen following a concern raised by the Planning Authority at a pre-planning meeting with the applicant in relation to the preparation of an application for future quarrying on a reduced scale and within the PL. Ref. 09/415 planning footprint. This site lies to the east of the current application site, and the application included an Environmental Impact Statement.

6.2.2. The Board will note that the PA ref: 09/415 planning application was appealed to the Board, PL07.235316 refers, but the appeal was withdrawn before the Board made a decision on the case. A memo from the reporting Inspector raised concerns in terms of the actual extent of extraction in the context of the permitted site area, the apparent non-compliance with planning conditions and a High Court settlement undertaking, as well as inadequate information submitted regarding the full extent of unauthorised works carried out within the overall landholding. Of particular note to the current application for leave to apply for substitute consent, the memo refers to the subject site as 'the large pit to the western end of the site is clearly part of the current quarry workings'. The Board decided to defer the making of the decision on the case in order to seek further information from the applicant. The S137 Notice advised the applicant that:

- The Board might consider that it is precluded from considering a grant of permission in the case due to the fact that it appears that retention permission would be required in order to regularise the planning status of the quarry, and
- Based on the site inspection, it appears that substantial work has already proceeded on elements of the proposed development prior to the determination of the appeal. Such works might be considered as comprising unauthorised development and was advised that it might be inappropriate for the Board to consider a grant of planning permission in these circumstances.

Following the issuing of the S137 Notice, the third-party appeal was withdrawn. The decision of Galway County Council to grant permission for the development stood and the applicant made no response to the concerns raised by the Board.

6.2.3. The PA grant of planning permission, ref. 09/415, was extended for a period of 5 years under PA ref: 15/724 with an expiry date of 10/08/2020. The Board will note that the applicant has indicated that there have been no works carried out on the site or wider landholding since the expiration of the above permission.

6.3. Review of Determination under Section 261A

6.3.1. An application to register the quarry was submitted to Galway County Council on the 22nd April 2005 (Ref: 05Q46 refers). The submission indicated that the registration

site area was 12.9ha but that the area of extraction was 2.9ha. Following a request for further information, submitted on the 31st August 2005, the applicant submitted that the area already extracted was 1.9ha, which extended beyond the area permitted under PA ref: 70238. In advance of issuing the consent, the PA advised the applicant of the proposed conditions to be attached to the registration which included Condition 1 which stated as follows;

The total area of the quarry activity hereby registered shall not exceed the boundaries of the quarry for which permission was granted in 1994, planning ref. 70238.

- 6.3.2. Galway County Council, in March 2007, determined under Section 261A of the Planning and Development Act, 2000 as amended (PA Ref. QSP46 refers) that while a total area of 12.9ha was included for registration, the extracted area of the site was stated as being 2.9ha. The Planning Officer noted that the quarry had the benefit of planning permission, while noting issues with the information submitted with the original registration application, High Court Agreement between residents in the area and the previous owner/operators of the quarry in 1999 and the fact that there were enforcement proceedings against unauthorised development outside the boundaries of the permitted quarry and recommended that the quarry be registered subject to 14 conditions.
- 6.3.3. Following a review of the file in 2012, the A/Senior Executive Planning concluded that as it was considered that the quarry was registered, obtained planning permission under planning references 70238 and 09/415 and that the site was not in use, no further action is required under Section 216A. No requirement for an application for Substitute Consent under Section 177E of the Planning and Development Act 2000 as amended, was determined to be necessary.

6.4. **Requirement for Environmental Impact Assessment (EIA) or EIA determination**

- 6.4.1. 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.

- 6.4.2. In the context of the current application before the Board, it is clear that the 5ha threshold has been exceeded. Leave to apply for substitute consent is predicated on the need for planning permission, where a development is not relying on pre 1964 existence, as is the case in this instance.
- 6.4.3. Development was carried out within the 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.
- 6.4.4. The development would therefore qualify for consideration for leave to apply for substitute consent being a development in respect of which EIA is required.

6.5. **Requirement for Appropriate Assessment (AA)**

- 6.5.1. 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.
- 6.5.2. The site is not located within any designated site. The closest Natura 2000 site is the East Burren SAC (Site Code: 001926) which is located approximately 560m to the west of the site. Termon Lough SAC (Site Code: 001321) lies approximately 650m to the south-west of the site.

Relevant Natura 2000 Sites:

- 6.5.3. East Burren SAC (site code 001926).
Ross Lake and Woods SAC lies approximately 560m to the west of the quarry. The SAC encompasses a range of limestone habitats that include limestone pavement and associated calcareous grasslands and heath, scrub and woodland together with

a network of calcareous lakes and turloughs. The site exhibits some of the best and most extensive areas of oligotrophic limestone wetlands to be found in the Burren and in Europe.

6.5.4. Termon Lough SAC (site codes 001321).

Both the SAC and SPA are located approximately 650m to the south of the subject site. These large sites are centred on Lough Corrib. The SAC consists of a series of three turloughs, with low, drift-covered slopes on all sides except in the north-east, where a small area of limestone pavement is found. The turloughs are hydrologically linked at times of high water. Termon Lough itself is now largely a reedswamp and is underlain by marl deposits. This is a particularly wet turlough system which seldom dries out.

Qualifying Interests for Natura 2000 Sites within Zone of Influence

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

European Site	Qualifying Interests
<p>East Burren SAC (site code 001926)</p> <p>Located approx. 560m to the west of the site</p>	<ul style="list-style-type: none"> • Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. [3140] • Turloughs [3180] • Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260] • Alpine and Boreal heaths [4060] • Juniperus communis formations on heaths or calcareous grasslands [5130] • Calaminarian grasslands of the Violetalia calaminariae [6130] • Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210] • Lowland hay meadows (Alopecurus pratensis, Sanguisorba officinalis) [6510] • Calcareous fens with Cladium mariscus and species of the Caricion davallianae [7210] • Petrifying springs with tufa formation (Cratoneurion) [7220]

	<ul style="list-style-type: none"> • Alkaline fens [7230] • Limestone pavements [8240] • Caves not open to the public [8310] • Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0] • <i>Euphydryas aurinia</i> (Marsh Fritillary) [1065] • <i>Rhinolophus hipposideros</i> (Lesser Horseshoe Bat) [1303] • <i>Lutra lutra</i> (Otter) [1355]
<p>Termon Lough SAC (site codes 001321)</p> <p>Located approx.650m to the south of the site.</p>	<ul style="list-style-type: none"> • Turloughs [3180]

Conservation Objectives:

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

European Site	Conservation Objectives
<p>East Burren SAC (site code 001926)</p> <p>Located approx. 560m to the west of the site</p>	<ul style="list-style-type: none"> • The NPWS has identified generic conservation objective to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.
<p>Termon Lough SAC (site codes 001321)</p> <p>Located approx.650m to the south 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 Turloughs in Termon Lough SAC, which is defined by a list of attributes and targets.

Potential Significant Effects

6.5.3. 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). Having regard to the nature and scale of the quarrying operation at the site, I am

satisfied that development was carried out after the 26th day of February 1997, which would have required an appropriate assessment (AA) on the basis of potential interaction between ground water and surface water interactions.

- 6.5.4. The development would therefore qualify for consideration for leave to apply for substitute consent being a development in respect of which AA is required.

6.6. Exceptional Circumstances

- 6.6.1. 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 177D(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;

- 6.6.2. The EIA Directive seeks to provide for an assessment of the likely significant effects of a development on the environment prior to decision making, and to take account of these effects in the decision making process. The Habitats Directive seeks to ensure the conservation of a wide range of rare, threatened or endemic animal and plant species and the conservation of rare and characteristic habitat types.

- 6.6.3. The Board will note that the subject site includes an area which was granted planning permission for a quarry in 1994, PA ref: 70238 refers. An application to register the quarry under S216 of the Planning and Development Act 2000, as amended, was made to the PA in 2005, PA ref: 05Q46 refers, which indicated that the area of the site to be registered was 12.9ha. The application noted that the area of extraction was indicated to be 2.9ha. Following a request for further information, the applicant advised that the area already extracted amounted to 1.9ha and that part of this area extended beyond the permitted site under PA ref: 70238. The modified consent ultimately granted in March 2007, amounted to approximately 4.8ha, allowing the quarry to be registered below the 5ha threshold for EIA. Condition 1 of the consent restricted the extraction area to within the boundaries of

the 1994 permitted site. The area of the current application site extends to 8.782ha and includes areas to the north and east of the originally permitted quarry area.

- 6.6.4. The Board will note that the 2009 application to Galway County Council for an extension to the quarry (to the east of the current subject site area) included an Environmental Impact Statement. A review of the S261 registration in 2012 concluded that no Substitute Consent was required for the subject area. I consider that this decision was likely incorrect given the extent of quarrying noted at the site at this time (I refer the Board to the aerial photos submitted with the current application).
- 6.6.5. If the Board decide to grant the applicant leave to apply for substitute consent, the application would be accompanied by a remedial EIAR and remedial NIS. Any subsequent decision by the Board to grant or refuse permission for substitute consent for development carried outside the previously permitted areas of the site would be made on the basis of an assessment of the likely effects of the development on the environment and the likelihood of any significant effects on European sites, as a result of past works.
- 6.6.6. As such, I am satisfied that the regularisation of the development concerned would not circumvent the purposes and objectives of the EIA Directive or the Habitats Directive.

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

- 6.6.7. It has been submitted that the current owner had a reasonable belief that the subject site was accepted by planning ref: 09/415 as being dormant and so was not unauthorised. I also note the submission that the valid planning permission under PA ref. 09/415 formed the basis of the site purchase. While it is submitted that the current subject area was used for stockpiling of material on the lower area, I note that the area did not comprise part of the 9.9ha site outlined in red as part of 09/415.
- 6.6.8. In terms of the reasonable potential that the current owner had a belief that the development was not unauthorised, this is supported by the above grant of planning permission, and indeed, the extension of the duration of that permission under PA ref: 15/724. I also note that Galway County Council, in 2012 determined under Section 261A of the Planning and Development Act 2000, as amended, that

Substitute Consent was not required, and that no further action under this section of the Act is required (PA ref: QSP46 refers).

6.6.9. Therefore, I am satisfied that the current operator believed that there was a recognition of the site under s261 and that it operated in accordance with the s261 decision. It is also noted that there has been no history of enforcement or noted unauthorised development at the site up to this point by Galway County Council. While I have referenced the concerns raised by the Board previously, (PL07.235316 refers) as the third party appeal was withdrawn, the Board issued no decision on the case.

6.6.10. In this case, I am therefore of the opinion that the applicant for leave to apply for substitute consent 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;

6.6.11. In the context of the application site, I note that planning applications were made to Galway County Council for permission to quarry in 1994 and 2009, with a 2015 application extending the duration of the 2009 permission. These applications involved statutory public participation and resulted in the submission of observations from third parties. I further note that the applicant in 2009 application included an EIS, which is available on the Galway County Council website. I further note that the conditions attached to the above permissions included conditions relating to monitoring, emissions, water protection, waste management and rehabilitation of the site. I further note that the S261A process in 2012 also provided for public participation.

6.6.12. 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;

6.6.13. While the quarrying at the site has occurred outside the original boundaries permitted by the planning authority, I note that the site is not located within or immediately adjacent to any designated European site. The closest Natura 2000 site is the East Burren SAC (Site Code: 001926) which is located approximately 560m to the west of the site. Termon Lough SAC (Site Code: 001321) lies approximately 650m to the south-west of the site.

6.6.14. I am satisfied that the quarrying which has occurred in this area has been managed and subject to certain measures to protect the water environment including groundwater monitoring which has indicated that the site is disconnected from the regional groundwater regime.

6.6.15. 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;

6.6.16. I note the applicants commitment to rehabilitating the site, and that as the site is not located within any Natura 2000 site, no remediation of a European Site is required. 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;

6.6.17. I have noted planning history of the site, and the change in ownership of the site and I would accept, based on the information available to me, that the applicant for leave to apply for substitute consent does not appear to have carried out an unauthorised development. The area quarried since purchased in 2014 was in accordance with the planning permission granted under PA ref: 09/415, and PA ref: 15/724, and I would accept that since the expiration of said grant of planning permission, the quarry has not been worked.

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

6.6.18. I consider it reasonable to note that the current applicant, since acquiring the subject quarry site, has moved to secure access to the quarry face with the erection of fencing around the full perimeter of the pit. I also accept the commitment of the applicant to implement an agreed post closure and rehabilitation plan to ensure the biodiversity potential of the site.

6.7. Conclusion

6.7.1. It is my conclusion that exceptional circumstances exist in this case and that the regularisation of the development would not circumvent the purposes or objectives of the EIA Directive and the Habitats Directive. I am further satisfied, due to the planning history of the site, that the applicant could reasonably have had a belief that the development was not unauthorised and that the ability to carry out EIA and AA and provide for public participation has not been substantially impaired.

7.0 Recommendation

7.1.1. Having regard to Section 177 D(1)(b), which provides that the Board shall only grant leave to apply for substitute consent where AA is required and that it is satisfied that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of development by permitting an application for substitute consent, I am satisfied that such exceptional circumstances exist in this case, and therefore recommend that consent for leave to apply for substitute consent be permitted.

8.0 Reasons and Considerations

Having regard to Section 177D of the Planning and Development Acts, 2000-2016, as inserted by Section 57 of the Planning and Development (Amendment) Act 2010, I am satisfied that:

- a) the development is one where an EIA or a determination as to whether EIA is required, and

- b) the development is one where Appropriate Assessment (AA) is required, but is not satisfied that:
- c) exceptional circumstances exist such that I consider it appropriate to permit the opportunity for regularisation of the development by permitted an application for substitute consent.

In this regard, I consider that:

- the regularisation of the development would not circumvent the purpose and objectives of the Environmental Impact Assessment Directive or Habitats Directive;
- the applicant had, or could reasonably have had, a belief that the development was not unauthorised;
- the ability to carry out an assessment of the environmental impacts of the development for the purpose of an EIA and AA and in particular to provide for public participation in such assessment, has not been substantially impaired;
- the actual or likely significant effects on the environment or adverse effects on the integrity of a European Site, if any, resulting from the carrying out of the development, could likely be substantially remediated;
- the applicant has not otherwise carried out any unauthorised development.

and, therefore, concluded that it would be appropriate to consider an application for the regularisation of the development by means of an application for substitute consent.

A. Considine

Planning Inspector

20/01/2022