



An  
Bord  
Pleanála

## Inspector's Report ABP-311265-21

<b>Development</b>	(1) 25 year permission to extract & blast rock (2) relocation of stone crushing & screening plant (3) all other associated site works. An Environmental Impact Assessment (EIAR) & Natura Impact Statement (NIS) accompany the application.
<b>Location</b>	Carrownamaddy, Dunfanaghy, Co Donegal
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	2150256
<b>Applicant(s)</b>	McFadden & McGinley Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	To grant with conditions
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Marian McDaid.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	21 <sup>st</sup> March 2022.
<b>Inspector</b>	Deirdre MacGabhann

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## 1.0 Site Location and Description

- 1.1. The 14.67ha appeal site is situated c.3km to the north west of Muckish Mountain and c.3km north west of Creeslough, in the townland of Carrownamaddy, County Donegal. Dunfanaghy lies c.5km north of the site. The site lies on the northern side of a county road, L-1284-2. This road joins the R56 approximately 3km to the north east of the quarry.
- 1.2. The appeal site can be divided into two areas, the western part of the site, comprising the existing rock processing and manufacturing area and to the east of this an area of unworked land comprising dry heath, wet heath, wet grassland and scrub. Within the processing and manufacturing area there are:
- Site offices, with staff facilities and weighbridge, adjoining the public road.
  - Machinery workshop.
  - Dry batch ready mixed concrete plant, with associated holding bins, hoppers and silos (west of area).
  - Wet batch ready mixed concrete plant, with associated bins, hoppers and silos (central to area).
  - Concrete block yard.
  - Static stone crusher/washing unit (southwest of area).
  - Stockpiles of processed materials.
  - Four linked settlement ponds.
- 1.3. To the north of the yard an internal access road runs alongside the northern boundary of the site and provides access to lands to an extraction area to the east of the site and north of the proposed extraction area. It is stated in the planning application documents that extraction has ceased from this area.
- 1.4. Access to the site is from the L-1284-2 via three entrances. Internal access roads are linked internally.
- 1.5. Carrownamaddy River runs along the northern boundary of the site in an easterly direction. To the south of the site, along the public road are a small number of one

off houses. Other dwellings/farms lie alongside the public road to the north of the site and Carrownamaddy River.

## 2.0 Proposed Development

2.1. The proposed development, as revised by way of significant further information (submitted on the 17<sup>th</sup> June 2021) comprises:

- 25 year permission to extract and blast rock, with a new 3.0ha extraction area to the east of the existing quarry yard and settlement ponds. Overburden will be removed from the extraction area and placed in berms of 2.5m-3.0m around the perimeter of the extraction area. Two additional settlement ponds will be constructed for the settlement of run off from the area. Rock will be extracted to a depth of 53m on a phased basis, by a combination of excavator and periodic blasting (c.5 x year) to fragment the parent material into manageable sizes from the quarry face. Rock will be processed by a primary mobile crusher sited close to the active face and by the static crushing and screening plant. Crushed material will be screened into various sized aggregate, washed if necessary and stockpiled. Aggregate will be sold directly from stockpiles or used in dry and wet batch concrete products.
- Excavation will not take place below water table.
- Relocation of stone crushing and screening plant from its current location to the south of settlement pond no. 2.
- All other associated site works.

2.2. Water supply to the main office, canteen and staff facilities will be from an existing supply from the public mains. Wastewater will be disposed of in a holding tank on site, as per a condition of ABP-SU05E.SU0030.

2.3. Water for processing and manufacturing is taken from the settlement ponds, with occasional topping up from Carrownamaddy River. Discharges to Carrownamaddy River are made in periods of sustained weather. Run off from the new extraction area will be directed into the same settlement pond system. Water for dust suppression is supplied by pump from the settlement pond system in the manufacturing area.

2.4. The planning application includes:

- Environmental Impact Assessment Report.
- Appropriate Assessment Screening Report.
- Natura Impact Statement (NIS).
- Addendum to NIS.
- Quarry Landscape and Restoration Plan.
- Report on Archaeological Assessment.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On the 6<sup>th</sup> August 2021, the planning authority decided to grant permission for the development subject to 19 conditions, including:

- C1 – Limits permission to 25 years. Development to be carried out as per plans and details lodged including EIAR and NIS and Addendum NIS.
- C2 – Defines extraction area, requires implementation of perimeter berms and submission of landscaping and restoration plan.
- C3 – Requires implementation of all environmental, construction and ecological mitigation measures.
- C4 – Requires discharge of trade effluent to waters to be in accordance with requirements for a discharge licence under Water Pollution Act.
- C5 – Sets out hours of operation.
- C6 – Precludes blasting April to June (inclusive).
- C7 and C8 – Set out requirements for blasting operations.
- C9 and C10 – Govern noise and dust respectively.
- C11 – Requires stock proof fencing.
- C12 – Requires archaeological monitoring of site works.

- C13 – Requires provision and use of wheel wash.
- C14 – Requires appropriate storage of pollutants.
- C18 – Requires payment of a bond or security.
- C19 – Requires payment of a development contribution.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

- 6<sup>th</sup> April 2021 – The report refers to internal reports made, including those by Lab (no objections) and Conservation Officer (observations on PA ref. 20/51287), submissions by prescribed bodies and third parties, the planning history of the site and policy context for the development. The report considers the principle of the development to be acceptable given the established nature of the activity on the site and local and national planning policies which support extractive industries. The report refers to enforcement action in respect of compliance with conditions attached to the substitute consent to cease quarrying operations. Further, it states that as extraction works have ceased the PA consider that it is acceptable in principle for the proposed works to be carried out at an alternative location on the landholding. The report carries out an environmental impact assessment of the development, having regard to the EIAR submitted, and considers that the development would not detract from the visual amenity of the area and that arrangements for access are acceptable. The report recommends further information in respect of effect of the development on Merlin, as per the submission by the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (DTCAGSM) and location of settlement ponds in new extraction area. Appropriate assessment to be carried out subsequent to the submission of further information.
- 28<sup>th</sup> July 2021 – The report refers to the further information submitted. It recommends conditions precluding blasting during April to June (inclusive) but states that the PA is satisfied that the results presented in the NIS Addendum demonstrate that subject to mitigation measures the development will not

result in any significant loss of habitat associated with Derryveagh and Glendowan Mountains SPA. Further, it states that any discussion in respect of securing and managing lands for habitat are between the applicant and NPWS outside of the application process.

- 28<sup>th</sup> July 2021 – The planning authority’s Appropriate Assessment refers to European sites that may be affected by the development (site synopsis and conservation objectives), Muckish Mountain SAC, Derryveagh and Glendowan Mountains SPA and Sheephaven Bay SAC. It determines that, having regard to the detailed mitigation measures and recommendations set out in the NIS and Addendum to NIS, the development will not have a significant effect on European sites.

### 3.2.2. Other Technical Reports

- Fire Officer (5<sup>th</sup> March 2021) – No objection.
- Building Control (10<sup>th</sup> March 2021) – All works to comply with Building Regulations where applicable. The report refers to the findings of the Appropriate Assessment Report and recommends granting permission for the development subject to condition.

### 3.3. Prescribed Bodies

- An Taisce (22<sup>nd</sup> March 2021) – Application submitted in parallel to PA ref. 21/50257 and subject development should be assessed in conjunction with the application. A range of invalid or incomplete applications have been lodged between 2016 and 2020 and operations have continued on site. Application requires preliminary legal assessment as it raises significant EU level and national EIA and planning compliance issues, which render the application invalid due to large scale unauthorised development. In 2020 An Taisce obtained a supreme court judgement nullifying the then applicable Substitute Consent regime on the basis of failure to address consideration of exceptionality (An Taisce v An Bord Pleanála High Court 201/342 JR and Supreme Court 9/19). Site is in an ecological and landscape sensitive area. Operational history referred to by applicant indicates absence of planning permission for developments carried out and lack of compliance with condition



no. 1 of application for substitute consent (ABP05E.SU0030). Application does not address or resolve the nature or extent of development on the site since the 2014 Board Pleanála substitute consent decision. The NIS cannot separate the subject application from PA ref. 21/50257. Granting of 25 year permission is inappropriate in principle.

- Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (DTCAGSM) – Recommends pre-development archaeological impact assessment. Considers that risks to Merlin populations, that support the Derryveagh and Glendowan Mountains SPA, are inadequately assessed. Subsequent report recommends that blasting activities are undertaken outside of the main sensitive bird breeding season and that compensatory foraging habitat is provided for merlin.

### **3.4. Third Party Observations**

3.4.1. There is one third party observation on file by Marian McDaid, the appellant. The following issues are raised:

- Impact of blasts on integrity of residential property.
- Health effects of chemicals used in blasting.
- Notice of application in a national newspaper and no site notice.

### **4.0 Planning History**

- PA ref. 04/3277 – Permission granted for office with septic tank.
- PA ref. EUQY82/ABP05E.SU0030 – In accordance with section K of the Planning and Development Act 2000 (as amended), the Board granted substitute consent for a quarry at Carrownamaddy. The consent referred to an overall site area of 21ha, comprising the existing manufacturing and processing area and quarry extraction area to the east of the site (to the north of the proposed extraction area). The grant of substitute consent did not authorise any structures or future quarrying on the site, and it did not apply to the batching plants or associated works or any manufacturing on the site.

- PA ref. 16/51814 – Invalid application (for continuation of quarrying, manufacturing and processing, new garage/workshop, relocation of stone crushing and screening plant and associated works).
- PA ref. 17/50038 – Invalid application (for continuation of quarrying, manufacturing and processing, new garage/workshop, relocation of stone crushing and screening plant and associated works).
- PA ref. 20/51287 – Invalid application (for retention of quarry yard to include all related manufacturing and processing works with ancillary facilities, 25 year permission to extract and blast rock, relocation of stone crushing and screening plant and associated works).
- PA ref. 21/50257 – Permission for retention and continuation of use of manufacturing and processing plant, existing domestic wastewater holding tank and settlement ponds at Carrownamaddy was granted by the planning authority 13<sup>th</sup> September 2021. The 4.0ha application site refers to the existing operations at the subject site (i.e. it excludes any extraction area).

## 5.0 Policy Context

### 5.1. National Policies

- National Planning Framework – National policy objective 23 seeks to facilitate the development of the rural economy through supporting sustainable and economically efficient sectors, including extractive industries, provided they maintain and protect the natural environment.

### 5.2. Development Plan

- 5.2.1. The appeal site lies in the administrative area of Donegal County Development Plan 2018 to 2024. The site lies in an area of Moderate Scenic Amenity. These are areas outside of the Local Area Plan boundaries and Settlement framework boundaries that have a unique, rural and generally agricultural quality. It is stated that these areas have the capacity to absorb additional development that is suitably

located, sited and designed subject to compliance with all other objectives and policies of the Plan (Policy NH-P-7 applies)

- 5.2.2. Policies in respect of extractive industries are set out in section 8.1. Overall the aim of the Plan is to facilitate appropriate and sustainable extraction of locally sourced aggregates and/or minerals that contribute to the local economy subject to environmental safeguards. This overall aim is reflected in policies EX-P-1 to EX-P-6 of the Plan.
- 5.2.3. The appeal site lies in proximity to various national and European sites of natural heritage interest. Policy NH-P-1 affords protection to these sites from development proposals.

### **5.3. Natural Heritage Designations**

- 5.3.1. The appeal site lies c.450m north of Muckish Mountain Special Area of Conservation. Within the site, part of the SAC is also designated as a proposed Natural Heritage Area (Muckish Mountain pNHA) and as a Special Protection Area, Derryveagh and Glendowan Mountains SPA. Other sites lie in the wider area, including Sheephaven Bay SAC into which Carrownamaddy River flows, c.3km to the north east of the appeal site.

### **5.4. EIA Screening**

- 5.4.1. Class 19, Part 1 of Schedule 5 of the Planning and Development Act, 2001 (as amended) requires EIA of quarries in excess of 25ha.
- 5.4.2. Class 2, Part 2 of Schedule 5 requires EIA of developments comprising the extraction of stone or sand, where the area of extraction would be greater than 5ha.
- 5.4.3. Class 13(b), Part 2 of Schedule 5 requires EIA of changes and extensions to development which comprise an increase in size greater than 50% of the appropriate threshold.
- 5.4.4. The proposed development refers to a site of 14.67ha, with an extraction area of 3ha. However, the development is an extension of an existing quarry where the extension is >50% of the appropriate threshold of 5ha. The proposed development triggers the requirement for EIA.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

#### 6.1.1. Grounds of appeal are:

- The application does not comply with the requirements of the planning regulations.
- The EIAR is not compliant with the EIA Directive.
- The planning authority failed to carry out a proper EIA.
- The planning authority failed to carry out a proper Appropriate Assessment.
- The decision by the planning authority is contrary to the Planning and Development Act, Directives of the EU and findings of the CJEU.
- It is not possible for the Board having carried out its functions *de novo* to grant permission for the development.
- The development and the retention application are the same.

### 6.2. Applicant Response

#### 6.2.1. The applicant makes the following response to the appeal:

- Application complies with articles 22 and 23 of the Planning and Development Regulations (including EIA portal).
- Appellant fails to indicate how the EIAR is defective. EIAR is compliant with article 4(4) of the EIA Directive.
- NIS and Addendum NIS submitted. Development is consistent with article 6(3) of the Habitats Directive. Addendum NIS focuses on Merlin bird studies with methodology agreed with NPWS. PA and Department are satisfied development will not adversely affect the integrity of a European site. PA have carried out a AA determination.
- No information is submitted by the appellant to undermine the conclusions of the Planning Officer's report which deemed the proposal to be acceptable.

### 6.3. Planning Authority Response

6.3.1. The planning authority set out the background to the subject development, the application lodged simultaneously with the application for the subject development and make the following comments:

- Under section 261 the quarry was deemed a pre-64 quarry requiring substitute consent. Under ABP 05E.SU0030, substitute consent was granted by the Board subject to conditions. The Board noted that the notice issued by the PA referred only to appropriate assessment. The scope of the substitute consent was confined to past quarrying. Any future development on the site was outside of the substitute consent process. The Board's decision pre-dated amendments to the Planning and Development Act, under section 37L, which allowed for the continuation of quarry use as part of the substitute consent process.
- The appellant was granted planning permission for her dwelling in 2001 (PA ref. 01/2206) with full awareness of the quarry operation within 400m of the dwelling.
- Planning permission was granted by the planning authority under PA ref. 21/50256 to regularise the area of the quarry that had already been granted substitute consent by the Board and to allow for this area of the quarry to continue operation. The storm water collection and discharge to ground measures proposed in the subject application are those approved under the substitute consent application. The PA was satisfied that the mitigation measures set out in the substitute consent application were more than adequate to protect against risk to water quality and the discharge did not pose any risk to the qualifying interests of the Muckish Mountain SAC, Derryveagh and Glendowan Mountains SAC or Sheephaven SAC..
- Compliance with planning regulations. It is unclear what part of the planning regulations the appellant refers. The PA consider the development compliant with all Articles of Part 4 – Control of Development (and therefore constituted a valid planning application), Part 10 – Environmental Impact Assessment, and part 20 – Appropriate Assessment, of the Planning and Development Regulations 2001 (as amended).

- Compliance with EIA Directive. It is unclear which part of the EIAR the appellant is referring to. The PA is satisfied that the EIAR is consistent with the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended) by the transposing of the EIA Directive into Irish law in 2018.
- Carrying out of EIA. PA carried out an EIA as prescribed for under Part 10 of the Planning and Development Act 2000 (as amended) and Part 10 of the Planning and Development Regulations 2001 (as amended).
- Carrying out of AA. The PA carried out an AA as prescribed for under Part 20 of the Planning and Development Act 2000 (as amended) and Part 20 (*sic*) of the Planning and Development Regulations (as amended).
- P&D Act 2000 (as amended), EU Directives and findings of CJEU. PA disagree with assertion. The appellant has not specified which CJEU he is referring to. PA is satisfied that its assessment is fully compliant.
- Determination by ABP. PA relies on the board to carry out its functions regarding the appeal. The quarry has been previously assessed by the Board under substitute consent application. At that time there was no legal mechanism provided under legislation for the continuation of quarrying. The P&D Act 2000 (as amended) was amended by legal provisions of section 37L which allows for continuation of quarrying.
- PA is satisfied that the principle for quarrying has been established at the location, proposal complies with National Policy Objective 23 and policies EX-P-1 to EX-P-6 of the CDP 2018-2024, as varied and proposal for extraction period for 25 years is acceptable in principle, subject to compliance with all other relevant development management criteria and monitoring.

#### 6.4. Observations/Further observations

- None.

## 7.0 Assessment

7.1. Having inspected the appeal site, examined the application details and all other documentation on file and having regard to relevant national guidance and local planning policies, I consider that the main issues in this appeal can be confined to the matters raised by parties, namely legal issues, environmental impact assessment and appropriate assessment. I note that the issues raised in observations have been addressed by the planning authority and have not been brought through to appeal.

### 7.2. Legal Issues

- 7.2.1. The appellant refers to three distinct legal tasks when the Board deals with the subject appeal, the Planning Acts, the EIA Directive and assessment under the Habitats Directive. Legal issues in respect of the Planning Acts are discussed below. Legal issues in respect of EIA and AA are dealt with in separate sections.
- 7.2.2. Under the Planning Acts the appellant states that the Board must examine the application to ascertain if the contents comply with (a) the Planning Regulations, in particular Articles 22 and 23 of the 2001 Regulations as per Judgement of *Humphries J Sweetman v An Bord Pleanála* 2020, No. 557 JR, and (b) the merits of the application in accordance with the Planning and Development Act 2000 (as amended) to ensure the proposed development is in accordance with the proper planning and sustainable development of the area.
- 7.2.3. No specific matters are raised regarding inadequacies of the subject application/proposed development with either the Regulations or the Act, including how the development fails to accord with the proper planning and sustainable development of the area. In *Sweetman v An bord Pleanála*, the Judgement considered the Planning and Development Regulations, 2001 (as amended) and the requirement in law for an appropriate description of the development in terms of plans and particulars. However, this matter is not specifically raised by the appellant.
- 7.2.4. Section 22 and 23 of the Planning and Development Regulations, 2001 (as amended) respectively deal with the content of planning applications generally and

particulars to accompany an application under article 22. Validation is the responsibility of the PA under article 26.

- 7.2.5. In the course of the planning application, An Taisce also raised concerns regarding the legal matters stating that '*The subject application requires preliminary legal assessment as it raises significant EU level and national Environmental Impact Assessment and planning compliance issues*'. These arguments are not detailed, but the submission states that the application is invalid due to unauthorised development on the site and that the NIS cannot separate the subject application from PA ref. 21/50257 (application for retention).
- 7.2.6. Matters of enforcement are the responsibility of the planning authority and in this instance permission has been granted under PA ref. 21/50257 for the retention and continuation of use of plant and equipment on the appeal site and settlement pond system (no extraction area).
- 7.2.7. Under section 34(12) of the Planning and Development Act 2000 (as amended), retention permission cannot be sought if a development that was carried out requires EIA, a determination in respect of EIA or appropriate assessment. I would consider, therefore, that there may be issues with the retention permission granted by the planning authority. However, this matter is outside the scope of this appeal.
- 7.2.8. The subject appeal is in respect of an application to extract stone from a new site and to continue manufacturing and processing in the existing manufacturing and processing area, with relocation of the crushing and screening plant. In the absence of the application for retention 'failing', I consider that it is incumbent on the Board to determine the appeal in respect of the proposed development and the matters raised.
- 7.2.9. Section 127(1)(a) of the Planning and Development Act 2000 (as amended) requires that an appeal state the full grounds of the appeal and the reasons, considerations and arguments on which they are based. In this instance, there are no specific issues raised by the appellant to indicate the manner in which the planning application fails to comply with the Planning and Development Regulations or how it fails to be in accordance with the planning and sustainable development of the area. In the absence of any supporting reasons, considerations or arguments I am not satisfied that the appellant has provided adequate substance to the appeal.



### 7.3. Environmental Impact Assessment

- 7.3.1. The appellant refers to the Article 4(4) of the EU's Environmental Impact Assessment Directive and the information to be included in an EIA, the requirements placed on the Board to form and record a view as the environmental impacts of the development (considering the EIA Report), views of the public and applying its own expertise. It argues that the EIAR is not compliant with the EIA Directive and that the planning authority failed to carry out a proper EIA, if at all.
- 7.3.2. The appellant puts forward no further information to demonstrate how the EIAR fails to comply with the EIA Directive, or any reasons, considerations or arguments to indicate or demonstrate how the planning authority's EIA is defective.
- 7.3.3. Whilst the Board is required to consider appeals *de novo*, section 127(1)(a) of the Act clearly requires that an appeal shall '*state in full the grounds of the appeal...and the reasons, considerations and arguments on which they are based*'. In the absence of any justification of the grounds of appeal, I am not satisfied that the appellant has provided adequate substance to the appeal to comply with the Act.

### 7.4. Appropriate Assessment

- 7.4.1. The appellant refers to:
- (a) the Board's responsibilities under the Habitats Directive, to screen the development and to make a decision as required under article 6.3,
  - (b) case law, which has clarified the threshold for appropriate assessment ('the possibility of significant effect', *Sweetman & Others v An Bord Pleanála*, 259/1 and *Kelly v An Bord Pleanála* [2014] IEHC 400).
- 7.4.2. It is argued that on the basis of total lack of certainty in the information submitted, it is not possible for the Board to make a decision to comply with the requirement for the absence of lacunae, with complete, precise and definitive conclusions capable of removing all reasonable scientific doubt.
- 7.4.3. It is also argued that the PA failed to carry out a proper appropriate assessment, according to case law of the CJEU, if at all and has acted in a manner which is contrary to the Planning and Development Act and the Directives of the EU and findings of the CJEU in respect of appropriate assessment.

7.4.4. The appellant provides no information on the lack of certainty in the information submitted, apparent lacunae in the NIS/AA or methodology adopted by the PA which is at fault. Whilst the Board is required to consider appeals *de novo*, again section 127(1)(a) of the Act clearly requires that an appeal shall '*state in full the grounds of the appeal...and the reasons, considerations and arguments on which they are based*'. In the absence of any justification or explanation for the grounds of appeal, I am not satisfied that the appellant has provided adequate substance to the appeal to comply with the Act.

## 8.0 Recommendation

8.1. I recommend that the Board dismiss the appeal on the grounds under section 138(1)(a)(i) of the Act, that the appeal has been made without supporting arguments and is therefore without substance.

## 9.0 Reasons and Considerations

It is a requirement of section 127(1)(d) of the Planning and Development Act, 2000 (as amended) that an appeal shall state in full the grounds of appeal and the reasons, considerations and arguments on which they are based. This is an important requirement for protecting the integrity of the planning system. In this instance the appellant has not provided reasons, considerations or arguments upon which the grounds of appeal are based. It is considered, therefore, that the appeal is without substance and shall be dismissed.

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Deirdre MacGabhann

Planning Inspector

24<sup>th</sup> March 2022