



An
Bord
Pleanála

Inspector's Report ABP 311639-21

Development	Continue Quarrying Activity.
Location	Lissoughter, Recess, County Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	N/A
Applicant(s)	Grealish Quarries Limited.
Type of Application	Application for Leave to apply for Substitute Consent
Planning Authority Decision	N/A
Date of Site Inspection	23 rd day of August 2022
Inspector	Fergal Ó Bric

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1.0 Site Location and Description

- 1.1. The site is located in the townland of Lissoughter, Recess, County Galway, a rural area in the Connemara Gaeltacht, approximately 30 kilometres west of Oughterard. Access to/from the quarry is directly onto the N59, a national secondary route linking Galway city with Clifden and Connemara. The site comprises a granite quarry which it is stated ceased extraction in 2013 following the liquidation of the quarry business. Mineral extraction has progressed in a north and easterly up until the quarry closure. The main access is via a 9 metre wide double gated entrance onto the N59 and there is also a secondary entrance off a local county road to the north(rear) of the quarry site. The applicants land ownership extends further, west, east and north of the extracted area.
- 1.2. The quarry site is hydrologically linked to Glendollagh lake on the opposite side of the N59 via a culvert underneath the N59. The lake forms part of the Galway Bay Complex Special Area of Conservation (SAC). The area surrounding the appeal site comprises bogland, small patches of improved agricultural land and some forestry. The landscape to the north of the quarry site comprises the Maumturk Mountains where levels gently fall from north to south towards the quarry site.
- 1.3. The quarry comprises an area of approximately 7.11 hectares. Extraction has occurred across two benches which are evident to the north and east of the quarry faces. There is a 2.4 metre tall post and wire fence to the south of the quarry site along its boundary with the N59. There is a tree lined boundary to the north and west of the site and hedgerow and foliage to the east of the site. The quarry site is screened by the surrounding topography including trees and hedges, the extraction area is visible from the N59 to the south of the quarry site. Levels on the site rise dramatically to the north and east of the site, these are the areas that have not been quarried to date. The quarry floor sits at a depth of 20AOD approximately.

2.0 Proposed Development

- 2.1. The continued extraction of granite used in the production of aggregates, concrete, concrete blocks and precast concrete products at a quarry at Lissoughter, Recess, County Galway.

3.0 Planning History

- 3.1. Under planning reference QSP35, Galway County Council determined on 3rd day of August 2012 that development was carried out after the 1st day of February 1990, development which would have required an environmental impact assessment, but that such an assessment was not carried out, that development was carried out after the 26th day of February 1997, development which would have required an Appropriate Assessment, but that such an assessment was not carried out and were therefore, directed to apply to the Board for substitute consent.
- 3.2. Under Board reference QV07.QV0065, in January 2014, the Board confirmed the decision of the Planning Authority under Section 261A (3) (a) of the Planning and Development Act 2000 (as amended). The applicant was advised by the Board that they had a twelve month timeframe from the date of confirmation by the Board to submit a substitute consent application including the submission of remedial Environmental Impact Assessment Report (rEIAR) and remedial Natura Impact Statement (rNIS).
- 3.3. Under Board reference 07.SH.00998, in July 2016, the Board refused an application for an extension of time to apply for substitute consent due to the failure of the owners/operators of the quarry to make an application for SC, within the time period specified by the Board under QV07.QV0065.

4.0 Policy Context

4.1. Galway County Development Plan 2022-2028

4.2. The site is located within a rural area as defined within the current Galway County Development Plan (GCDP).

4.3. Section 4.14 Mineral Extraction and Quarries

The GCDP includes the following policy objectives

MEQ 1 Aggregate Resources Ensure adequate supplies of aggregate resources to meet future growth needs within County Galway and the wider region and to facilitate the exploitation of such resources where there is a proven need and market

opportunity for such minerals or aggregates and ensure that this exploitation of resources does not adversely affect the environment or adjoining existing land uses.

MEQ 2 Protection of the Environment: The Planning Authority shall require the following in relation to the management of authorised aggregate extraction

(a) All quarries shall comply with the requirements of the EU Habitats Directive, the Planning and Development (Amendment) Act 2010 and by the guidance as contained within the Department of Environment Heritage and Local Government Guidelines 2004 for Quarries and Ancillary Facilities, the Environmental Protection Agency Guidelines 'Environmental Management in the Extractive Industry: Non-Scheduled Minerals 2006 (including any updated/superseding documents) and to DM Standard 19 of this Development Plan;

(b) Require development proposals on or in the proximity of quarry sites, to carry out appropriate investigations into the nature and extent of old quarries (where applicable). Such proposals shall also investigate the nature and extent of soil and groundwater contamination and the risks associated with site development works together with appropriate mitigation;

(c) Require Development Proposals to assess the potential impact of extraction in areas where geo-morphological interest, groundwater and important aquifers, important archaeological features and Natural Heritage Areas are located;

(d) Have regard to the Landscape Character Assessment of the County and its recommendations;

(e) Ensure that any quarry activity has minimal adverse impact on the road network and that the full cost of road improvements, including during operations and at time of closure, which are necessary to facilitate those industries are borne by the industry itself.

(f) Ensure that the extraction of minerals or aggregates does not adversely impact on residential or environmental amenity;

(g) Protect all known un-worked deposits from development that might limit their scope for extraction.

4.4. **Landscape:**

Section 8.13 of the Plan pertains to landscape

The appeal site is located within an area identified as being within the uplands and bog landscape and the classification of sensitivity is within Class 4-Iconic, where the landscape has a high sensitivity to change.

The Plan includes the following policy objectives:

LCM 1 Preservation of Landscape Character: To preserve and enhance the character of the landscape where, and to the extent that, in the opinion of the Planning Authority, the proper planning and sustainable development of the area requires it, including the preservation and enhancement, where possible of views and prospects and the amenities of places and features of natural beauty or interest.

LCM 2 Landscape Sensitivity Classification: The Planning Authority shall have regard to the landscape sensitivity classification of sites in the consideration of any significant development proposals and, where necessary, require a Landscape/Visual Impact Assessment to accompany such proposals. This shall be balanced against the need to develop key strategic infrastructure to meet the strategic aims of the plan.

LCM 3 Landscape Sensitivity Ratings: Consideration of landscape sensitivity ratings shall be an important factor in determining development uses in areas of the County. In areas of high landscape sensitivity, the design and the choice of location of proposed development in the landscape will also be critical considerations

LCM 5 Prospecting and Mining: It is a policy objective of the Planning Authority to give careful consideration in exceptional circumstances for prospecting or mining for gold, silver or base metals in landscapes class 3 or 4.

4.5. Natural Heritage

Section 10.6 of the Plan pertains to Natural Heritage and biodiversity

There are a number of policy objectives included within the plan which are pertinent to this particular quarry proposal as follows:

NHB 1: Natural Heritage and Biodiversity of Designated Sites, Habitats and Species Protect and where possible enhance the natural heritage sites designated under EU Legislation and National Legislation (Habitats Directive, Birds Directive, European Communities (Birds and Natural Habitats) Regulations 2011 and Wildlife Acts) and extend to any additions or alterations to sites that may occur during the lifetime of

this plan. To protect and, where possible, enhance the plant and animal species and their habitats that have been identified under European legislation (Habitats and Birds Directive) and protected under national Legislation (European Communities (Birds and Natural Habitats) Regulations 2011 (SI 477 of 2011), Wildlife Acts 1976-2010 and the Flora Protection Order (SI 94 of 1999). Support the protection, conservation and enhancement of natural heritage and biodiversity, including the protection of the integrity of European sites, that form part of the Natura 2000 network, the protection of Natural Heritage Areas, proposed Natural Heritage Areas, Ramsar Sites, Nature Reserves, Wild Fowl Sanctuaries (and other designated sites including any future designations) and the promotion of the development of a green/ecological network.

NHB 2: European Sites and Appropriate Assessment To implement Article 6 of the Habitats Directive and to ensure that Appropriate Assessment is carried out in relation to works, plans and projects likely to impact on European sites (SACs and SPAs), whether directly or indirectly or in combination with any other plan(s) or project(s). All assessments must be in compliance with the European Communities (Birds and Natural Habitats) Regulations 2011. All such projects and plans will also be required to comply with statutory Environmental Impact Assessment requirements where relevant.

NHB 3: Protection of European Sites No plans, programmes, or projects etc. giving rise to significant cumulative, direct, indirect or secondary impacts on European sites arising from their size or scale, land take, proximity, resource requirements, emissions (disposal to land, water or air), transportation requirements, duration of construction, operation, decommissioning or from any other effects shall be permitted on the basis of this Plan (either individually or in combination with other plans, programmes, etc. or projects).

4.6. Natural Heritage Designations

There are a number of European sites located in proximity to the appeal site and a number of European Sites to which there is a hydrological connectivity to the quarry site. These include the Connemara Bay Complex SAC (site code 002034) which is located approximately 15 metres south of the appeal site, the Maumturk Mountains SAC (site code 002008) is located approximately 125 metres north of the appeal

site, the Twelve Bens/Garraun Complex SAC (site code 002031) is located approximately 1.16 kilometres from the appeal site and the Connemara Bog complex SPA (site code 004181) is located approximately 720 metres downstream from the quarry site.

The Maumturk Mountains pNHA is located approximately 125 metres north of the appeal site at its closest point.

5.0 The Appeal

5.1. Grounds of Appeal

- The Board previously determined that the applicant was entitled to make an application for substitute consent under Board reference QV07/QVO65 which determined that development was carried out which would have required EIA and AA.
- A subsequent application for an extension of the period for the making of an application for substitute consent (07.SH.00998) was refused as the timeframe for which the extension of time application was received, extended beyond the timeframes set out by the Board in its decision under Board reference QV07/QVO65.
- This application meets the criteria set out within Section 177E of the P & D Act 2000 (as amended) in relation to exceptional circumstances. The regularisation of the quarry would not circumvent the purposes or objectives of the EIA Directive.
- The quarry came under the control of the current applicants (Grealish Quarries Ltd) in December 2016. They reasonably took the view that it was a pre-'63 use, as previously confirmed by Galway County Council (GCC) and the Board. Aerial photographs from 1995 and 2000 demonstrate that the quarry was several hectares in area on those dates.
- The previous quarry owners complied with the requirement to register the quarry under Section 261A of the Act.

5.2. Planning Authority Response

The Board invited the Planning Authority to submit details in relation to all correspondence in respect of planning applications on the lands, any planning enforcement correspondence in relation to the property and/or the applicant.

The Planning Authority made no response in relation to this request.

6.0 Assessment

- 6.1. Section 177C of the Planning and Development Act 2000 (PDA), as amended, provides, *inter alia*, that an application for leave to apply for substitute consent may be made where development required an EIA, screening for EIA and/or submission of an NIS and where 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.
- 6.2. Section 177D provides that the Board, *inter alia*, may grant leave to make an application for substitute consent where it is satisfied that the application refers to development that has been carried out and that EIA screening, EIA or AA is required and where exceptional circumstances apply.
- 6.3. This section was amended by EU Planning and Development (Environmental Impact Assessment) Regulations, 2018. The amendment provides that in making a determination on the matter of the requirement for EIA, the Board shall have regard to Schedule 7 of the Planning and Development Regulations, the information submitted pursuant to Schedule 7A, any further information received by the Board, the available results of preliminary verifications or assessments of the effects on the environment carried out pursuant to EU legislation other than the EIA Directive, the likely significant effects on any European site or other protected site. The Board has determined under the Section 261A process (Board reference QV07.QV0065), the development came within the scope of Schedule 5 of the Planning and Development Regulations 2001, as amended, and required submission of an rEIAR. I conclude on that basis that the development the subject of this application for leave is one which should be the subject of an EIS and carrying out of an EIA and that therefore, the tests set out in Section 177D are met in this instance.

- 6.4. In addition to the foregoing Section 177D(1)(b) provides that the Board may grant leave to apply for substitute consent where exceptional circumstances apply. These exceptional circumstances are set out in Section 177D (2), and I consider the provisions of Section 177D (2) as follows (the criteria set out in the section are in bold while my assessment is bullet pointed).
- 6.5. **Whether the regularisation of the development would circumvent the purposes and objectives of the EIA Directive or the Habitats Directive:**
- This application for leave applies to an area outlined in red on the submitted site layout drawing (Fig 001). This application site is very similar to which the application under QV07.QV0065 referred. The Board confirmed Galway County Council's decision in respect of Section 261 (A) (3) (a) of the PDA and a twelve month timeframe was issued to the applicants for the submission of a substitute consent application including an rEIAR and rNIS. The submission of a remedial EIAR and carrying out of an EIA would not circumvent the purpose and objectives of the EIA and Habitats Directive.
- 6.6. **Whether the applicant had or could reasonably have had a belief that the development was not unauthorised:**
- The applicant states that the previous quarry owners entered voluntary liquidation in March 2013 via a Deed of Mortgage with the National Asset Management Agency (NAMA) and subsequently went into receivership in April 2015, despite the best efforts of the then quarry owners to continue working the quarry. The Board issued a determination in the 27th day of January 2014, confirming the decision by Galway County Council and instructed the quarry owners (at that time) to apply for substitute consent (SC) within a period of 12 months of the Boards order, and that the SC application be accompanied by an rEIAR and rNIS. The opportunity to apply for SC lapsed in January 2015 by virtue of the previous owners being unable to prevent the business from entering liquidation. The significant costs associated with making the planning application, especially the rEIAR, made the cost of making the application financially prohibitive.

- Permission was sought to extend the timeframe for the submission of an SC application, including the rEIAR and rNIS. In July 2016 the Board under reference 07.SH.00998 refused permission to the then quarry owners to extend the time period for making the SC application under Section 177E (4) of the Planning and Development Act 2000 (as amended), as the specified timeframe (as previously set out by the Board in 2014) for the making of such an application had elapsed. Subsequently, Grealish Quarries Ltd subsequently purchased the quarry site in December 2016.
- An Enforcement Notice (EN) was issued by the PA under reference number EN14/117 following the failure of the previous owners to apply for SC within the specified timeframe. However, the development is considered to be compliant with the terms of the EN with the operations ceasing on site following liquidation in 2013. The fencing around the site perimeter was repaired and secured and plant and machinery were removed following the sale of the site. The current applicants sought confirmation from GCC in March 2018 that the EN had been complied with, however, to date, no reply was received from the PA. The current applicants consider that due to the passing of time and the lack of any further enforcement proceedings, that the Council are satisfied that no planning enforcement issues arise within the site.
- The applicants were aware the quarry had some pre 1964 rights, which have been acknowledged by both the PA and the Board within their planning decisions. I acknowledge that since the applicant took ownership of the quarry in late 2016, they have sought to engage with the PA to regularise the status of the quarry in a timely manner. It is acknowledged by the PA and the Board that the quarry use existed for many years prior to the purchase of the site by the current applicant. Some uncertainty did exist within the development management process in relation to quarries where a mix of pre '63 use, subsequent expansion and potential to require EIA and/or AA applied. Therefore, I conclude that the applicant could reasonably have had the belief that the quarry was authorised.

6.7. **“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.”**

- The process of EIA and AA involves the research and provision of information to the public and consenting authorities in relation to likely significant environmental impacts of a proposed development. In the present case, the ability to provide such information has not been substantially impaired and the provision of such information would facilitate public participation in the assessment/consent process. I conclude that the ability to carry out an rEIA and rNIS to assess the environmental impacts of the development has not been substantially impaired nor has the capacity for public participation in the process been substantially impaired.

6.8. **“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”**

- It is likely that there will be significant effects on the environment arising from this development, but only the submission of an rEIAR and carrying out of a rEIA will fully examine these impacts. I conclude therefore, that granting leave to make such an application to apply for substitute consent would facilitate that assessment process.
- The finding of adverse effects can only be made following an appropriate assessment on foot of submission of an rNIS. An rNIS has been submitted by the applicants and has concluded that with the implementation of the mitigation measures, that the continuance of quarrying on site (subject to permission being granted on foot of an application being made under Section 34 of the Act) would not adversely impact the integrity of any European site. I conclude therefore, that granting leave to make an application for substitute would facilitate the assessment of an rNIS.

6.9. **“The extent to which significant effects on the environment or adverse effects on the European site can be remedied”**

- I have had regard to the information available on the current file, including the rNIS, board reference numbers QV07/QV0065 and 07.SH.0098 and I carried out a walkover site inspection. Having regard to the material available, it is apparent that there is a surface water outfall from the quarry site through a culvert under the N59 into a pond area on the southern side of the N59 which in turn drains into Glendollagh lake. Additionally, it appears that the re-fuelling area within the quarry site is bunded with a concrete plinth and therefore, is confined within a closed system which may mitigate the direct flow of contaminants to the wider water environment. I conclude that an application for substitute consent, accompanied by an rEIAR and rNIS could provide information which could address significant effects on the environment or adverse effects on the integrity of European sites.

6.10. “Whether the applicant has complied with previous planning permissions or previously carried out an unauthorised development”

- I note that the Board under reference QV07.QV0065 acknowledge that the quarry commenced operation before the 1st day of October 1964, confirmed Galway County Council’s decision made in respect of this site under Section 261A (3) (a) of the Planning and Development Act 2000 (as amended) were fulfilled. Additionally, I am not aware the Planning Authority has issued any enforcement proceedings against the quarry at present. I conclude that the applicant has made reasonable efforts to regularise gravel extraction and concrete batching and block making on site.

6.11. “Such other matters as the Board consider relevant”

- The applicants within a supporting cover letter refer to the socio-economic benefits that would arise within the local area in terms of the employment (direct and indirect) that the continuance of quarrying on site would create, that the aggregates could assist in Galway County Council achieving its housing targets and assist the Government in realising the objectives within Rebuilding Ireland, Housing for All and Project Ireland 2040. The re-opening of the quarry would reduce the need for locals to travel to Galway city for employment as there will be opportunities at Recess Quarry to be employed

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

6.12. Recommendation

I recommend that leave to apply for substitute consent should be granted.

7.0 Reasons and Considerations

7.1. Having regard to Section 177D of the Planning and Development Act, 2000, as amended, the Board is satisfied that an environmental impact assessment and an appropriate assessment is required in this case, in the light of the scale and nature of the quarrying that has been carried out.

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

In this regard the Board;

- considered that this application for leave to apply for substitute consent has demonstrated that the regularisation of the quarry would not circumvent the purposes and objectives of the EIA Directive or the Habitats Directive because it would allow for the provision of information and an analysis of the likely significant environmental effects of the development.
- considered that the applicant could reasonably have had a belief that all/some of the quarrying development that took place prior to prior to 2016 when he acquired the site was authorised.
- considered that this application for leave to apply for substitute consent has demonstrated that the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment and to carry out an appropriate assessment, and that public participation in such assessments has not been substantially impaired.
- considered the submission of an rEIAR and rNIS would facilitate an assessment of the potential for the remediation of any significance effects on the environment or on a European site,

- considered that the applicants have made reasonable efforts to regularise the planning status of the quarry and noted that the planning authority is not currently pursuing enforcement proceedings against the applicant in this case,

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

Fergal Ó Bric
Planning Inspectorate

20th day of February 2023