



An
Bord
Pleanála

Inspector's Report ABP-311755-21

Development	Extraction/quarrying development
Location	Lands at Aghaskew (Dartee by), Scotshouse, Co. Monaghan
Planning Authority	Monaghan County Council
Planning Authority Reg. Ref.	n/a
Applicant(s)	Scotshouse Quarries Ltd
Type of Application	Leave to apply for substitute consent
Planning Authority Decision	n/a
Date of Site Inspection	17 th February 2022
Inspector	Hugh D. Morrison

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1.0 Introduction

- 1.1. This is an application for leave to apply for substitute consent under Section 177(C)(1) & 2(b) of the Planning and Development Act, 2000 – 2021. The applicant is of the opinion that “substantial exceptional circumstances” apply to its lands at Aghaskew (Dartree by), Scotshouse, Co. Monaghan, such that it should be given leave to apply for substitute consent for extraction/quarrying activities.

2.0 Site Location and Description

- 2.1. The site is located 0.9km to the south of the village of Scotshouse within a drumlin landscape. It is accessed off the south-western side of the L6280, 0.75km to the south of its junction with the R212, which runs between Cavan Town and Clones.
- 2.2. The site itself is roughly kite shaped and it extends over an area of 11.5 hectares. Some 8.9 hectares has been the subject of extraction for stone known as greywacke. The site entrance is at the northernmost corner of the site, and it is accompanied by a site office and staff welfare facilities, a weighbridge, a wheel wash, and surface water settlement tanks. Further into the site, but still within its northern portion, lies a considerable amount of plant and machinery used to process and crush stone and to produce coated road stone. The central and southern portions of the site have been the subject of the most recent extraction activities. Stockpiles of material are laid out on the quarry floor within these areas. A road runs around the perimeter of the site, elevated above the exposed rock faces.

3.0 Planning History

- 3.1. The key quarrying elements of the planning history of the site are summarised below.
- 83/09: Develop quarry c. 3.3 hectares: Permitted on 25th July 1983.
 - QY1: Section 261 registration of a 11.5-hectare quarry with an extraction area of 10 hectares: Registration confirmed by the Planning Authority on 12th April 2005.

- Q04/3002: Section 261(6)(a)(ii) conditions attached to operation of quarry on 24th March 2006. Pursuant to Condition 3 a restoration plan for the 11.5-hectare quarry was submitted to and agreed in writing by the Planning Authority on 6th November 2006.
- Section 261A(2)(a): In 2012, the Planning Authority prepared a “Quarry Assessment – Internal Report”, which addressed the need for EIA and NIA and which recommended that “no further action is required”.
- Enforcement report dated 21st March 2014 following site visit on 14th March 2014: No unauthorised quarrying recorded and no non-compliance with conditions recorded.
- Enforcement enquiry E1760: Enforcement report dated 24th October 2017 concluded that “the quarry is operating within the boundaries/site area registered under ref. 4/3002 and compliant with subsequent permissions.”
- Enforcement enquiry E82.2019: Warning letters issued on 2nd October 2019 and 20th February 2020 concerning extension to quarry and quarrying on lands without planning permission and a subsequent enforcement notice was issued on 2nd June 2020.

3.2. Other planning applications are summarised below, all of which were made by the current applicant:

- 08/787: Existing floodlights: Retention permission granted.
- 09/618: Portal frame workshop: Permitted.
- 10/127: Prefabricated single storey office building, weighbridge, and 2.4m high roadside boundary palisade fence: Retention permission granted.
- 14/124: Crushing plant facility: Retention permission granted.
- 14/157: Site office, wastewater treatment unit and associated raised filter percolation area, 7-space car park, storm drainage, foul drainage and all other associated site works: Permitted and subsequent application 19/9011 for extension of duration of permission granted until 27th August 2024.
- 15/113: Coated road stone plant: Permitted.
- 18/485: ESB sub-station and customer switch room: Permitted.

4.0 The applicant's Case for Leave for Substitute Consent

- 4.1. I will summarise the applicant's case using the headings that he cites for ease of reference.

Planning History to Section 261A

- 4.2. The quarry has operated over many decades, including from before 1963.
- 4.3. Permitted application 83/09 regularised planning for extraction from within an area of c. 3.3 hectares of an overall landholding of 11.5 hectares.
- 4.4. Entire landholding of 11.5 hectares registered under Section 261, as the quarry QY1, with 10 hectares for extraction. Conditions attached to this registration under Section 261(6)(a)(ii) were added to those attached under permitted application 83/09 and deemed to be equivalent to a Section 34 permission.
- 4.5. At the time of registration, the extraction area permitted under 83/09 had been exceeded.
- 4.6. Additional Condition 3 required the submission of a restoration plan. One was prepared for the entire landholding and accepted in writing by the Planning Authority.
- 4.7. Subsequent applications for ancillary buildings and structures (08/787, 09/618, and 10/127) indicated that the quarry extended over the entire landholding.

Section 261A

- 4.8. In 2012, under Section 261A, the Planning Authority assessed the quarry and concluded that, as neither an EIA nor a NIA offence existed on the site, "no further action" was needed. The need for Appropriate Assessment was screened out.
- 4.9. By 2012, the area under extraction had exceeded 3.3 hectares to extend over an additional 2.4 hectares. Consequently, a total of 5.7 hectares was under extraction, i.e. in excess of the 5-hectare threshold for EIA.
- 4.10. In these circumstances, the Planning Authority's above cited conclusion indicates that it viewed the "modified permission", i.e. 83/09 + Section 261 conditions, as providing for extraction within the registered site.
- 4.11. The Planning Authority's internal quarry assessment report contains plans showing the extent of the 83/09 site and the Section 261 registered site. Under the heading

“EIA/ Determinations in relation to EIA” of this report, the following commentary is given:

This site is authorised by planning permission P/83/09. Whilst it is noted that development has taken place post 1990, post 1997 and post 2008. It is also noted that no quarrying activity has been undertaken outside of the originally, granted site.

The reference here to “originally, granted site” can only “make sense” if it refers to the area of the modified permission.

Further Authorisations Post Section 261A

- 4.12. Both application 14/124, for a static aggregates processing/crushing assembly, and 15/113, for a tarmacadam plant, were permitted in the knowledge that they would be dependent upon site won aggregates, i.e. these aggregates must have been regarded as authorised.
- 4.13. In 2015 a discharge licence WP26/15 was issued to the operator following a further Screening for Appropriate Assessment
- 4.14. Only in 2019, following an enforcement enquiry, did the Planning Authority take the view that the existing modified permission was defective. A warning letter was received by the applicant on 2nd October 2019, and it has ceased extracting from the “unauthorised area” and agreed a site restoration plan for this area.

Route to Planning Compliance

- 4.15. Prior to 2019, the Planning Authority treated the site as fully authorised for quarrying. The applicant reasonably understood that the modified permission was sound and so it purchased the site on this basis.
- 4.16. On foot of the warning notice and an enforcement notice, the applicant, through no fault of its own, must seek to address any shortfall in the authorisation of its site.
- 4.17. In the above cited circumstances, the closure of the quarry would be a disproportionate response.
- 4.18. If the Planning Authority had identified the need for EIA under the Section 261A process in 2012, then the applicant would have been able automatically to avail of the substitute consent process.

4.19. In March 2021, the applicant approached the Planning Authority with a view to applying to the High Court for an order under Section 177B. Its case would have been that the modified permission was valid if defective. The High Court could then have issued an order under Section 177E directing the applicant to apply for substitute consent with a remedial EIAR for the area quarried beyond that which was authorised under 83/09, i.e. as of October 2021 an additional 5.6 hectares. However, as the Planning Authority has not responded to the applicant's approach, it has resorted to the current Section 177C application for leave to apply for substitute consent from the Board.

Applicability of Section 177C Leave to Apply for Substitute Consent

- 4.20. The Board must decide if an EIA and/or a NIA offence exists. If so, then it must decide if exceptional circumstances exist that would justify granting leave to apply for substitute consent under Section 177C.
- 4.21. The applicant accepts that quarrying in its site since 1990 has exceeded the threshold of 5 hectares for EIA and so, in the absence of an EIA, an EIA offence has arisen.
- 4.22. The Planning Authority has Screened for Appropriate Assessment on several occasions, i.e. under the Section 261A process, under subsequent planning applications, and under the discharge licence process. No need for NIA was thereby identified.
- 4.23. The applicant has submitted a Stage 1 Screening for Appropriate Assessment for the site of 8.9 hectares where quarrying has occurred to date. This Screening undertaken to current standards concludes that a Stage 2 Appropriate Assessment is not needed.
- 4.24. Given the planning history of the site, quarrying beyond the original 3.3-hectare site needs to be the subject of EIA, i.e. the 5.6 hectares.
- 4.25. The Board must now decide on whether exceptional circumstances exist, which would allow leave to apply for a substitute consent to be granted, thereby making it possible for a subsequent application to be made for substitute consent with a remedial EIAR.

Considerations including Exceptional Circumstances

(i) Procedural Error

- 4.26. Section 177D(1)(a)(ii) enables the Board to grant leave to apply for substitute consent where “any error of fact or law or procedural error” has occurred.
- 4.27. The applicant relied upon the outcome of the Section 261 process, namely the conditions attached to its site, in proceeding to expand the area of quarrying without seeking any further permission with an EIS under Section 34.
- 4.28. The applicant relied upon the outcome of the Section 261A process, namely that the Planning Authority concluded that “No further action” was needed, thereby unwittingly denying itself access to the process under Sections 261A(2) & (3), which would have allowed the need for EIA to be established and the substitute consent process to be accessed.

(ii) Exceptional Circumstances

- 4.29. The above cited procedural errors are exceptional circumstances in their own right and they are sufficient to justify leave to apply for substitute consent.
- 4.30. Prior to the enforcement enquiry in 2019, the Planning Authority was satisfied with the on-going development of the site as regulated by Section 261 and subsequent permissions/licences granted to it, which would necessarily have entailed assessment of cumulative impact and impacts arising from connectivity.
- 4.31. Under Section 177D(1A)(b), the view is expressed that any EIA of the site would not identify significant risks of environmental impact and so EIA is needed on the basis of the site's size alone.
- 4.32. Under Section 177D(2), the Board must consider whether various matters (a) – (g) (inclusive) are applicable. Given the planning history of the site, the opportunities that multiple applications afforded for the Planning Authority to assess impacts upon the site, and the applicant's commitment to obtaining permissions, the view is expressed that matters (a) – (g) are applicable and so exceptional circumstances do exist.
- 4.33. A legal opinion has also been submitted in support of the view that exceptional circumstances do exist.

Conclusion

- 4.34. Extraction was authorised under 83/09 and aerial photographs for 1995 – 2005 illustrate that the area thus authorised was exceeded in advance of the Section 261 process, which resulted in conditions and a modified permission. As no EIA has been undertaken, this modified permission is defective and so the site outside the originally authorised area has been left in planning jeopardy.
- 4.35. As of 18th June 2021, extraction has ceased outside the originally authorised area following works undertaken to ensure that benches are left in a safe condition.
- 4.36. As the Planning Authority has not responded to the applicant's approach to regularise matters under Section 177B, the current application, under Section 177C, was made for leave to apply for substitute consent from the Board. Relevant conditions in this respect, under Section 177D, have been complied with.
- 4.37. The effect of the Planning Authority's errors and the inevitable lapses in time involved in seeking to regularise the planning of the site mean that the applicant's business has been severely impacted: The remaining reserves within the originally authorised area are extremely limited.

5.0 Planning Authority Submission

- 5.1. The Planning Authority's view is that exceptional circumstances arise in this case.
- 5.2. By way of background to this view it states the following:

The 2006 decision on the 261 quarry registration arguably should have identified the site being quarried. The 2014 assessment and decision on the 261A quarry registration application failed to identify that the quarrying extraction area was extending beyond the site area of the P9/83 application.

Furthermore the assessment of planning enforcement complaints in 2014 and 2017 erroneously deemed an enlarged quarrying site to be authorised by virtue of having regard to documents submitted with the 261 registration application and which showed a quarrying area beyond the red line site area of the P9/83 application.

6.0 Legislative Provisions

- 6.1. Section 34 of the Planning and Development Act, 2000 – 2021, (hereafter referred to as the Act) addresses “Permission for development”. Sub-section 12 states the following:

A planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required that one or more than one of the following was carried out —

- (a) an environmental impact assessment,*
- (b) a determination as to whether an environmental impact assessment is required, or*
- (c) an appropriate assessment.*

- 6.2. Section 177C of the Act addresses the subject of “Application for leave to apply for substitute consent where notice not served by planning authority.” Relevant extracts from this Section are set out below.

(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 assessment report or a Natura impact statement or both that report and that statement, as the case may be, or

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

(ii) any error of fact or law or 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.

6.3. Section 177D of the Act addresses the subject of “Decision of Board on whether to grant leave to apply for substitute consent.” Relevant extracts from this Section are set out below.

(1) The Board shall only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required in respect of the development concerned and where it is further satisfied —

(a) that a permission granted for development by a planning authority or the Board is in breach of law, invalid or otherwise defective in a material respect whether by reason of a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union, or otherwise, by reason of —

(i) any matter contained in or omitted from the application for the permission including omission of an environmental impact assessment report or a Natura impact statement or both that report and that statement, as the case may be, or inadequacy of an environmental impact assessment report or a Natura impact statement or both that report and that statement, as the case may be, or

(ii) any error of fact or law or procedural error,

or

(b) that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

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

- (a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;*
- (b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;*
- (c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;*
- (d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;*
- (e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;*
- (f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;*
- (g) such other matters as the Board considers relevant.*

7.0 National Planning Guidelines

- 7.1. The Quarries and Ancillary Activities Guidelines (April 2004) advise on the Section 261 registration process as follows:

Section 261 of the Planning and Development Act, 2000 introduces a new system of once-off registration for all quarries. Only those for which planning permission was granted in the 5 years before section 261 became operative are excluded. The registration system has two purposes:

- to give a 'snapshot' of the current use of land for quarrying. This will ensure that local authorities have basic information about a quarry's operations. Planning permission may then be required for any proposed expansion or intensification of its operations;*
- where necessary, to permit the introduction of new or modified controls on the operation of certain quarries. These controls may be imposed in two ways. Quarries may have to comply with certain new or modified conditions on their operation...*

8.0 Assessment

- 8.1. The applicant accepts that, as the area of rock extraction within its site has extended over an area of 8.9 hectares, the threshold for mandatory EIA of 5 hectares cited under Item 2(b) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2021, has been exceeded and so its quarry needs to be the subject of EIA.
- 8.2. The applicant has addressed the question as to whether its quarry needs to be the subject of NIA, too. Previously, Stage 1 screening exercises were conducted as part of applications for planning permission and for a discharge licence. In each case, it was concluded that such need did not arise. The applicant has submitted with its current application a further Stage 1 screening exercise, which applies contemporaneous standards to this matter. Again, the conclusion reached is that NIA is not required.
- 8.3. I have reviewed the applicant's submission and I concur that the need for EIA, as distinct from NIA, exists and so I will proceed on this basis.
- 8.4. The applicant requests leave to apply for substitute consent under Section 177C of the Planning and Development Act, 2000 – 2021. By way of background, it explains in its submission why the route to planning compliance on its site necessarily entails the use of this Section. Section 177C(2) applies to situations within which development has been carried out where an EIA was or is required. It then goes on, to outline two alternative scenarios denoted as (a) and (b), under which an application for leave for substitute consent can be made:
- (a) envisages a scenario wherein a permission granted for the development "may be in breach of law, invalid or otherwise defective in a material respect" by reason of (i), for example, the omission of an EIAR, or (ii) "any error of fact or law or a procedural error", or
 - (b) envisages a scenario wherein "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."
- 8.5. On Page 10 of the submitted legal opinion, the applicant's barrister states that the planning permission granted to application 83/09 is the only planning permission that

exists for quarrying on the site, and it is not considered to be defective. She goes on to state that the Section 261 registration “is not a permission *per se* as it does not have the status of a permission granted under a *de novo* Section 34 application.” She adds that this registration was not defective, and the additional conditions attached under it have been complied with.

- 8.6. Section 177(D) addresses the decision of the Board on whether to grant leave to apply for substitute consent. Under Section 177D(1) the above cited scenarios are repeated from Section 177C(2). In the light of the foregoing paragraph, I consider that the first of these scenarios, (a), is not applicable to the applicant’s situation. I will, therefore, consider whether the second scenario, (b), is applicable. Section 177D(2) sets out matters, denoted as (a) – (g), which the Board is to have regard to in considering whether exceptional circumstances exist. I will consider each of these matters in turn below.

(a) Whether regularisation of the development concerned would circumvent the purpose and objectives of the EIA Directive or the Habitats Directive.

- 8.7. Article 1 of the EIA Directive states that it “shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.”
- 8.8. The applicant expresses the view that its project does not have significant effects on the environment and that the need for EIA arises only from the fact that the extraction area of its quarry has exceeded 5 hectares, i.e. the threshold for mandatory EIA.
- 8.9. I consider that the submission of an application for substitute consent with a remedial Environmental Impact Assessment Report (rEIAR) would provide the opportunity for the environmental effects of the applicant’s project to be assessed and for any mitigation measures to be identified and implemented. In such circumstances, the purpose and objectives of the EIA Directive would be capable of being upheld and so I conclude that such regularisation would not circumvent them.
- 8.10. The applicant draws attention to several Stage 1 screening exercises for Appropriate Assessment that have been undertaken by the Planning Authority. It also draws attention to its own screening exercise, which was undertaken for the working quarry, i.e. the extraction area of 8.9 hectares, and which is submitted as part of its

current application. In each case the conclusion was reached that Stage 2 Appropriate Assessment is not required. *Prima facie* the Habitats Directive is not therefore relevant to the current application.

(b) Whether the applicant had or could reasonably have had a belief that the development was authorised.

- 8.11. The applicant sets out the planning history of the site. It purchased the site of the quarry following its Section 261 registration and the attachment of conditions. One of these conditions required the preparation of a site restoration plan. Such a plan was subsequently prepared for the entire site and submitted to and agreed in writing by the Planning Authority.
- 8.12. The applicant as owner of the site subsequently made a considerable number of planning applications and its site was the subject of several enforcement enquiries. Prior to the warning notices served upon it in 2019, the applicant had been given no reason to believe by the Planning Authority that its extraction activities within the site of the quarry were unauthorised for planning purposes. Instead, the Planning Authority gave the applicant every reason to believe that it considered these activities to be authorised, as is illustrated by the following items:
- Under Section 261A, the Planning Authority assessed the site of the quarry in 2012. Extraction activities were occurring over an area of 2.4 hectares beyond the boundaries of the 3.3-hectare site permitted for quarrying under 83/09. Nevertheless, the Planning Authority concluded that no EIA offence was occurring and so “no further action” was needed.
 - An enforcement report following a site visit in March 2014 recorded no unauthorised quarrying and no non-compliance with conditions.
 - Under 14/124, the applicant applied to retain a crushing plant facility on the site of the quarry. The case planner’s report concludes that “The elements of the development to be retained are used in conjunction with the daily operations of this established quarry and are therefore considered acceptable in principle from a planning perspective.”
 - Under 15/113, the applicant applied for a coated road stone plant. An accompanying “Written Statement” comments that “Approximately 90 – 95%

of materials to be employed at the plant site will be sourced from the existing quarry.”

- An enforcement report following a site visit in October 2017 recorded the quarry is operating within the boundaries/site area registered under ref. 4/3002 and in compliance with subsequent permissions.

8.13. The applicant draws particular attention to applications 14/124 and 15/113, which entailed the introduction of plant and machinery to the site of the quarry on the basis that they would use the aggregates extracted on-site from within areas that exceeded the boundaries of the 83/09 permission. For these applications to be permitted, the accompanying extraction of aggregates must have been regarded as authorised. The conclusions of the two enforcement reports, cited above, corroborate that this was indeed the understanding.

8.14. In the Planning Authority’s submission to the current application, it accepts that it failed, at both the Section 261 and 261A stages, to identify that extraction was occurring beyond the boundaries of the 83/09 permission. It also accepts that the enforcement reports referred to above erred insofar as they understood the site registered under Section 261 to be authorised for extraction beyond the boundaries of the 83/09 permission.

8.15. In the light of the foregoing, I conclude that the applicant had or could reasonably have had a belief that the development was authorised.

(c) Whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an EIA or an AA and to provide public participation in such a scenario has been substantially impaired.

8.16. The applicant acknowledges that substitute consent is needed for the extraction that has occurred beyond the boundaries of the 83/09 permission and that this extraction needs to be the subject of a rEiAR. During my site visit, I observed that recent extraction appears to have occurred wholly within the area beyond the 83/09 permission.

8.17. A rEiAR would provide the opportunity for the environmental impacts of the above cited extraction to be assessed and reported upon. As part of an application for substitute consent, it would be the subject of public participation and it would inform

the EIA conducted by the Board. I do not anticipate that the ability to prepare a rEIAR has been substantially impaired by the chronology of development upon the site or any other factors.

- 8.18. I conclude that the ability to carry out an assessment of the environmental impacts of the development for the purpose of an EIA and to provide public participation in such a scenario has not 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.

- 8.19. As noted above, the applicant does not consider that actual significant effects on the environment have occurred as a result of extraction activities within the site of its quarry. Clearly, a rEIAR would provide the opportunity to assess and report upon all such effects and to establish whether they are significant or not. The Board's own EIA would further consider this question.

- 8.20. I conclude that whether actual significant effects on the environment resulting from the carrying out of the development that has occurred would be addressed by a rEIAR and a subsequent EIA.

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

- 8.21. The extraction activities authorised under the permission granted to application 83/09 were conditioned and they were further conditioned under Section 261(6)(a)(ii). The Planning Authority's enforcement officer and the applicant's barrister in her legal opinion advise that these conditions have been/are being complied with. Precedence thereby exists for the regulation of extraction activities on the site of the quarry.
- 8.22. The more recent extraction activities on the site have occurred beyond the boundaries of the 83/09 permission in an extension to the original quarry. Insofar as the above precedence exists, I consider that it is reasonable to expect that satisfactory remediation of the extended quarry would be attainable too.
- 8.23. I conclude that it is reasonable to expect that any significant effects on the environment can be remediated to a satisfactory extent.

(f) Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development.

- 8.24. The planning history of the site of the quarry is summarised under Section 3.0 of my report. This summary includes instances wherein retention permissions were applied for and granted. It also includes evidence from enforcement reports of compliance with planning conditions.
- 8.25. Prior to 2019, there is no evidence before me that either the Planning Authority or the applicant were aware that extraction activities beyond the boundaries of the 83/09 permission were unauthorised. In 2019, these activities were the subject of enforcement action, by means of warning notices and an enforcement notice, which has cumulated in the current application for leave to apply for substitute consent as the hoped-for precursor to a substitute consent and eventual authorisation.
- 8.26. I conclude that the planning history of the site indicates that only the extraction activities that lie behind the current application are unauthorised.

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

- 8.27. I am not aware of any other matters that are relevant for the Board to consider in this case.

Overall conclusion

- 8.28. In the light of my above discussion, I conclude that exceptional circumstances do exist under Section 177D(2) and so the applicant's request for leave to apply for substitute consent should be granted.

9.0 Recommendation

That leave to apply for substitute consent be granted.

10.0 Reasons and Considerations

Having regard to Section 177D(1) of the Planning and Development Act, 2000 – 2021, the Board considers that an EIA is required in respect of the development concerned and 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.

Having regard to Section 177D(2) of the Act, the Board considers these exceptional circumstances to be as follows:

- (a) Regularisation of the development concerned would not circumvent the purpose and objectives of the EIA Directive,
- (b) The applicant had or could reasonable have had a belief that the development was authorised,
- (c) The ability to carry out an assessment of the environmental impacts of the development for the purpose of an EIA and to provide public participation in such a scenario has not been substantially impaired,
- (d) The actual or likely significant effects on the environment resulting from the carrying out or continuation of the development would be capable of assessment, and
- (e) The satisfactory extent to which significant effects on the environment can be remediated.

Hugh D. Morrison
Planning Inspector

21st February 2022