



An  
Bord  
Pleanála

## Inspector's Report ABP-311900-21

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<b>Question</b>	Whether: (i) the continuation of existing quarry operation including extraction, processing and sale of raw and processed quarried material, is operating in accordance with its pre-64 authorisation and is/is not development and is/is not exempted development, (ii) the continuation of quarrying to the extremity of the current landholding (2.53ha), abutting a Natura 2000 site, is in accordance with its pre-64 authorisation and is/is not development and is/is not exempted development.
<b>Location</b>	Arduns, Gweedore, Co. Donegal.
<b>Referral</b>	
<b>Referred by</b>	Donegal County Council.
<b>Owner/ Occupier</b>	Eugene and Bernadette O'Neil (owner/occupier)
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	21 <sup>st</sup> March 2021
<b>Inspector</b>	Deirdre MacGabhann

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## 1.0 Site Location and Description

- 1.1. The 2.53ha appeal site lies c.1.5km to the south west of Gweedore, in the townland of Arduns, County Donegal. It lies c.750m south of the N56. Access to the site is from a minor, un-made up county road, off the N56.
- 1.2. The appeal site comprises a small working quarry. On the quarry floor are two machinery sheds and mobile equipment. Rock has been extracted from the western side of the site and would appear to be progressing in a largely easterly direction. The site is fenced around its perimeter and an overhead line crosses the eastern side of the site.
- 1.3. Immediately north of the quarry is a second quarry. It is separated from the subject site by an un-made up road. To the east, west and south the site adjoins blanket bog. Approximately 30m to the east of the site, the bog is designated as a national and European site, Cloghernagore Bog and Glenveagh National Park proposed Natural Heritage Area (pNHA) and Special Area of Conservation (SAC).

## 2.0 The Question

- 2.1. The question before the Board, referred to the Board by Donegal County Council, is whether:
  - i. The continuation of existing quarry operation including extraction, processing and sale of raw and processed material, is operating in accordance with its pre-64 authorisation and is or is not development and is or is not exempted development, and
  - ii. The continuation of quarrying to the extremity of the current landholding (2.53ha), abutting a European site Cloghernagore Bog and Glenveagh National Park Special Area of Conservation (site code 002047) is in accordance with its pre-64 authorisation and is or is not development and is or is not exempted development.

## 3.0 Planning History

- 3.1. The following history is relevant to the subject site:

- April 2005 - Quarry registered under section 261 of the Act. Total site area 2.068ha, extraction area 2.0ha. Stone and aggregates being extracted by rock breaker. No blasting carried out.
- PA ref. QY78 – Conditions imposed on the operation of the quarry under section 261(5) of the Planning and development Act, 2000 (as amended) in March 2007. Condition no. 2 stated that no processing should be carried out on the site, such as crushing and washing, with only processed rock to be excavated and removed.
- ABP QV05E.QV0189 – Under section 261A (6)(a) of the Planning and Development Act, 2000, as amended, the owner/operator of the quarry at Arduns, made an application to the Board for review of the decision made by the PA under section 261A 4(a) of the Act which had determined that development had been carried out after 1<sup>st</sup> February 1990 and 26<sup>th</sup> February 1997 which would have required environmental impact assessment and appropriate assessment, respectively. On the 10<sup>th</sup> March 2014 the Board set aside the determination of the planning authority on the grounds that scale and nature of the operations carried out on site were consistent with and of a similar nature to the historical operations of the quarry, which was established prior to the coming into operation of the planning acts and prior to the introduction of the EIA Directive and the Habitats Directive.
- PA ref. UD20255 - Enforcement Notice issued to Sinead O’Neil on 27<sup>th</sup> April 2021, under section 154 of the Planning and Development Act, 2000 (as amended), with respect to the use of land and all related ancillary activities at the subject site.

3.2. The planning authority also refer to the following case:

- ABP-309662 – In July 2021, the Board determined that the continuation of quarrying including extraction, processing and sale of material of a pre-63 existing quarry at Glenmakee, Carndonagh, County Donegal, was development and exempted development on the grounds that the nature of operations on the site had been consistent with those which had taken place prior to 2013 when the Board had determined the registration of the quarry (QV05-E0009). Further, the Board were satisfied that the quarry had the

benefit of pre-63 status and that since 1990 there had been no material change in the scale or nature of operations occurring at the site.

## 4.0 The Referral

### 4.1. Referrer's Case

4.1.1. Donegal County Council, refers to the planning history of the site and sets out the following arguments in respect of the subject development:

- The development is being investigated as an unauthorised development under PA ref. UD20255.
- Quarry was registered under section 261 of the Act (as amended), PA ref. Eqy 78. It identified an area of 2.068ha and extraction area of 2.0ha. Incorrect map submitted indicated a landholding of 3.5ha (wrong location).
- Property registration search shows landowner of site is Bernadette O'Neill. Area owned is 2.53ha, 0.53 ha above the extraction area identified under section 261. Eugene O'Neill has confirmed he owns the land, which is held in trust by Bernadette O'Neill.
- It is accepted by the PA and the Board (previously) that the subject quarry commenced prior to 1<sup>st</sup> October 1964 and the introduction of the EIA Directive (1<sup>st</sup> February 1990) and Habitats Directive (26<sup>th</sup> February 1997).
- PA issued a Notice under section 261A(4)(a), in respect of a determination under sections 261(2)(a)(i) [EIA] and 261(2)(a)(ii) [AA]. It was set aside by the board [under ABP QV05E.QV0189].
- The PA acknowledge case law that pre-64 authorisation for quarries is based on the extent of the core body or landholding in control of the landowner before the appointed day.
- The PA is of the opinion that:
  - If intensification/expansion occurred post 1<sup>st</sup> February 1990, which development would have required mandatory or EIA or determination for sub-threshold EIA (set out in article 92, 103 and 109 and the 7th

Schedule of the Planning and Development Regulations 2001, as amended), then a quarry cannot rely solely on pre-64 authorisation, and

- If intensification/expansion occurred post 26 February 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, then a quarry cannot rely solely on pre-64 authorisation.
- Under ABP-309662 (see Planning History) the Board concluded that ‘the continuation of quarrying, including extraction, processing and sale of material of a pre-63 existing quarry at Glenmakee, Carndonagh, County Donegal is development and is exempted development’, therefore accepting that the quarry is a pre- 64 authorised quarry.
- While acknowledging this outcome, the PA contend that the current case is materially different in location, scale and nature and cannot rely on the outcome of this previous referral as:
  - The current registered landholding extending to 2.53ha, located outside the adjoining Natura 2000 site, exceeds both the section 261 registered extraction area of quarry 2.0ha and quarry area of 2.068ha and therefore cannot rely on same, and
  - The map submitted with the original section 261 registration, identified lands c.0.3km south of the subject quarry.
- There are no other applicable exemptions, and the PA is of the view that the above mentioned continuation of quarrying without the benefit of planning permission comprises development and is not exempted development.

## 5.0 Responses

5.1. The owner/occupier of the quarry makes a substantial response to the referral. Matters which are relevant to the case are summarised below:

- There are numerous errors in the records of Land Registry/ Property Registration Authority and Donegal County Council, which are not of the owner/occupier’s making.

- Owner/occupier has complied with requirement under enforcement notice (PA ref. UD 20255) to secure boundaries to the site and erect warning signage.
- No response by PA to issues raised in correspondence to them by the owner/occupier.
- Conditions imposed on the operation of the quarry, under PA ref. QY78 on 9<sup>th</sup> March 2007, prevented the quarry from providing processed stone. Wrong location referred to in Registration Notice (Ardybsm, Gweedore).
- ABP's Inspector's Report, in respect of Review of Notice under section 261A, describes the history of the quarry correctly and in great detail. The planning authority's determination in respect of EIA and AA, was set aside by the Board.
- Planning authority's site location map is highly misleading and over sizes the quarry. It also fails to mention that the quarry to the north of the dividing road is a separate quarry. Aerial photographs submitted by the PA show two separate quarries.
- The term 'processed quarried material' in the referral incorrect as there is no permission to process material on site.
- Quarry is not an unauthorised development. In the Board's review of the PA's section 261A determination it was accepted that the quarry had pre-64 status. The issue cannot be revisited in law.
- The Warning Letter issued by the PA to Bernadette O'Neil and Sinead O'Neil in advance of the Enforcement Notice was not received. Letters are a source of stress for family.
- The landholding registered to the owner/operator (2.53ha) is irrelevant to the size of the quarry. Owner/operator has other landholdings in the area but does not intend to quarry lands outside of the existing quarry. The quarry area does not exceed 1.968ha as set out in latest survey of the site (exhibit 11, Tab 6 of appeal).
- Ownership of quarry is shown in Land Registry documents, folio DL83951F (exhibit 12).

- Map submitted with the original section 261 documentation (which referred to a site c.0.3km to the south), was an error of the PA. Copy of original Registration of Quarry Application under section 261 appended (exhibit 13 and 13a). This refers to a landholding of 2.068ha and a working area of 2ha. [N.B. The folio referred to in the document (13a) is stated to be ref. no. 04192F. This is corrected by hand to DL83951F].
- Owner/occupier has at all times complied with restrictions and regulations imposed according to law and intends to do so.
- No translation of Planning and Development Act, 2000 (as amended) into Irish. Rannóg an Aistriúcháin have failed to translate the bill, a matter which is open to legal constitutional challenge.

## 6.0 Statutory Provisions

### 6.1. Planning and Development Act, 2000

6.1.1. In Section 2 of the Act, as amended, “quarry” means *‘an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals ... or products of minerals .... and shall be deemed to include*

- (i) *any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on;*
- (ii) *any place occupied by the owner of a quarry and used for depositing refuse from it ..’*

6.2. Works are defined as *‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.’*

6.3. Section 3 of the Act defines development as *‘except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land’.*



## 6.4. **Planning and Development Regulations, 2001**

- 6.4.1. Exempted development provisions are set out in the Planning and Development Regulations, 2001 (as amended). No exemptions are provided in respect of quarrying operations.

## 7.0 **Assessment**

### 7.1. **Is or is not development**

- 7.2. The excavation of lands, for the benefit of quarrying, constitutes development under the definition provided by the Planning and Development Act, 2000 (as amended). Use of land surrounding or adjacent to a quarry occupied for the storage or removal of materials or for depositing refuse from the quarry, are included within the definition of quarrying.

- 7.3. The subject quarry has been registered under the Planning Act and has been deemed by the Board, and accepted by the Planning Authority, as a quarry which has pre-64 status. It has also previously been decided that the development carried out since the 1<sup>st</sup> February 1990 and the 26<sup>th</sup> February 1997, did not require environment impact assessment or appropriate assessment (QV05E.AV0189).

- 7.4. The December 2005 quarry registration form, set out in the owner/occupiers submission, indicates a total site area of 2.068ha and an extraction area of 2.0ha. The site map that was originally appended to the registration document is incorrect. The location and extent of the site was considered in the Inspector's report under QV05E.AV0189 (see attached file and Inspector's maps). It also refers to a registered area of 2.068ha and a then extraction area of c.1.5ha. The planning authority's section 261A Assessment/Determination Report contains orthophotography of the site and a map of its extent (area of site and extraction area). These are also consistent with a site area of 2.068ha and an extraction area of c.1.5ha.

- 7.5. At the time of site inspection, and reflected in more recent orthophotography, it appears that land to the east of the area registered (and the subject of QV05E.AV0189) has been modified, with soils stripped and/or stockpiled on them i.e. to the south east and east of area F, extending east and south into area H

(owner/occupiers exhibit 11). This extension area can be seen in Bing and Google orthophotographs (attached) and in photographs 7, 8 and 9 (also attached) taken from under and facing the electricity line crossing the site, respectively.

7.6. The area affected is quite modest i.e. c.0.2ha. However, it does extend beyond the original quarry boundary. Further, the subject quarry lies directly south of an active working quarry and a European site. There is potential, therefore, for cumulative environmental effects (including visual effects from the regional road as the quarry extends into more elevated lands) and for potential effects on a European site. Having regard to the definition of quarrying the Planning Act, 2000 (as amended) and the nature and extent of works which have taken place, I consider that these works constitute a material change of use (quarrying) and development.

**7.7. Is or is not exempted development**

7.8. From the information on file it is evident that the correct folio for the subject lands is DL83951F (see attachments). The area associated with this folio is Land direct shows an area of 2.53ha. This folio includes land to the south and east of the quarry lands that were registered in 2005. It is stated in the documentation on file that the quarry has been leased by Ms O'Neill since February 2004 (exhibit 13a) and purchased in May 2015 (see Land Registry documents).

7.9. Under QV05E.QV0189, the Board's decision to set aside the planning authority's determination in respect of EIA and AA was predicated on the documented historic record of quarrying at the location and the scale and nature of operations carried out that were consistent with and of a similar nature to historic operations, which was established prior to the coming into operation of the planning acts and prior to the introduction of the EIA and Habitats Directive.

7.10. In this instance, it is my view that the quarry has extended beyond the established boundary of the registered quarry (2.068ha). Having regard to the scale and nature of the operations on site and proximity to an active quarry and European site, I consider that a material change of use has occurred, which falls outside of the scope of the planning status of the existing registered quarry and for which no exemption development provisions exist.

## 8.0 Recommendation

8.1. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether:

- i. The continuation of existing quarry operation including extraction, processing and sale of raw and processed material, is operating in accordance with its pre-64 authorisation and is or is not development and is or is not exempted development, and
- ii. The continuation of quarrying to the extremity of the current landholding (2.53ha), abutting a European site Cloghernagore Bog and Glenveagh National Park Special Area of Conservation (site code 002047) is in accordance with its pre-64 authorisation and is or is not development and is or is not exempted development.

**AND WHEREAS** Donegal County Council requested a declaration on this question under the provisions of section 5(4) of the Planning and Development Act 2000 (as amended) on the 8<sup>th</sup> day of November 2021.

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2 and 3 of the Planning and Development Act, 2000, as amended,
- (b) The Board's previous decision under QV05E.QV0189 signed on the 10<sup>th</sup> day of March 2014,
- (c) The nature and scale of the activities undertaken at the quarry site subsequent to the Board's decision on the 10<sup>th</sup> day of March 2014, and
- (d) The pattern of development in the area which includes an active quarry adjacent to the site and the proximity of Cloghernagore Bog

and Glenveagh National Park Special Area of Conservation to the immediate east of the site.

**AND WHEREAS** An Bord Pleanála has concluded that:

- (i) The continuation of existing quarry operation, within a site area of 2.068ha, including extraction, processing and sale of raw and processed material, is in accordance with its pre-64 authorisation.
- (ii) The continuation of quarrying to the extremity of the current landholding (2.53ha), abutting a Natura 2000 site, is not in accordance with its pre-64 authorisation, by virtue of the nature and extent of works outside of the established boundary of the quarry.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that:

- (i) The continuation of existing quarry operation, within a site area of 2.068ha, including extraction, processing and sale of raw and processed material, is operating in accordance with its pre-64 authorisation and development and is not exempted development, and
- (ii) The continuation of quarrying to the extremity of the current landholding (2.53ha), abutting a European site Cloghernagore Bog and Glenveagh National Park Special Area of Conservation (site code 002047) is in not accordance with its pre-64 authorisation, is development and is not exempted development.

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Deirdre MacGabhann

Planning Inspector

13<sup>th</sup> April 2022