



An
Bord
Pleanála

Inspector's Report ABP-312006-21

Development

Extraction/quarrying development in the operational area since the original substitute consent was granted, and the retention of ancillary structures, such as the canteen, pumphouse, lime crushing enclosure and water tank, and existing extensions to the garage/workshop, and an additional workshop/storage building.

Location

McTigue Quarries, Cartron Quarry, Co. Galway

Planning Authority

Galway County Council

Planning Authority Reg. Ref.

n/a

Applicant(s)

McTigue Quarries

Type of Application

Leave to apply for substitute consent

Planning Authority Decision

n/a

Date of Site Inspection

10th May 2023

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 – 2023. The applicant is of the opinion that “substantial exceptional circumstances” apply to its lands at Cartron Quarry, Co. Galway such that it should be given leave to apply for substitute consent for extraction/quarrying development in the operational area since the original substitute consent was granted, and the retention of ancillary structures, such as the canteen, pumphouse, lime crushing enclosure and water tank, and existing extensions to the garage/workshop, and an additional workshop/storage building.

2.0 Site Location and Description

- 2.1. The site is located 6.7km to the south-west of Tuam town centre and 1km to the south of Belclare village on the R333, which runs between Headford and the N83 close to Tuam. This site is situated within the east facing slopes of Knockmaa, a hill within which lies the legendary burial place of Queen Maeve. It encompasses one of two adjoining quarries, i.e., McTigue and Mortimer Quarries, both of which are accessed via a private road off the L2112, which runs south-west from its junction with the R333 to the east of Belclare village.
- 2.2. The site itself is “L” shaped in plan-view, and it extends over an area of 8.64 hectares. Its eastern portion is accessed from the east, and it is laid out as a yard, which comprises two freestanding buildings that are used as workshops and for garaging/storage, a bunded refuelling area, a wheel wash, and open storage/parking of materials, plant, machinery, and vehicles. Its central and south-western portions comprise the quarry itself. A road network within these portions affords vehicular access to the various levels. Water sumps are located in the lowest points of each portion and exposed rock faces are evident throughout. Prior to its cessation, quarrying last occurred along the north-east face of the south-western portion of the quarry.
- 2.3. The applicant owns a further 3.47 hectares to the west of the existing quarry. The south-eastern boundary to the south-western portion of the quarry adjoins the active neighbouring Mortimer’s Quarry.

3.0 Planning History

3.1. The applicant's quarry has the following planning history:

- **QY71:** Under Section 261, the quarry was registered in April 2007, subject to conditions.
- **06/3299:** Retention of garage/workshop, wheel-base washing unit, and weighbridge: Permitted on 21st July 2007.
- **09/1518:** Retention of oil storage tanks, office, extension to garage/workshop (permitted under 06/3299), and additional garage/workshop: Withdrawn on 30th September 2009.
- **10/629:** Same description as under 09/1518: Withdrawn on 13th October 2010.
- **EN09/098:** Enforcement notice re. development subject of 06/3299.
- **07.SU0036:** Following service of a notice under Section 261A (3)(a) of the Planning and Development Act 2000 (as amended), an application was made for substitute consent and, subsequently, granted by the Board on 22nd December 2014, subject to conditions. While the development which was the subject of 06/3299 was addressed within the remedial EIA, the description cited on the public notices omitted this development and so it was not granted substitute consent.

Following the grant of substitute consent, the applicant continued with extraction works from the quarry, taking the view that they were now authorised. An Taisce contested this view. The High Court judged that the extraction was indeed unauthorised, but it did not grant An Taisce's request for a Section 160 injunction. The applicant and An Taisce appealed this judgement to the Supreme Court ([2018] IESC 54), which upheld the High Court's judgement that the extraction was unauthorised and confirmed the Section 160 injunction, subject to a 6-month delay from 12th December 2018.

- **15/869:** Extension westwards of existing quarry over 3.3 hectares: Withdrawn in March 2016.

- **16/953:** Same description as 15/869: EIS and NIS submitted: Withdrawn September 2017.
- **ABP-306155-19:** Application for leave to apply for substitute consent for unauthorised quarrying, which occurred over the period between the grant of substitute consent 07.SU0036 and the cessation of quarrying, and the retention of ancillary unauthorised structures, which are the subject of the current application for leave to apply for substitute consent. The Board granted leave to apply for substitute consent on 3rd July 2020. Its decision was the subject of judicial review (2020 Nos. 539 & 540 JR), which was brought by Peter Sweetman and An Taisce. The High Court, subsequently, granted an order of *certiorari* and so the Board's decision was quashed on 9th November 2021.

Of relevance to the High Court's decision is the Supreme Court case *An Taisce -v- An Bord Pleanala & Others* ([2020] IESC 2020). Judgement was delivered on 1st July 2020. On the two key issues, it was held that:

(i) on Issue One, s. 177C(2)(a) and its corresponding provision, s. 177D(1)(a) are inconsistent with the EIA Directive as interpreted by the Court of Justice, in that they fail to provide adequately for the exceptionality test as demanded by that court;

(ii) on Issue Two, given the structure of s. 177, the failure to make provision for public participation at the leave application stage for substitute consent is inconsistent with the public participation rights conferred by and outlined in the EIA Directive;

- **ABP-308837-20:** Application for an extension of time to apply for substitute consent: extra 6 months granted by the Board on 11th December 2020.
- **20/1547:** Retention of unauthorised structures that are the subject of the current application for leave to apply for substitute consent: Under Section 34(12) of the Planning and Development Act 2000 (as amended), the Planning Authority deemed this application to be invalid.
- **20/2013:** Extension westwards of existing quarry over 3.3 hectares: Under Article 26 (3)(b) of the Planning and Development Regulations 2001 (as amended), the Planning Authority deemed this application to be invalid.

- **ABP-310435-21**: Application for substitute consent for the unauthorised continuation of quarrying operations and ancillary development: lodged and invalidated by the Board on 4th June 2021.
- **ABP-310771-21**: Application for an extension of time to apply for substitute consent: extension granted by the Board on 20th July 2021 until 20th October 2021 “to enable completion of application documentation to the necessary standard.”

4.0 **The applicant’s Case for Leave to Apply for Substitute Consent**

4.1. The applicant begins by referring to its last application for leave to apply for substitute consent (ABP-306155-19), which, although granted by the Board on 3rd July 2020 and subsequently extended timewise, was ultimately quashed by the High Court on 9th November 2021 following the decision of the Supreme Court on 1st July 2020 that impugned the relevant leave to apply for substitute consent legislation¹. The need, therefore, arises to re-apply for leave to apply for substitute consent as the first part of a two-stage process with the aim of regularising the unauthorised quarrying, which occurred over the period between the grant of substitute consent 07.SU0036 and the cessation of quarrying, and retaining ancillary unauthorised structures.

4.2. Section 177D (2) of the Planning and Development Act, 2000 – 2023, (hereafter referred to as the Act) sets out the criteria against which the Board assesses whether exceptional circumstances exist to justify the grant of an application for leave to apply for substitute consent. Each criterion is considered in turn by the applicant.

¹ While Section 40 of the Planning and Development, Maritime and Valuation (Amendment) Act 2022 repeals Section 177C & D, amongst other provisions of Section 177, as of 10th March 2023, Section 40 has not commenced (See Notes 832 & 841 of the consolidated Planning and Development Act, 2000 – 2023, as of 10th March 2023). Under Chapter 4 of the draft Planning and Development Bill, 2002, the present two-stage substitute consent legislation would be replaced with a new single stage application for retrospective consent, which would also allow for the inclusion of new future development in the same application.

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

- 4.3. Attention is drawn to the planning history of the site and in particular to applications 07.SU.0036 and 16/953.
- 4.4. The former application was for substitute consent, and it was accompanied by a remedial (r) EIS and a remedial (r) NIS. The Board granted consent. In doing so it accepted the mitigation measures set out in the rEIS and it concluded that the subject development would not be likely to have had or have a significant effect on the environment. It also accepted that, on the basis of the rNIS and its own AA, the subject development, either individually or in combination with other plans or projects, has not adversely affected and is not adversely affecting the integrity of any European site, having regard to the conservation objectives of those sites.
- 4.5. The latter application was for a western extension to the applicant's quarry. They were both accompanied by EISs and NISs. However, both were withdrawn as the Planning Authority was concerned that it could not process them.
- 4.6. The applicant has prepared consecutive (r) EISs and (r) NISs, and so it has over several years, analysed site activities in accordance with the EIA and Habitat Directives. The substitute consent application now being envisaged would not, therefore, circumvent these Directives.

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

- 4.7. Under Section 261A (3)(a) of the Act, the Planning Authority served notice upon the applicant on 2nd August 2012, which required that it apply for substitute consent to regularise development undertaken since 1990 that needed to be the subject of EIA. The applicant proceeded to make an application for substitute consent (07.SU0036), which was granted by the Board on 22nd December 2014. This application was accompanied by a rEIS, which envisaged a two-stage restoration of the quarry, with the second stage occurring only after further extraction of rock had been completed.
- 4.8. Based on the substitute consent granted, the applicant continued to extract rock, in the belief that it was authorised to do so. An Taisce served a Section 160 notice on the applicant, which led to consecutive High and Supreme Court hearings. The High

Court held that the applicant's continuing extraction of rock was unauthorised, but it declined to confirm the Section 160 notice, considering that enforcement was for the Planning Authority to consider/pursue. The applicant and An Taisce appealed this decision to the Supreme Court, which confirmed that the continuing extraction of rock was unauthorised and the Section 160 notice was valid, albeit subject to a 6-month delay in its commencement. All quarrying activities duly ceased from June 2019 on.

- 4.9. That the applicant took the case to the Supreme Court at considerable expense is evidence that it believed that continuing extraction of rock was authorised. Essentially, its case centre on the interpretation of Section 177O of the Act and the equivalence of a substitute consent to a Section 34 planning permission. This consent related to plans that showed continuing extraction of rock within the quarry, as distinct from any extension of the quarry, and so the applicant reasonably believed that it was authorised to undertake such extraction.

(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 for public participation in such an assessment has been substantially impaired.

- 4.10. The applicant draws attention to its substitute consent application (07.SU0036), which was accompanied by rEIS and rNIS. The Board, in granting consent, agreed with the inspector that the rEIS had identified and adequately described all direct and indirect impacts upon the environment, and it agreed with his conclusion that the proposed mitigation measures would be acceptable. The Board concluded that the subject development would not be likely to have had or have a significant effect on the environment. Likewise, with respect to the rNIS, the Board concluded that the subject development, either individually or in combination with other plans or projects, has not adversely affected and is not adversely affecting the integrity of any European site, having regard to the conservation objectives of those sites.
- 4.11. The substitute consent now envisaged would cover the period between January 2015 and June 2019 when rock extraction occurred in the quarry, a relatively short period within the life of a hard rock quarry. This extraction was addressed in the

above cited rEIS, in particular, under the restoration strategy, which was set out under the chapter on landscape and visual impact assessment.

- 4.12. The restoration strategy outlined a two-phase approach: “phase 1 being implemented within 0 – 5 years, while the quarry is active, and the broader measures of phase 2 implemented when the quarry has ceased all operations.” Accordingly, the strategy envisaged the continuation of quarrying activities, and so these activities were anticipated and assessed under the rEIS. Consequently, there would be overlap between such assessment and any further rEIS and rNIS under the substitute consent application that is now envisaged. Public participation would not, therefore, be impaired substantially or otherwise.

(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.

- 4.13. The Board’s above cited conclusions on the rEIS and rNIS submitted as part of substitute consent application (07.SU0036) are reiterated. Given these conclusions, which related to documents that anticipated the development that subsequently occurred, 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 have already been before the Board.

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

- 4.14. In the light of (d) above, the need for remediation of significant effects upon European sites does not arise.

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

- 4.15. The quarry commenced around 1954. Since then, a planning history has ensued, as set out under Section 3.0 of my report. The applicant comments upon this history as follows:

- The quarry was registered (QY71) under Section 261 of the Act and a subsequent notice, served under Section 261A (3)(a), led to an application for substitute consent (07.SU0036), which was granted by the Board. These

measures did not represent any impropriety on its part, but the erroneous implementation of the EIA and Habitat Directives by the state and the Planning Authority.

- The applicant sought to regularise ancillary structures within the quarry under 07.SU0036. However, due to a draughting error, they were missed from the description of the proposal that was advertised and so the subsequent substitute consent was precluded from authorising them.
- Following the grant of substitute consent, the applicant continued to extract rock from the quarry in the reasonable belief, as outlined under (b) above, that it was authorised to do so. Nevertheless, applications (15/869, 16/953 & 20/2013) were made for an extension of the quarry westwards. While the first and second applications were withdrawn, the third was invalidated by the Planning Authority, under Article 26 (3)(b) of the Planning and Development Regulations 2001 (as amended). The applicant questioned this decision with the Planning Authority, but it has received no response.

The applicant concludes that, while it has sought to regularise ancillary structures and provide for the quarry's extension, the Planning Authority has been reluctant to deal with applications while court cases have been on-going.

- 4.16. With respect to the substitute consent (07.SU0036), the applicant did comply with the third condition, which required the submission of a comprehensive restoration scheme. A financial contribution has not been paid, pending the outcome of court cases, and the applicant anticipates that it would be reimposed under any substitute consent that may be granted to the application now envisaged.
- 4.17. The applicant has had a further pre-application meeting with the Planning Authority to discuss the proposed extension of the quarry. Such an extension would rely upon existing/proposed access arrangements through the existing quarry.
- 4.18. In the light of the above planning history and commentary, the applicant has accounted for any unauthorised development undertaken and it has outlined its on going quest to regularise the same.

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

- 4.19. The applicant outlines the range of its activities, which include the delivery of quarry products across Galway and Mayo, the provision of a mobile crushing business (drilling, blasting, and crushing), and the removal and disposal of material from construction sites to its licensed waste facility.
- 4.20. The applicant's business contributes to the local rural area by means of the economic activity that it generates and the employment that it affords, i.e., 31 employees at present, who reside within a 15km radius of the quarry. Prior to the cessation of quarrying activities, they provided employment for 12 people and these activities contributed to an annual average expenditure of €200,000 on goods and services. Additionally, 4 employees are office based and 5 employees repair and maintain vehicles and plant and machinery. These economic and social benefits persisted over the period for which the envisaged substitute consent would apply.
- 4.21. The applicant supports and has supplied aggregates to local schools, community groups, and sports clubs.
- 4.22. The applicant's quarry has been an important source of aggregates for the local construction industry. Given the housing crisis both nationally and locally within Galway, the need for aggregates is greater than ever and, in this respect, the need for a range of operational quarries to ensure continuity of supply and competition is self-evident. The applicant's quarry once regularised and extended would contribute accordingly.
- 4.23. Travel-to-work times in Galway City and County are inordinately long. The applicant's quarry, as a source of local employment, does not result in time consuming commutes. It also contributes to sustainability by providing a local source of aggregates to surrounding construction industry users, thereby ensuring shorter haul trips.
- 4.24. The applicant draws attention to relevant legislative provisions that define development, quarry operators, and quarries, themselves. The unique nature of quarrying as a development type is illustrated by the case law finding² that it is a continuous operation within which each shovelful extracted from a quarry is a

² Thomas David (Porthcawl) Ltd v Penybont Rural District Council [1972] EWCA Civ J1005-1.

separate act of development. It is also illustrated by Section 37L of the Act³, which allows the Board to consider contemporaneously an application for substitute consent and an application for the further development of a quarry as a quarry. This Section acknowledges that substitute consent cannot authorise the further development of a quarry, as such development entails on-going operations that constitute development in their own right and so require planning permission.

- 4.25. The applicant draws attention to the unenviable position that the present legislative framework has left quarry operators within, whereby following receipt of substitute consent, uniquely, they are not able to continue quarrying without first obtaining a separate planning permission so to do. They effectively bear the cost of the state's failure to provide an efficient legislative framework.

5.0 Planning Authority Submission

- 5.1. Notwithstanding three Section 132 requests, the Planning Authority has made no submission on the current application.

6.0 Legislative Provisions

- 6.1. Section 34 of the Planning and Development Act, 2000 – 2023, (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.

³ However, under Section 17 of the Planning and Development, Maritime and Valuation (Amendment) Act, 2022, Section 37L is amended and the contemporaneous provision is deleted.

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 has explicitly applied for leave to apply for substitute consent under Section 177C (2)(b) of the Planning and Development Act, 2000, (as amended) (hereafter referred to as the Act). This Section states the following:

(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 —

(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.

- 8.2. The applicant has not stated explicitly whether the development, which would be the subject of the proposed application for substitute consent, would need to be the subject of an EIA or a determination as to whether an EIA is required. As the applicant's quarry has an area of 8.64 hectares, the possibility arises that the extraction of rock in question during the relevant period of January 2015 to June 2019, may have occurred over an area of 5 hectares, i.e., the threshold, under Item 2(b) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2023, for EIA. Alternatively, such extraction may have occurred over less than 5 hectares and so, as sub-threshold development, the need for a determination as to whether an EIA is required would arise.
- 8.3. Likewise, the applicant has not stated explicitly whether the development, which would be the subject of the proposed application for substitute consent, would need to be the subject of AA. Given that AA was necessary under the previous application for substitute consent (07.SU0036), I would expect that the need for it would arise again.
- 8.4. I will proceed then on the basis that the subject development would be a candidate for a substitute consent application under Section 177C (2) of the Act.
- 8.5. The applicant has explicitly selected Item (b) of Section 177C (2) of the Act against which its application is to be assessed/determined. The criteria for establishing what constitutes exceptional circumstances is set out in Section 177D (2) of the Act. The applicant has addressed each of the criterion set out in this Section and I will do so, too, below.

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

- 8.6. The applicant draws attention to its previous application for substitute consent (07.SU0036) for its existing quarry, which was accompanied by a remedial (r) EIS and a remedial (r) NIS, and to its subsequent application (16/953) for a westward extension to this quarry, which was accompanied by an EIS and a NIS. The statements accompanying both these applications were prepared in compliance with the purpose and objectives of the EIA and Habitats Directives. The former statements were explicitly accepted by the Board's inspector and such acceptance

was endorsed by the Board in its acceptance of his report and in the conclusions which the Board itself reached on EIA and AA as encapsulated in its Order as follows:

Appropriate Assessment

Having regard to the nature, scale and extent of the development for which substitute consent is sought, the remedial Natura impact statement submitted with the application, the submissions on file and the Inspector's assessment, the Board completed an appropriate assessment of the impacts of the proposed development on Natura 2000 sites. The Board concluded that, on the basis of the information available, the subject development, either individually or in combination with other plans or projects, has not adversely affected and is not adversely affecting the integrity of any European site, having regard to the conservation objectives of those sites.

Environmental Impact Assessment

The Board completed an Environmental Impact Assessment in relation to the subject development and concluded that the remedial Environmental Impact Statement submitted identified and described adequately the direct and indirect effects on the environment of the development. The Board considered that the Inspector's report was satisfactory in addressing the environmental effects of the subject development and also agreed with its conclusions in relation to the acceptability of mitigation measures proposed and residual effects. The Board adopted the report of the Inspector and decided that the subject development would not be likely to have had/or have a significant effect on the environment.

- 8.7. Significantly, the application and the accompanying rEIS and rNIS anticipate the development that subsequently occurred between January 2015 and June 2019. Thus, the submitted plans depicted the continuing extraction of rock, and the rEIS brought forward a two-phase restoration strategy, which explicitly referred to the second phase as occurring following the cessation of active quarrying 5 years hence. Insofar as the Board's EIA and AA drew upon these statements, assessment of the subject development has already occurred for the purposes of the EIA and Habitats Directive.
- 8.8. While the subsequent application (16/953) was ultimately withdrawn, that it was accompanied by an EIS and a NIS indicates the applicant's continuing commitment

to seeking to comply with the purpose and objectives of the EIA and Habitats Directives.

- 8.9. I conclude that regularisation of the development concerned would not circumvent the purpose and objectives of the Environmental Impact Assessment (EIA) Directive or the Habitats Directive.

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

- 8.10. The applicant applied for substitute consent (07.SU0036) to regularise quarrying activities that it had undertaken since 1990 which needed to be the subject of EIA. The Board granted consent on 22nd December 2014. An Taisce challenged the applicant's continuation of quarrying activities in the High Court, which held that the continuation of quarrying activities was unauthorised, as consent for the same was not given by the substitute consent granted by the Board. The applicant challenged this judgement in the Supreme Court, which confirmed the High Court's decision in the matter. It also confirmed an injunction brought by An Taisce against the continuation of quarrying, which took effect 6 months after the Supreme Court's judgement on 12th December 2018.

- 8.11. The applicant contends that it had reason to believe that the continuation of quarrying activities was authorised. In this respect, it refers to the details outlined under (a) above concerning the submitted application for substitute consent and the accompanying rEIS. It also refers to the considerable expense that it incurred in taking its legal case to the Supreme Court.

- 8.12. I conclude that 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 EIA or an AA and to provide for public participation in such an assessment has been substantially impaired.

- 8.13. As outlined above under (a), the applicant's rEIS and rNIS, which accompanied its application (07.SU0076) for substitute consent, anticipated the development that would be the subject of the substitute consent application now being envisaged. This earlier application entailed the assessment of environmental impacts both in its

accompanying statements and the subsequent EIA and AA carried out by the Board. It also entailed a public consultation exercise, which resulted in the submission of 7 observations from statutory bodies and neighbours.

- 8.14. Under any future application for substitute consent, the environmental impacts of the development would be further assessed, and the opportunity for public consultation would occur again.
- 8.15. I conclude that 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 for public participation in such an assessment 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.

- 8.16. As outlined under (a) above, the Board undertook an EIA and AA of the applicant's substitute consent application (07.SU0036) and it, variously, concluded that "the subject development would not be likely to have had/or have a significant effect on the environment", and "the subject development, either individually or in combination with other plans or projects, has not adversely affected and is not adversely affecting the integrity of any European site, having regard to the conservation objectives of those sites."
- 8.17. The applicant draws attention to how the quarrying activities, which took place after the grant of substitute consent (07.SU0036), were anticipated and assessed. It also draws attention to the relatively small-scale nature of these activities within the context of the existing quarry. Thus, if they are considered in isolation under rEIAR and rNIS, then the Board would be in a position to undertake EIA and AA.
- 8.18. I conclude that 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 would be capable of being assessed by the submission of a rEIAR and rNIS and the Board's subsequent EIA and AA.

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

- 8.19. As outlined under (a) above, the Board accepted the mitigation measures outlined under the applicant's rEIS, which was submitted under 07.SU0036. Likewise, it concluded that, in accordance with the applicant's rNIS, the integrity of European sites would not be adversely affected, and so the need for remediation would not arise.
- 8.20. As outlined under (d) above, the quarrying activities in question, if considered in isolation under rEIAR and rNIS, would afford the Board the opportunity to undertake EIA and AA.
- 8.21. I conclude that the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated would be capable of being assessed by the submission of a rEIAR and rNIS and the Board's subsequent EIA and AA.

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

- 8.22. The planning history of the applicant's quarry is summarised under Section 3.0 of my report. The applicant has provided a commentary on this history, which is summarised under Paragraphs 4.15 – 4.18 of my report.
- 8.23. The quarry was the subject of a registration application (QY71), under Section 261 of the Act, and a subsequent application for substitute consent, 07.SU0036, which was granted by the Board. The applicant has thereby ensured that its quarry is substantially authorised. It reports that conditions attached to the substitute consent, such as the need for a comprehensive restoration scheme, have been complied with. The only outstanding condition relates to a financial contribution, which the applicant did not pay, pending the outcome of court proceedings on its post-decision quarrying activities. While the Planning Authority's advice has been sought by means of Section 132 notices on the current application on three occasions, no advice has been received, and so its position, on amongst other things, this outstanding condition has not been stated.
- 8.24. As discussed under (b) above, the applicant had or could have had a belief that the substitute consent granted to 07.SU0036 authorised it to carry out further quarrying

activities. Ultimately, such belief was determined by the Supreme Court to be misplaced, and so the need arises to seek leave to apply for substitute consent for these activities. That the applicant undertook unauthorised development should be viewed in the light of these unfolding circumstances. Its current application signals its intent to attend to try and remedy this situation.

- 8.25. The planning history of the quarry refers to several ancillary structures, which the applicant has sought to obtain retention permission for, for example, by means of 07.SU0036. However, due to a drafting error in the public notices for this application, consent was not obtained. The applicant now envisages that, under any substitute consent application for its post-decision quarrying activities, these structures would be included, too.
- 8.26. The planning history of the quarry also refers to applications (15/869, 16/953, & 20/2013) for the westward extension of the quarry. These applications have either been withdrawn or invalidated. The applicant expresses the view that the Planning Authority has been reluctant to process further applications while court proceedings surrounding 07.SU0036 and ABP-306155-19 have been on-going.
- 8.27. I conclude that the applicant has complied substantially with previous permissions and that, insofar as it has been responsible for unauthorised development, it is actively seeking to regularise such development.

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

- 8.28. The applicant has raised a series of other matters relating to the nature of its business, the economic and social contributions that it makes to people residing in the surrounding area by means of expenditure on goods and services, employment, and short commutes, its support of local schools, community groups, and sports clubs, and the contribution that the quarry could make again to the sustainable provision of aggregates within the locality.
- 8.29. The applicant also makes a series of observations on the evolving legislative framework for quarries, which encumber quarry operators with expense that no other sector of the economy faces. Specifically, the unique nature of quarrying as on-going development necessitates a situation wherein substitute consent can only regularise historic quarrying and so present-day quarrying requires to be the subject of its own discrete planning permission. Strictly speaking, quarries need to cease activities

while such permission is obtained, or else the need for further substitute consent will arise. The inadequacy of the legislative framework to ensure that quarrying can be undertaken efficiently is, thereby, highlighted.

Overall conclusion

8.30. 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 – 2023, the Board considers that either an EIA or an EIA determination is required, and an AA 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 means of 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) The regularisation of the development concerned would not circumvent the purpose and objectives of the Environmental Impact Assessment (EIA) Directive or the Habitats Directive.
- (b) The applicant had or could reasonably have had a belief that the development was not unauthorised.
- (c) 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 for public participation in such an assessment 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 would be capable of being assessed by the submission of a rEIAR and rNIS and the Board's subsequent EIA and AA.

(e) The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated would be capable of being assessed by the submission of a rEIAR and rNIS and the Board's subsequent EIA and AA.

(f) The applicant has complied substantially with previous permissions and that, insofar as it has been responsible for unauthorised development, it is actively seeking to regularise such development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Hugh D. Morrison
Planning Inspector

24th May 2023