



An  
Bord  
Pleanála

## Inspector's Report ABP-313921-22

<b>Development</b>	Application for retention of an area of 400sqm which was subject to extraction of rock.
<b>Location</b>	Ballynahallia, Co Galway
<b>Planning Authority</b>	Galway County Council
<b>Planning Authority Reg. Ref.</b>	22457
<b>Applicant</b>	M & M Caireal Teoranta
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Grant Retention Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Connemara Environmental Action Association CLG
<b>Observer</b>	DoHLGH
<b>Date of Site Inspection</b>	5 <sup>th</sup> April 2023
<b>Inspector</b>	Ian Campbell

## 1.0 Site Location and Description

- 1.1. The appeal site, an existing limestone quarry, is located at Ballynahallia, c. 3km north of Moycullen, Co. Galway. Access to the appeal site is via the L-5366.
- 1.2. The wider quarry, which has a stated area of c. 5.1 Ha, is within the control/ownership of the applicant, as indicated by the blue line boundary. The quarry is described in the particulars submitted with the planning application as a pre-1963 development and was granted substitute consent (see planning history below).
- 1.3. The floor of the quarry lies at c. 6 metres (OD Malin). There are a number of stockpiles of crushed rock on the quarry floor. At the time of site inspection there was some ponding of water on the quarry floor. Machinery was evident within the quarry at the time of my site inspection however the quarry does not appear to be in operation. A portacabin office, wheel wash and weighbridge are located at the quarry entrance.
- 1.4. The appeal concerns 2 no. separate areas within the quarry, a long narrow area c. 62 metres in length along the western edge of the quarry, and a larger area, c. 91 metres in length, to the south of the quarry at the ramp to the quarry floor. Both areas lie just outside the red line boundary associated with the substitute consent application.
- 1.5. A nursing home and football c/lub/pitch are located to the south of the appeal site. Dwellings are located along the local road network in the vicinity of the appeal site to the east, south and north. The landscape in the vicinity of the site is characterised by woodland and limestone outcrops. The adjoining lands to the immediate north accommodate a separate smaller limestone quarry.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the retention of an area of 400 m<sup>2</sup> which was subject to the extraction of rock<sup>1</sup>, equating to 0.78 % of the extracted area of the quarry (i.e. 5.1 Ha). The particulars submitted with the planning application state that the proposed development was required to be undertaken so as to stabilise the quarry face at these locations.

---

<sup>1</sup> The particulars submitted under the application for Leave to Apply for Substitute Consent (ABP-309419-21) state that this rock was extracted over 2 no. blasts on 19<sup>th</sup> August 2015 and 20<sup>th</sup> January 2016, yielding c. 10,500 tonnes of rock which was dispatched from the site over an 8 month period.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority issued a Notification of Decision to GRANT retention permission on the 30<sup>th</sup> May 2022.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The report of the Planning Officer notes the following:

- Following a grant of Substitute Consent (ABP. Ref. PL.07.SU.0084), the applicant sought permission for a further small area of extraction (i.e. 0.69 Ha) and the importation of soil and stone to give effect to the restoration conditions of the Substitute Consent. During this application the Planning Authority were made aware that an area (i.e. 400 sqm) of extraction had occurred post the grant of Substitute Consent requiring regularisation.
- A planning application (PA. Ref. 20/387) was made to the Planning Authority to retain this area however the Planning Authority refused to validate the application on the basis that the proposal required an Appropriate Assessment.
- The applicant subsequently applied to the Board under Section 177C for Leave to Apply for Substitute Consent. The Board refused the application for leave to apply for Substitute Consent and the applicant is now submitting an application for retention permission in order to regularise the site.

Re. AA -

- While extraction has not occurred below the water table, due to the karstified nature of the bedrock, together with the level of winter groundwater, there is potential for pollution of surface or groundwater to occur.
- The proposed development site lies outside the boundaries of the European sites, no direct effects are anticipated.
- No qualifying species or habitats of interest, for which the designated sites are so designated, occur at the site.

- Having regard to the nominal scale of the proposed development in the context of the wider quarry, there is little likelihood of significant effects on the conservation objectives of nearby Natura 2000 sites.

Re. EIA –

- The Substitute Consent included a remedial EIS. The area of the quarry under the permitted Substitute Consent application was 5.1 Ha while the area of the subject application is 400 sqm. The proposed development would not trigger a statutory EIAR.
- Part 13 of Schedule 5 of the Planning and Development Regulations, 2001, deals with changes, extensions, development and testing of development already authorised. The works undertaken have not resulted in an increase in the quarry size greater than 25% of the existing quarry and is substantially below 50% of the relevant 5 Ha threshold.
- On the basis of the criteria contained in Schedule 7 of the of the Planning and Development Regulations, 2001 (as amended), specifically the characteristics of the proposed development; the location of the proposed development; and the characteristics of potential impacts, the Planning Authority conclude that there is no real likelihood of significant effects on the environment arising from the post consent development, and the need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

### 3.2.2. Other Technical Reports

None received.

### 3.3. Prescribed Bodies

None received.

### 3.4. Third Party Observations

17 no<sup>2</sup>. third party observations were received by the Planning Authority. Issues raised in the observations can be summarised as follows;

- There is no basis for the reversal of Galway County Council's previous opinion re. the requirement for AA and as such the application should be invalidated.
- Road safety concerns.
- Impact on residential amenity.
- The extracted area is part of the Ballydotia Limestone Pavement, an Annex 1 Habitat under EU Habitats Directive. Appropriate Assessment should be carried out.
- The site is located close to SACs and an SPA.
- Extensive flooding affected the site.
- It is unclear if an Integrated Pollution and Prevention Control licence is required.
- Permission is curtailed by S. 34 (12) of the Planning and Development Act, 2000.
- EIA is required under Schedule 5, Part 2 of the Planning and Development Regulations (Extractive Industries)/EIA screening is required.
- Application documents were not available on the Galway County Council website within the required time. Failure to comply with public participation requirements affected third parties ability to mount a challenge under Section 50.
- Application lacks detail including volume, depth, extraction method and restoration.
- The processing of rock from the 400 sqm took place in a wider area and as such the proposal is contrary to Condition no. 1 of the Substitute Consent.
- Conditions of the Substitute Consent were not agreed as required. The proposal took place without an agreed restoration plan in place and without the

---

<sup>2</sup> Including 2 no. observations from and also on behalf of the appellant (Connemara Environmental Action Association CLG) dated 8<sup>th</sup> May 2022 and 10<sup>th</sup> May 2022 respectively.

payment of a bond. No environmental mitigation measures have been implemented and no water quality monitoring agreed.

- No details regarding the justification for the proposal submitted.
- Failure to comply with previous grant of retention/Substitute Consent.

## 4.0 Planning History

### Appeal Site:

**PA. Ref. QV33 & ABP Ref. QV07.QV0057** - The quarry was registered under PA ref: QV 33 and had conditions imposed under Section 261(6) as a pre-1963 site. M&M Caireal Teoranta requested a review in respect of the determination by Galway County Council under the provisions of Section 261A of the Planning and Development Act 2000, as amended. It was determined that both EIA and NIA offences existed, and the applicant was directed to apply for Substitute Consent with a rEIS and rNIS.

**ABP Ref. PL.07. SU.0084** – Substitute Consent GRANTED for rock quarry. Under this application Remedial NIS (rNIS) and Remedial EIS (rEIS) were submitted.

**PA. Ref. 17/448** – Permission sought for extraction on 0.69ha within a 2.6ha designated quarry area, and the importation of soil onto the site to give effect to the restoration conditions of Substitute Consent (ABP Ref. PL07.SU.0084) This application was withdrawn.

**PA. Ref. 20/387** – Retention permission sought for the extraction of 400 sqm of rock. This application was invalidated on the basis of Section 34 (12) of the Planning and Development Act, 2000, as amended.

**ABP Ref. 309419-21** – Leave to apply for Substitute Consent under Section 177C REFUSED.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The proposed development was considered by the Planning Authority under the Galway County Development Plan 2015-2021 however the Galway County

Development Plan 2022-2028 came into effect on the 20<sup>th</sup> June 2022 and is now the relevant development plan.

5.1.2. The appeal site is not subject to any land-use zoning in the Galway County Development Plan 2022-2028.

5.1.3. The provisions of the Galway County Development Plan 2022 – 2028 relevant to this assessment are as follows:

- Policy Objective MEQ 2 – Protection of the Environment (Chapter 4, Vol 1).
- DM Standard 18 – Extractive Development (Chapter 15, Vol 1).

5.1.4. In terms of Landscape Character Type, the appeal site is located within a 'Lake and Environs Landscape' (see Map 1, Appendix 4 'Landscape Character Assessment' of CDP). Regarding landscape sensitivity, the appeal site is located within Class 3 'Special' (see Map 6, Appendix 4 of CDP), which is noted as being '*highly sensitive to change*'. The appeal site is not affected by any protected views (see Map 08, Appendix 4).

## 5.2. Natural Heritage Designations

- Ross Lake and Woods SAC (Site Code: 001312) – c. 1.2 km north-west.
- Ross Lake and Woods pNHA (Site Code: 001312) – c. 1.2 km north-west.
- Lough Corrib SAC (Site Code: 000297) – c. 0.8 km north-east.
- Lough Corrib pNHA (Site Code: 000297) – c. 3 km north-east.
- Lough Corrib SPA (Site Code: 004042) – c. 3 km north-east.
- Drimcong Wood pNHA (Site Code: 001260) – c. 1.4 km south-west.

## 5.3. EIA Screening

(See completed Form 1 and Form 2 on file). Having regard to the limited nature and scale of development, as well as the criteria set out in Schedule 7 of the Planning and Development Regulations, 2001, as amended, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

#### 5.4. Grounds of Appeal

This is a third party appeal by Connemara Environmental Action Association CLG against the decision of Galway County Council to grant retention permission. The grounds of appeal may be summarised as follows;

- The appellant's grounds of appeal are stated as being set out in the submission made to Galway County Council (for the purpose of clarity these are summarised as follows);
  - Galway County Council failed to publish application material on its website within the required timeframe resulting in the appellant being unaware that the applicant had applied to An Bord Pleanála for leave to apply for Substitute Consent, affecting the appellant's ability to challenge this decision under Section 50 of the Act and the appellant's ability to become involved in the planning application.
  - Galway County Council has no jurisdiction to consider this application having previously invalidated an application for the same development in light of Section 34(12) of the Act. There has been no change in the underlying circumstances against which this application may be considered.
  - An Bord Pleanála's decision to refuse leave to apply for Substitute Consent is immaterial for the purposes of this application and Galway County Council is bound by its previous decision, that the development for which retention permission was sought required Appropriate Assessment, thereby removing its ability to further consider the application under Section 34(12) of the Act. The question of the status of the development proposed to be retained in relation to the requirements of the Habitats Directive cannot be revisited in this further application for the retention of the same unauthorised development.
  - EIA Screening needs to be addressed by the Planning Authority.
  - Mount Juliet Estates Residents Group v Kilkenny County Council (2020) IEHC 128 is noted as being of relevance in relation to the prohibition under section 34(12), the following is referenced –

*'the planning authority must consider whether, in the event that a hypothetical planning application had been made in advance of the*

*commencement of development works, it would have required a determination as to whether an environmental impact assessment is required, i.e. a screening determination. If it did, then the developer cannot apply for retention planning permission. The developer would have to seek "substitute consent" instead. Crucially, this is so even if the (hypothetical) screening determination would have been negative, i.e. a full assessment would not have been required. It is enough to trigger the prohibition under section 34(12) that the developer avoided having to submit to a screening exercise, irrespective of what the outcome of that exercise would have been. Put otherwise, the procedural misstep of avoiding a screening exercise precludes the making of a retention planning permission'.*

- The proposal does not meet the threshold for mandatory EIA, however Part 2(2) of Schedule 5 of the Planning and Development Regulations 2001 relates to the 'Extractive Industry' and part (b) refers to the extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares. The proposal is 'sub-threshold' development and therefore would have required a Screening Determination for EIA. Section 34(12)(b) therefore applies and Galway County Council has no jurisdiction to consider further the application.
- Whilst not directly relevant, An Bord Pleanála in their decision on the leave to apply for Substitute Consent application fell into legal error by not properly considering the requirement for EIA screening.

The appeal submission raises the following;

- The unauthorised development will have a likely significant effect on the environment.
- Galway County Council had no jurisdiction to consider this application for retention permission having regard to the requirements of section 34(12) of the Planning and Development Act 2000. There has been no change in the underlying circumstances.
- The fact that An Bord Pleanála refused leave to apply for Substitute Consent is immaterial for the purposes of the consideration of whether Galway County Council had jurisdiction to consider the application.

- EIA Screening was not addressed by the Planning Authority.
- Mount Juliet Estates Residents Group v Kilkenny County Council (2020] IEHC 128 is noted as being of relevance in relation to the prohibition under section 34(12) (see extract from Judgment above).
- The development is 'sub-threshold' development and therefore would have required a Screening Determination for EIA in the event that this application was being made prior to the development being carried out.
- The proposal included blasting in the bird nesting season in the immediate vicinity of an established nest of Peregrine Falcon, a species of bird granted protection under Annex I to the Birds Directive (Directive 2009/147/EC). The protection of Peregrine Falcon was conditioned as a mitigation measure in the grant of Substitute Consent for the quarry.
- It was accepted by the NPWS and the developer that the area of extraction is Limestone Pavement, an Annex I habitat protected under the Habitats Directive. These impacts could not be screened out for EIA on a preliminary assessment. At a minimum a Screening for EIA was required. Accordingly, the development is one to which Section 34(12)(b) of the Act applies, and Galway County Council had no jurisdiction to consider the application and subsequently grant planning permission for.

## 5.5. Applicant Response

The applicant has submitted a response in respect of the third party appeal submission. The applicant's response notes the following.

- The appellant's assertion that the proposed development would have required either EIA or a Stage 2 Appropriate Assessment is erroneous.
- The history of the site post 2012 is set out as follows;
  - Following assessment under Section 261A the area of the site which was subject of extraction (i.e. 5.1 Ha.) was the subject of a Substitute Consent with a rEIS and rNIS (see ABP. Ref. SU0084).
  - A warning letter issued following an infringement (of a few hundred square metres) which was undertaken to stabilise a small part of the quarry face.

This warning letter was issued in the course of a planning application (PA. Ref. 17/448) for a proposed further area of quarrying (i.e. 0.69 Ha) and soil importation for the purpose of site restoration. The PA requested Further Information seeking a Stage 2 Appropriate Assessment and seeking how the issue raised in the warning letter was to be addressed. The applicant subsequently withdrew PA. Ref. 17/448.

- Retention permission was subsequently sought for the small area of extraction under PA. Ref. 20/387 however this was invalidated on the basis of Section 34(12) of the Planning and Development Act, 2000.
- An application for leave to apply for Substitute Consent was then made under Section 177C (see ABP. Ref. ABP-309419-21) to query whether there actually existed any offence under the Habitats legislation, and if such an offence existed whether exceptional circumstances existed as to provide a gateway to regularisation. An Bord Pleanála refused the application on the basis that the alleged offence did not exist which allowed for an application under Section 34 (see PA. Ref. 22/457) to be made to the Planning Authority.
- The appeal omits any reference to the decision of An Bord Pleanála (i.e. ABP-309419-21) which decided that no Habitats offence was present on the site.
- The appellant suggests that a Screening for Sub-Threshold EIA should have been carried out. Galway County Council in two successive applications in 2017 and 2020 did not seek to suggest that EIA was a factor. The threshold for EIA Sub-Threshold determination is the greater of (i) 50% of the national mandatory threshold (50% of 5 Ha) which is 2.5 Ha or (ii) 25% of the existing site area which has undergone EIA (25% of 5.1 Ha) so 1.25 Ha. Thus, the 2.5 Ha threshold applies for an EIA screening at this site. The actual area is just 400sqm, i.e. <0.8% of the extracted site area which previously underwent EIA, and just 1.6% of the Sub-Threshold EIA screening level. Consequently, the allegation regarding the need for EIA screening is without basis.

## **5.6. Planning Authority Response**

None received.

## 5.7. Observations

An observation was received from the DoHLGH (Department of Housing, Local Government and Heritage). The observation notes the following.

- The lands are part of the Ballydotia Karst Landscape.
- The site lies within a groundwater vulnerability which has been categorised as Extreme/Rock near surface within a Karst landscape.
- The site falls within both the Corrib and Ballycuike Lough Stream sub catchment areas.
- The quarry site contains water at the surface potentially feed from both surface spring or seepages and groundwater providing potential hydrological links to European Sites.
- Prior to granting retention An Board Pleanála must be satisfied that the proposed development does not pose a significant impact on the nearby European Sites qualifying interest's habitats, species and especially on water quality, and that an Appropriate Assessment is not required.

## 5.8. Further Responses

The appellant submitted a response in respect of the first party response to the third party appeal submission. This submission comprises 3 no. elements, (i) a submission made on behalf of the appellant raising legal issues, and (ii) Appendix A and (iii) Appendix B. The issues raised in each are summarised in turn below.

### Submission made on behalf of the appellant:

- In addition to this appeal, the appellant initiated Judicial Review of Galway County Council's decision on the application. A stay on determining this appeal has been lifted pending the outcome of this appeal.
- The applicant's characterisation of the nature of Section 177C of the Planning and Development Act, 2000, is erroneous. Section 177C is not a mechanism by which one can query the validity of a decision of a Planning Authority. It is not possible to challenge the validity of a decision of a Planning Authority, other than in accordance with the provisions of the Act, which require that such a challenge be by way of judicial review under

Section 50 of the Act. The applicant was transparent that the application under Section 177C was designed as a collateral challenge to the decision of Galway County Council. An Bord Pleanála failed to engage with the fact that the application was mounted as a collateral challenge to the validity of a decision of a Planning Authority in breach of Section 50 (2) of the Planning and Development Act, 2000.

- The purpose of an application under Section 177C of the Act is not to 'query' whether there may be an 'offence' under the Habitats legislation as submitted by the Applicant, but to apply for retention of development where same is otherwise not permissible under Section 34 of the Act. An application under Section 177C is only made by a person to whom the section applies (i.e. a person who has carried out a development, or who is the owner or occupier of lands upon which such a development has been carried out. Such a development is one which has been carried out where an environmental impact assessment, a determination as to whether an environmental impact assessment or a determination as to whether an environmental impact assessment was required). An application under Section 177C is made in circumstances where the applicant accepts that the development to which the application relates, requires EIA, Screening for EIA or Appropriate Assessment. It is not possible for an applicant to resile from this acceptance in the course of an application of Section 177C, and resile from acceptance that the development required regularisation under the Substitute Consent provisions.
- The decision of the Board in ABP-309419-21 is wrong in law, and any decision of the Board in this appeal to grant permission for the unauthorised development will also be wrong in law for the same reasons.
- Whether An Bord Pleanála in its decision on the Section 177C application had decided that the unauthorised development did not require Appropriate Assessment has no bearing on a subsequent application for retention of unauthorised development under Section 34 of the Act. This is because there is no statutory relationship between Section 34 and Section 177C.
- Galway County Council cut and pasted the Board decision on the Section 177C application and gave no independent consideration to the application

before it, contrary to law as a Planning Authority cannot fetter its discretion in considering a planning application before it, including in relation to its obligations under the EIA and Habitats Directives.

- The original legal error of An Bord Pleanála in refusing leave to apply for Substitute Consent on the basis that no Appropriate Assessment was required has infected this application and appeal.
- In the case of *Mount Juliet Estates Residents Group v Kilkenny County Council* [2020] IEHC 128 and *Suaimhneas Limited v Kerry County Council* [2021] IEHC 451, the Court explained and elaborated on the context of and wider framework for Section 34(12) of the Act, and in particular how it arose from the decision of the Court of Justice in Case C-215/06, *Commission v. Ireland*. The Court found that the Planning Authority in considering an application under Section 34 for retention of unauthorised development must conduct a 'notional screening exercise'. The Court stated: *'The term the "development concerned" under section 34(12) of the PDA 2000 should be understood as referring to the development as envisaged at the time the unauthorised development commenced. On this interpretation, a planning authority must ask itself whether development of the nature and extent envisaged at that time would have been likely to have a significant effect on any European Site. This notional screening exercise is to be carried out on the counterfactual hypothesis that an application for planning permission had been made prior to the commencement of the development concerned'*. The notional screening exercise in respect of this unauthorised development has already been carried out by Galway County Council, leading to its decision of 6<sup>th</sup> July 2020 to refuse to consider the application further. Nothing which has transpired subsequently, including the erroneous decision of the Board on the Section 177C application or the elapsing of time, can alter the nature the development concerned. The notional screening exercise has been carried out by Galway County Council, and the result of that determination was that the development required an Appropriate Assessment.
- The development required at the very least, Screening for EIA, being sub-threshold development for quarrying. Furthermore, the presence of Peregrine Falcon on the quarry face, an Annex I species listed in the Birds

Directive, and for whose protection mitigation measures were conditions in the Substitute Consent might trigger a requirement for full EIA. Accordingly, it is clear that even without the notional screening exercise of Galway County Council in relation to the Habitats Directive, that the development concerned triggered Section 34(12) of the Act in relation to Screening for EIA.

- In the context of the Mount Juliet Estates case, the Planning Authority must consider whether is the event that a hypothetical planning application had been made in advance of the commencement of development works, it would have required a determination as to whether an EIA is required i.e. a screening determination. If it did, then the developer cannot apply for retention permission, even if the hypothetical screening determination would have meant that a full EIA is not required.
- No right to regularise the unauthorised development exists, such regularisation is only permissible in this case by way of Substitute Consent provisions.

Submission by the appellant (Connemara Environmental Action Association) referred to as Appendix A:

- The issue of the validity of the application having regard to Section 34(12) of the Planning and Development Act 2000 is raised.
- The planning application contains multiple inaccuracies and omissions about the planning status, extent, timescale and nature of the development.
- The development was larger than stated and was not a minor maintenance exercise to stabilise a rock face.
- Extraction and processing on site took place continuously from July 2015 to November 2016.
- The applicants misled Galway County Council regarding the extent of flooding on the site.
- The applicants were advised by the Enforcement Officer that quarrying activity, including a scheduled blast was outside the scope of the Substitute Consent however the applicants proceeded to blast.

- The applicants were notified by Warning Letter that the development was unauthorised and did not comply with any the conditions of Substitute Consent (Ref 07.SU0084). Despite the warning letter, extraction and processing continued until November 2016.
- The applicant's submission to the Board (dated July 21<sup>st</sup> 2022) contains false and misleading information. The apparent intent of this is to hide the fact that the applicants continued with quarrying activity having been notified in person and by Warning Letter by Enforcement that the development was unauthorised and did not comply with the conditions of the Board's Substitute Consent, and to minimise the description of extent and timeline of extractive development that took place from July 2016 to November 2016.
- The applicants refer to the development as a further infringement of just a few hundred sqm to stabilise one small area of the quarry face. Drawings of extraction relate however to two separate quarry faces hundreds of meters apart. Photographs in the appellant's submission to the PA show a larger area than claimed.
- Both areas are severely flooded and no agreed water management and monitoring procedures were submitted prior to works taking place as required by substitute consent decision 07.SU.0084.
- Retrospective permission cannot be granted for an application that would have failed if it had been submitted as a fresh application. If the applicants had applied for permission to extend the quarry and to begin processing in the area defined by the Substitute Consent Area, they would have been required to implement the conditions of the Substitute Consent Decision (Ref 07.SU0084). They would have been required to state the means and timeline of extraction, blasting frequency, noise, dust mitigation and water management - the standard conditions for extractive development.
- Appropriate Assessment (and Screening for EIA) must be carried out and the operator must be required to completely fulfil the conditions of the substitute consent order from 2015 before any further development takes place.

Submission by the appellant (Connemara Environmental Action Association) referred to as Appendix B (observation to PA in respect of planning application)

- The PA have previously determined that the development requires Appropriate Assessment. Circumstances have not changed and there is no basis for the PA to reverse their opinion. The application should be invalidated.
- Multiple inaccuracies in planning application/questions within same.
  - o No details provided of the volume of rock extracted, technique, dates, etc.
  - o The extracted material was worked/processed within the substitute consent area and therefore the site area relevant to the application is larger than stated.
  - o Extracted area part of same geological plateau of limestone pavement as Ballydotia limestone pavement.
  - o Absence of information to support the requirement for the proposal.
  - o Application site is in proximity to Natural Heritage Area.
  - o Proposal requires EIA.
  - o Proposal requires Integrated Pollution Control Licence, due to flooding on site.
  - o The site is subject to flooding.
  - o No agreed measures submitted in respect of Substitute Consent to address monitoring of surface water.
- Failure to comply with conditions of Substitute Consent.
- Failure of PA to publish application documentation on website within 5 working days.
- The fact development has been undertaken should not influence the determination of same.

## 6.0 **Assessment**

- 6.1. Having examined the application details and all other documentation on file, including the appeal and observation, having inspected the site, and having regard to the

relevant national and local policy and guidance, I consider the main issues in relation to this appeal are as follows:

- Background
- Issues Arising
- Ecological Impact
- EIA
- Appropriate Assessment

## **6.2. Background**

- 6.2.1. The quarry, which the appeal site forms part of, was the subject of a Substitute Consent (ABP Ref SU07.SU0084 refers). In order to comply with restoration requirements arising from this Substitute Consent the applicant applied to Galway County Council under PA. Ref. 17/448 for development which included the importation of soil to the quarry. The issue of unauthorised development was raised in the course of this planning application and the applicant was requested to submit Further Information. PA. Ref. 17/448 was subsequently withdrawn.
- 6.2.2. In seeking to address the issue of unauthorised development, the applicant submitted a planning application to Galway County Council under PA. Ref. 20/387 for retention permission for the extraction of a 400 sqm area of rock. Galway County Council refused to validate the application on the basis of Section 34 (12) of the Planning and Development Act, 2000, as amended, specifically on the basis that the development for which retention permission was sought would have required an Appropriate Assessment.
- 6.2.3. The applicant subsequently submitted an application for Leave to Apply for Substitute Consent to the Board (ABP. Ref. 309419-21 refers). The Board refused the application for Leave to Apply for Substitute Consent on the basis that

*'having regard to the limited size and scale of the extraction area outside the permitted quarry area (see PL.07.SU0084) which was carried out subsequent to 1<sup>st</sup> February 1990 and which is significantly below the mandatory threshold for Environmental impact Assessment, together with the nature of the receiving environment, it is considered that an environmental impact assessment, or determination for same, would not have been necessary or warranted in this instance',*

and that -

*'having regard to the separation distance between the quarry operation and the Ross Lake and Woods Special Area of Conservation (Site Code: 001312), the Lough Corrib Special Area of Conservation (Site Code: 000297) and Lough Corrib Special Protection Area (Site Code: 004042), the lack of direct effects thereon resulting from the quarry operations, and the lack of any known pathways linking potential pollutants arising from the quarry operations that could indirectly effect the SACs or SPA, it is considered that an appropriate assessment arising from development that was carried out on this 400sqm quarry site subsequent to 26th February 1997 would not have been necessary or warranted in this instance. In these circumstances, a need for substitute consent does not apply'.*

- 6.2.4. Following the decision of the Board to refuse Leave to Apply for Substitute Consent the applicant submitted a planning application to Galway County Council under PA. Ref. 22/457 for retention permission for the extraction of 400 sqm of rock. Galway County Council granted retention permission for this development and this permission is now the subject of a third party appeal, coming before the Board in this appeal.

### **6.3. Issues Arising**

- 6.3.1. Nature/Extent of Proposed Development - the appellant contends that working and processing of the extracted rock took place over a much wider area than indicated in the plans and particulars submitted with the planning application, and that the details submitted with the planning application contain inaccuracies and omissions, including with reference to the timescale of the development. I note that the development description contained in the public notices refers to the extraction of 400 sqm of rock

and as such I am satisfied that the area indicated by the red line boundary corresponds to this area. In the event that the Board are minded to grant retention permission for the proposed development I recommend that a condition is attached stipulating that the development permitted is as per the development description contained in the public notices. I consider that the information submitted is sufficient to enable an assessment of the proposed development. I note that the application for Leave to Apply for Substitute Consent (ABP Ref. 309419-21) included information in respect of the volume of rock extracted and the timeframes concerned and I have referred to this information in my report in the interests of clarity.

- 6.3.2. Change in Legislation – a key issue raised by the appellant is that the proposed development should have been subject to a Screening Determination for EIA, and that as such the prohibition provided under Section 34 (12) of the Planning and Development Act, 2000, as amended applies. I note that certain provisions of the Planning and Development, Maritime and Valuation (Amendment) Act, 2022 commenced on 16<sup>th</sup> December 2023, including an amendment to Section 34 (12) of the Planning and Development Act, 2000. Section 34 (12) now provides; -

*‘a Planning Authority shall refuse to consider an application to retain unauthorised development of land where it decides that either or both is required in respect of the development: (a) an environmental impact assessment; (b) an appropriate assessment’.*

The Planning and Development, Maritime and Valuation (Amendment) Act, 2022 also amended Section 37 of the Planning and Development Act, 2000 and provides that *‘the reference in section 34(12) to the planning authority shall be construed as a reference to the Board’*. The changes outlined above mean that a ‘determination’ as to whether an environmental impact assessment is required is no longer grounds to refuse to consider a retention application, and that the prohibition on determining an application or appeal for retention permission relates to developments requiring an EIA or Appropriate Assessment.

- 6.3.3. Mitigation Measures – I note that the Inspector’s report in respect of the application for Leave to Apply for Substitute Consent (ABP Ref. 309419-21) appears to refer to mitigation measures contained in the rNIS and rEIS as having been in place at the

time of the extraction of the 400 sqm of rock which is the subject of this planning application for retention permission. Additionally, the cover letter submitted with the application for Leave to Apply for Substitute Consent also refers to mitigation measures. I note that the appellant's submission to the Planning Authority in respect of the planning application includes correspondence in relation to compliance with the conditions of the Substitute Consent (ABP. Ref. SU0084). This correspondence indicates that conditions concerning mitigation measures which required the written agreement of the Planning Authority were not complied with, written agreement from the Planning Authority does not appear to have been received as required by the conditions on the consent. As such there remains a degree of ambiguity in relation to whether mitigation measures contained in the rEIS and rNIS submitted as part of the Substitute Consent (ABP. Ref. SU0084) have in fact been implemented fully, or whether these measures were in place at the time the proposed development which is the subject of this application for retention permission was undertaken. In any event I note that mitigation cannot be considered in Appropriate Assessment screening. Having regard to the forgoing and in the interest of clarity I confirm that I have not had regard to mitigation measures contained in the rEIS or rNIS submitted as part of the Substitute Consent (ABP. Ref. SU0084) in assessing this application for retention permission.

#### **6.4. Ecological Impact**

- 6.4.1. Peregrine Falcon – the appellant notes that blasting took place at the quarry during nesting season and in the vicinity of an established nest of Peregrine Falcons (a species listed in Annex I of the EU Birds Directive). Whilst Peregrine Falcons are noted as being present on the site, I note that the appeal site is not designated as a SPA for Peregrine Falcon. Having regard to the limited blasting (i.e. 2 no. blasts) used to extract the rock, any disturbance caused to Peregrine Falcon within the quarry would have been short lived and as such I do not consider that the proposed development for which retention permission is sought would have resulted in any significant impact on Peregrine Falcons within the quarry.
- 6.4.2. Limestone Pavement – the appellant contends that the extracted area includes Limestone Pavement (an Annex 1 Habitat) and that as such the proposal could not be screened out for EIA on a preliminary assessment, and that at a minimum screening

for EIA would have been required. The observation from DoHLGH notes that the extracted area forms part of same geological plateau of Limestone Pavement as Ballydotia Limestone Pavement. I note that the cover letter submitted with the application for Leave to Apply for Substitute Consent (at page 8) states that 'while the original pavement, pre-Habitats Directive, may have been Limestone Pavement, there was no further loss of this by the extraction of the already bare 400 sqm post Substitute Consent development'. With the exception of the applicant's statement in relation to Limestone Pavement in the cover letter of the application for Leave to Apply for Substitute Consent I note that no ecological survey has been provided to support this position. Having reviewed the information on the file, and also that submitted with the application for Leave to Apply for Substitute Consent (ABP. Ref. 09419-21) I cannot therefore conclude definitively whether or not the extracted area comprised Limestone Pavement, however I note that the appeal site itself is not designated as a SAC for Limestone Pavement. Based on the site sections submitted I also note that the majority of extracted rock was from the vertical sections/faces of the quarry, as opposed the surface where Limestone Pavement is present. Noting the extent of Limestone Pavement which may have been removed relative to the extent of Limestone Pavement in the vicinity, I do not consider that the proposal would have resulted in any significant loss of Limestone Pavement.

- 6.4.3. Lesser horseshoe bat – I note that Ross Lake and Woods SAC, of which the Lesser horseshoe bat is a QI of, is at its closest point c. 1.2 km from the appeal site. According to information on the NPWS website, the weighted average maximum foraging range of the Lesser horseshoe bat is 2.02 km. I note that Lesser horseshoe bats occupy a roost<sup>3</sup> c. 4 km from the appeal site. The appeal site is therefore outside the foraging range for this species associated with Ross Lake and Woods SAC. The Lesser horseshoe bat is also a QI of Lough Corrib SAC, which at its closest point is c. 0.8 km from the appeal site. The appeal site could therefore potentially be within the foraging range for the Lesser horseshoe bat associated with Lough Corrib SAC. In addition, bats are likely to use the woodland around the appeal site for foraging. The information submitted with the application for Leave to Apply for Substitute Consent stated that works at the site occurred during the day and therefore it is unlikely that disturbance to bats from artificial light would have occurred. Additionally, noting the limited duration

---

<sup>3</sup> See map 3, Conservation Objective Series, Ross Lake and Woods SAC, Version 1, 18<sup>th</sup> October 2018, NPWS.

of blasting (i.e. 2 no. blasts) it is unlikely that the proposal resulted in any significant impact on bats, including Lesser horseshoe bats, should they have been present within the quarry during the course of works.

## 6.5. EIA

- 6.5.1. An Environmental Impact Assessment Screening Report has not been submitted with the planning application/appeal. Class 2 (b) Schedule 5 (Part 2) of the Planning and Development Regulations 2001, as amended, provides that mandatory EIA is required for the following classes of development:

*Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares.*

- 6.5.2. The area of the current planning application/appeal is 400 sqm. As such, I am satisfied that the site area of the development which is the subject of this application for retention permission is substantially below the relevant 5 Ha. threshold and a mandatory EIA is therefore not required on the basis of Class 2 (b).

- 6.5.3. Part 13 of Schedule 5 (Part 2) of the Planning and Development Regulations, 2001, as amended, relates to changes, extensions, development and testing and provides that,

*‘any change of extension of development already authorised, executed or the process of being executed (not being a change or extension referred to in Part 1) which would:-*

- (i) result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, and*
- (ii) result in an increase in size greater than –*
  - 25% per cent, or*
  - an amount equal to 50 per cent of the appropriate threshold, whichever is the greater.*

The two areas which are the subject of the appeal lie just outside the site boundary associated with the Substitute Consent and as such could be regarded as an 'extension' to the quarried area. The area of the quarry under the permitted Substitute Consent application was 5.1 Ha. The site area of the development which is the subject of this application for retention permission is 400 sqm. The works undertaken have not therefore resulted in an increase in the quarry size greater than 25% of the existing quarry or an amount equal to 50% of the appropriate threshold.

- 6.5.4. Schedule 7 of the of the Planning and Development Regulations, 2001 (as amended) sets out criteria for determining whether a development would or would not be likely to have significant effects on the environment.

#### Characteristics of the Proposed Development

- The extraction of rock concerned a cumulative area of 400 sqm and occurred immediately adjacent to a permitted quarry, and within the quarry face.
- The area which was subject to the extraction of rock comprises less than 1% of the overall approved quarry area.
- The rock which was extracted over two blasts.
- The extracted rock was dispatched from the site over an 8 month period.
- With the exception of the rock which was extracted, the proposed development did not entail the use of significant natural resources, including land, soil, water and biodiversity.
- The proposed development did not give rise to the production of significant waste, pollution or nuisances and would not give rise to a risk of major accidents or risks to human health, including through water or water contamination.

#### Location of the Proposed Development

- The quarry, and location of the proposed development, is within a rural area, c. 3 km north of Moycullen.
- The appeal site is located within an area which includes quarries (i.e. to the north) and areas of exposed limestone pavement (i.e. to the west of the site).
- The appeal site is not overly visible from the public road.
- The appeal site is located within a Class 3 'Special' landscape character area in the Galway County Development Plan 2022 - 2028, which is the second highest category of landscape sensitivity classification. The appeal site is not affected by any protected views.
- The site is not located within any designated site.

#### Types and Characteristics of potential Impacts

- The appeal site is not situated within a designated site and is of a small scale, having regard to the size of the area concerned (i.e. 400 sqm), which is less than 1% of the overall approved quarry area (07.SU0084 refers).
- Peregrine Falcons (a species listed in Annex I of the EU Birds Directive) are noted as being present on the site however having regard to the limited blasting (i.e. 2 no. blasts) used to extract the rock I do not consider that the proposal would have resulted in any significant impact on Peregrine Falcons within the quarry.
- Regarding potential impact on bats, I note that the appeal site is located outside the foraging range for Lesser horseshoe bat associated with Ross Lake and Woods SAC but potentially within the foraging range for Lesser horseshoe bat associated with Lough Corrib SAC. However, I note that the information contained in the application for Leave to Apply for Substitute Consent states that works occurred during the day and therefore disturbance to bats from artificial light would not have occurred. I therefore do not consider that the proposal

resulted in any significant impact on bats, including Lesser horseshoe bats, should they have been present within the quarry during the course of works.

- The extracted area may have comprised Limestone Pavement, however based on the site sections submitted I note that the majority of extracted rock was from the face of the quarry. Noting the extent of Limestone Pavement which may have been removed relative to the extent of Limestone Pavement in the vicinity I do not consider that the proposal resulted in any significant impacts on/loss of Limestone Pavement.
- I am satisfied that no significant visual impacts arise noting the nature of the proposal and its location within a quarry, which is largely screened from view within the wider landscape.
- Noting the distance between the appeal site a, Moycullen Nursing Home, the nearby GAA Pitch and residences in the vicinity, I do not consider that significant impacts arose in respect of these receptors.
- I consider that traffic impacts arising from the proposed development would have been minimal noting the volume of rock which was extracted, and the duration over which it was removed (i.e. 8 months).

6.5.5. In summation and having regard to:

(a) the nature and scale of the development, which is substantially below the mandatory threshold in respect of Class 2 (b) Schedule 5 (Part 2) of the Planning and Development Regulations, 2001, as amended,

(b) given that the development did not result in the production of any significant waste or result in emissions or pollutants,

(c) the criteria set out in Schedule 7 of the Planning and Development Regulations, 2001, as amended (as elaborated on above),

it is concluded that by reason of the nature, scale and location of the subject site, the proposed development would not have been likely to have resulted in significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development is not necessary in this case.

## 6.6. Appropriate Assessment

Appropriate Assessment Screening Determination (Stage 1, Article 6(3) of Habitats Directive)

I have considered the proposed development in light of the requirements of S177U of the Planning and Development Act 2000, as amended. The appeal is not accompanied by an Appropriate Assessment Screening report.

### **Description of Proposed Development**

The proposed development comprises retention permission for the extraction of rock at two separate locations at the edge of an existing quarry. The combined area of the rock which was extracted is 400 sqm. Rock was extracted by blasting in August 2015 and January 2016 (2 no. blasts), yielding c. 10,500 tonnes of rock and was dispatched from the site over an 8 month period.

An observation has been received from DoHLGH and notes the following.

- The lands are part of the Ballydotia Karst Landscape.
- The site lies within a groundwater vulnerability which has been categorised as Extreme/Rock near surface within a Karst landscape.
- The site falls within both the Corrib and Ballycuike Lough Stream sub catchment areas.
- The quarry site contains water at the surface potentially feed from both surface spring or seepages and groundwater providing potential hydrological links from the site seeking retention and European Sites.
- Prior to granting retention An Board Pleanála must be satisfied that the proposed development does not pose a significant impact on the nearby

European Sites qualifying interest's habitats, species and especially on water quality and that an Appropriate Assessment is not required with this retention application.

Separately, the appellant's submission notes that the area of extraction is Limestone Pavement, an Annex I habitat protected under the Habitats Directive and that Peregrine Falcon are present within the quarry.

### European Sites

The proposed development site is not located within or immediately adjacent to any site designated as a European Site, comprising a Special Area of Conservation (SAC) or Special Protection Area (SPA).

2 no. of European sites are located within a potential zone of influence of the proposed development. I am satisfied that other European sites proximate to the appeal site can be 'screened out' either as a result of the separation distance from the appeal site or given the absence of any direct hydrological or other pathway to the appeal site.

European Site	Qualifying Interests (summary)	Distance	Connections
Lough Corrib SAC (Site Code:000297)	<ul style="list-style-type: none"> <li>Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110]</li> <li>Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea [3130]</li> <li>Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. [3140]</li> <li>Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation [3260]</li> <li>Semi-natural dry grasslands and scrubland facies on calcareous</li> </ul>	c. 0.8m north and c. 3.4 km east of appeal site.	<b>Yes</b> - via ground water.

	<p>substrates (Festuco-Brometalia) (* important orchid sites) [6210]</p> <ul style="list-style-type: none"> <li>• Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410]</li> <li>• Active raised bogs [7110]</li> <li>• Degraded raised bogs still capable of natural regeneration [7120]</li> <li>• Depressions on peat substrates of the Rhynchosporion [7150]</li> <li>• Calcareous fens with Cladium mariscus and species of the Caricion davallianae [7210]</li> <li>• Petrifying springs with tufa formation (Cratoneurion) [7220]</li> <li>• Alkaline fens [7230]</li> <li>• Limestone pavements [8240]</li> <li>• Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</li> <li>• Bog woodland [91D0]</li> <li>• Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]</li> <li>• Austropotamobius pallipes (White-clawed Crayfish) [1092]</li> <li>• Petromyzon marinus (Sea Lamprey) [1095]</li> <li>• Lampetra planeri (Brook Lamprey) [1096]</li> <li>• Salmo salar (Salmon) [1106]</li> <li>• Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]</li> <li>• Lutra lutra (Otter) [1355]</li> <li>• Najas flexilis (Slender Naiad) [1833]</li> <li>• Hamatocaulis vernicosus (Slender Green Feather-moss) [6216]</li> </ul>			
--	---	--	--	--

Ross Lake and Woods SAC (Site Code:001312)	<ul style="list-style-type: none"> <li>• Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. [3140]</li> <li>• Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]</li> </ul>	c. 1.2 km north-west of appeal site.	<b>Yes</b> - via ground water.

The floor of the quarry is devoid of a protective layer of overburden and surface water which collects on the floor of the quarry, and which does not evaporate, percolates through the underlying bedrock. The development site is located within a karstified landscape and as such water has potential to travel some distance within the aquifer. The aquifer under the site is classified as 'Regionally Important'. In terms of groundwater vulnerability the site is indicated as 'rock at or near surface or karst' (X).

### **Possible Significant Impacts**

As the application site is not located within or adjacent to a European site there are no direct impacts and no risk of habitat loss, fragmentation or any other direct impact. However, due to the nature of the proposal, the distance of the development site to Lough Corrib SAC and Lake Ross and Woods SAC and to the nature of connectivity between the development site and these European sites, impacts generated from the extraction of the rock at the quarry require consideration. I note that ground water flows are likely to be in an easterly direction and there is therefore a more probable connection to Lough Corrib SAC. I have applied the source-pathway-receptor model in determining possible impacts and effects of the proposed development.

Sources of impact mechanism include;

- the release of hydrocarbons from vehicles involved in the works to discharge to groundwater.

The primary pathway to Lough Corrib SAC and Ross Lake and Woods SAC is via groundwater. Given the absence of overburden within the quarry and the nature of the underlying bedrock, contaminated run-off from the site could discharge unattenuated to groundwater. Additionally, the karstified nature of the bedrock beneath the site would facilitate the fast flow of run-off within groundwater and therefore the c.0.8 km and c. 1.2 km distance between the development site and Lough Corrib SAC and Ross Lake and Woods SAC respectively may not be sufficient

for contaminated run-off to be subject to the effects of dilution. As both Lough Corrib SAC and Ross Lake and Woods SAC are designated for species which require high water quality these sensitive receptors were therefore at possible risk via the pathway identified.

Based on the information provided in the application, my site inspection, and review of the conservation objectives and supporting documents, I consider that in the absence of mitigation measures the proposed development had the potential to result in the following impacts;

- potential damage to habitats and species within Lough Corrib SAC and Ross Lake and Woods SAC which are dependent on water quality.

I consider that such impacts could be significant in terms of the stated Conservation Objectives of Lough Corrib SAC and Ross Lake and Woods SAC when considered on their own and in combination with other projects and plans in relation to pollution related pressures.

Whilst it stated that the rock was extracted from above the water table I note that the rEIS (page 12) submitted in respect of the Substitute Consent stated that during winter the water table may rise above the quarry floor.

The development site, which consists of a quarry, is not suitable for any regular use by SCI wintering waterbirds of SPA's in the vicinity. There would have been no direct or ex-situ effects on wintering water birds from disturbance during the proposed development.

Regarding potential impact on the Lesser horseshoe bat, the appeal site is located outside the foraging range for Lesser horseshoe bat, a QI of Ross Lake and Woods SAC (see para. 6.4.3 of this report) but potentially within the foraging range for Lesser horseshoe bat which is a QI of Lough Corrib SAC. The information contained in the application for Leave to Apply for Substitute Consent states that works occurred during the day and therefore disturbance to bats from artificial light would not have occurred. I also note that blasting for limited to 2 no. occasions. I do not consider that the proposal resulted in any likely significant ex-situ effects on Lesser horseshoe bats, should they have been present within the quarry during the course of works.

Whilst Peregrine Falcons are noted as being present on the site, I note that the appeal site is not designated as a SPA for Peregrine Falcon.

### **Overall Conclusion**

In accordance with Section 177U of the Planning and Development Act, 2000 (as amended), and on the basis of objective information considered in this AA screening, I conclude that the proposed development could have resulted in significant effects on Lough Corrib SAC and Ross Lake and Woods SAC in view of the Conservation Objectives of a number of qualifying interests of those sites. It is therefore determined that Appropriate Assessment (Stage 2) under Section 177V of the Planning and Development Act, 2000, as amended is required.

No mitigation measures aimed at avoiding or reducing impacts on European sites were required to be considered in reaching this conclusion.

## **8.0. Recommendation**

- 8.1. Having regard to the above it is recommended that retention permission is refused based on the following reasons and considerations set out below.

## **9.0. Reasons and Considerations**

1. Given the absence of overburden within the quarry and the nature of the underlying bedrock, contaminated run-off from the site could have discharged unattenuated to groundwater. Additionally, the karstified nature of the bedrock beneath the site would facilitate the fast flow of run-off within groundwater and therefore the distance between the development site and Lough Corrib SAC and Ross Lake and Woods SAC may not have been sufficient for contaminated run-off to be subject to the effects of dilution. As both Lough Corrib SAC and Ross Lake and Woods SAC are designated for species which require high water quality these sensitive receptors were therefore at possible risk via the pathway identified. On the basis of the information submitted with the planning application and the appeal, the Board therefore cannot be satisfied that the proposed development individually, or in combination with other plans or

projects has not resulted in significant effects on the Lough Corrib SAC (Site Code: 000297) or Ross Lake and Woods SAC (Site Code:001312), or any other European site, in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting retention permission.

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.

---

Ian Campbell  
Planning Inspector

28<sup>th</sup> February 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	ABP-313921-22		
<b>Proposed Development Summary</b>	Retention of rock extraction (400 sqm)		
<b>Development Address</b>	Ballynahallia, Co. Galway		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	
		<b>No</b>	No further action required
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	X		Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>		N/A	
<b>Yes</b>	X	Class 2 (b)/Threshold is 5 Ha	Area of site concerned is substantially below 5 Ha threshold
			<b>Conclusion</b>
			No EIAR or Preliminary Examination required
			Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: Ian Campbell

Date: 28<sup>th</sup> February 2024

## Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	ABP-313921-22	
<b>Proposed Development Summary</b>	Retention for extraction of rock (400 sqm)	
<b>Development Address</b>	Ballynahallia, Co. Galway	
<p><b>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<ul style="list-style-type: none"> <li>• <b>Nature of the Development</b></li> <li>• Is the nature of the proposed development exceptional in the context of the existing environment?</li> <li>• Will the development result in the production of any significant waste, emissions or pollutants?</li> </ul>	<p>The proposed development comprises a small area (400 sqm) relative to the adjacent to a larger c. 5 Ha quarry.</p> <p>The proposed development did not give rise to the production of significant waste, emissions or pollutants.</p>	<ul style="list-style-type: none"> <li>• No</li> <li>• No</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Size of the Development</b></li> <li>• Is the size of the proposed development exceptional in the context of the existing environment?</li> <li>• Are there significant cumulative considerations having regard to other existing</li> </ul>	<p>The size of the proposed development would not be described as exceptional in the context of the existing environment.</p> <p>There are no significant developments within the vicinity of the site which would result in significant cumulative effects/considerations.</p>	<ul style="list-style-type: none"> <li>• No</li> <li>• No</li> </ul>

and/or permitted projects?		
<ul style="list-style-type: none"> <li><b>Location of the Development</b></li> <li>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</li> <li>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</li> </ul>	<p>Having regard to the nature and scale of the proposed development it is considered that the issues arising from the proximity/connectivity to European Sites can be adequately dealt with under the Habitats Directive (Appropriate Assessment) as there is no likelihood of other significant effects on the environment.</p>	<ul style="list-style-type: none"> <li>No</li> <li>No</li> </ul>
<ul style="list-style-type: none"> <li><b>Conclusion</b></li> </ul>		
<ul style="list-style-type: none"> <li><b>There is no real likelihood of significant effects on the environment.</b></li> <li>EIA not required.</li> </ul>	<ul style="list-style-type: none"> <li><del>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</del></li> <li><del>Schedule 7A Information required to enable a Screening Determination to be carried out.</del></li> </ul>	<ul style="list-style-type: none"> <li><b>There is a real likelihood of significant effects on the environment.</b></li> <li><del>EIAR required.</del></li> </ul>

Inspector: Ian Campbell

Date: 28<sup>th</sup> February 2024

DP/ADP: \_\_\_\_\_ Date: \_\_\_\_\_

(only where Schedule 7A information or EIAR required)