



An
Bord
Pleanála

Inspector's Addendum Report ABP-313921-22

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

1.0 Introduction

- 1.1. This report is an addendum report to the Inspector's report in respect of ABP-313921-22 (dated 28th February 2024).
- 1.2. On the 28th of March 2024 the Board decided to defer consideration of this case and to issue a Section 132 notice as follows;
 1. You are requested to submit a response to the matters raised in the attached submission from the Department of Housing, Local Government and Heritage - Development Applications Unit (dated 30th August 2022) received by An Bord Pleanála on the 30th day of August 2022.
 2. Furthermore, a submission on behalf of Connemara Environmental Action Association CLG by FP Logue Solicitors (dated 6th September 2023) received by An Bord Pleanála on the 6th day of September 2023 is attached. In light of the Board's requirement to undertake Environmental Impact Assessment screening in relation to, inter alia, biodiversity, including protected habitats and species, you are invited to make a submission with regards to protected habitat Limestone Pavement, and the protected species, Peregrine Falcon, as referred to in the said appellant's submission.

2.0. Response(s) to the Board's Decision to Request Further Information

- 2.1. The applicant submitted a response to the Section 132 notice. Correspondence from the applicant (dated 5th of July 2024) was received by the Board on the 8th of July 2024. The applicant's submission states;
 - The Planning Authority supports the assertion that the 400 sqm does not pose a significant threat and does not require Appropriate Assessment.
 - History of site outlined.
 - The extraction of a very limited area (400 sqm) was for health and safety purposes, represented 0.78% of the existing quarried area, and could not have posed a threat to nearby designated sites or to water quality. The quarry did not use process water, other than for dust suppression, and the duration of extraction was likely of the order of three weeks to one month.

- The applicant lodged a Section 177C application to the Board, who refused the applicant as neither EIA or AA was required. It is submitted that An Bord Pleanála has already favourably decided on the points raised by the DAU.
- FP Logue's contention that the applicant made a collateral attack on the retention application by making a Section 177C application is refuted. The Board have statutory duties when assessing a Section 177C application. The only way forward was to lodge a Section 177C application following the invalidation of the retention application. To be allowed to avail of that section of the legislation, as it was pre-repeal, the Board had to first assess the development which was the subject of the application and satisfy itself that an offence existed, otherwise Section 177C would not be available to the applicant. Where no offence was deemed to exist the Section 177C would be refused on the basis of the legislation not applying to the site, which meant that the retention application was the appropriate route to regularisation.
- In invalidating the retention application, Galway County Council did not undertake an Appropriate Assessment Screening, which could be considered a lack of fair procedures. The Section 177C application did not need a link to the Section 34 application, noting that it was the appropriate application in law.
- Representation made by the applicant to the Board in the Section 177C application were lawful.
- The appeal and submission made by FP Louge are in themselves a collateral attack on the Section 177C application.
- There are many examples nationally of quarry regularisations made by way of a retention application following Board decisions on Section 177C applications, which deemed that no offence existed.

2.2. Subsequent to the applicant's response in relation to the Section 132 notice, the Board issued Section 131 notices to appellant and the DoHLGH on the 6th of September 2024. The Section 132 notice also notes that following receipt of any response to the Section 131 notice that the file is to be referred to the Board's Senior Ecologist for a report and recommendation on Appropriate Assessment Screening. A response to the Section 131 notice was received from the appellant on the 7th of October 2024. No response was received from the DoHLGH. The appellant's submission states;

- No further comment to make subsequent to the appellant's submission dated 6th of September 2023.
- The applicant's submission does not address the requirements of the statutory scheme introduced to give effect to the Court of Justice decision in Case C-215/06, *Commission v. Ireland*. The statutory scheme must be read in light of the findings of the Court of Justice. The Council originally applied the statutory scheme correctly, there is now a requirement on the Board to apply the intention of the statutory scheme introduced to give effect to Case C-215/06.

2.3. This report considers the submission(s) made on foot of the request for further information, and the report and recommendation of the Inspectorate Ecologist in respect of Screening for Appropriate Assessment.

3. Assessment

3.0. The Board requested the Inspectorate Ecologist to prepare a report and recommendation on Screening for Appropriate Assessment. A report was subsequently prepared by the Board's Ecologist in respect of likely significant effects on European Sites. The report also took account of issues raised by the DoHLGH (dated 30th of August 2022). No new information was submitted as part of the Section 132 notice which would further inform Appropriate Assessment Screening. In light of the report prepared by the Board's Ecologist, and the submissions received from the applicant and the appellant in their responses to the Section 132 and 131 Notices respectively, I have undertaken a revised Appropriate Assessment Screening in respect of the proposed development (see para. 3.2 below). This Appropriate Assessment Screening supersedes that undertaken in my initial report dated 28th of February 2024.

3.1. In relation to the appellant's submission, specifically reference to the Court of Justice decision in Case C-215/06, *Commission v. Ireland* and the requirement on the Board to apply the intention of the statutory scheme introduced to give effect to Case C-215/06, I note that this application for retention permission is being considered after the commencement of the provisions relating to Section 34 (12) of the Planning and Development Act, 2000 (i.e. 16th of December 2023) set out in the Planning and Development, Maritime and Valuation (Amendment) Act, 2022. 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’.

As stated in my initial report, 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.

3.2. Appropriate Assessment Screening

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.

This Appropriate Assessment Screening also considers the report prepared by the Board’s Ecologist in respect of the proposed development (dated 10th of November 2024).

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 (dated 30th of August 2022) 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).

3 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"> • Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) [3110] • Oligotrophic to mesotrophic standing waters with vegetation 	c. 0.8m north and c. 1.8 km south-east of appeal site.	Yes - via ground water.

	<p>of the Littorelletea uniflorae and/or Isoetes-Nanojuncetea [3130]</p> <ul style="list-style-type: none"> • Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. [3140] • Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation [3260] • Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210] • Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410] • Active raised bogs [7110] • Degraded raised bogs still capable of natural regeneration [7120] • Depressions on peat substrates of the Rhynchosporion [7150] • Calcareous fens with Cladium mariscus and species of the Caricion davallianae [7210] • Petrifying springs with tufa formation (Cratoneurion) [7220] • Alkaline fens [7230] • Limestone pavements [8240] • Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] • Bog woodland [91D0] • Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] • Austropotamobius pallipes (White-clawed Crayfish) [1092] • Petromyzon marinus (Sea Lamprey) [1095] 			
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	<ul style="list-style-type: none"> • Lampetra planeri (Brook Lamprey) [1096] • Salmo salar (Salmon) [1106] • Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303] • Lutra lutra (Otter) [1355] • Najas flexilis (Slender Naiad) [1833] • Hamatocaulis vernicosus (Slender Green Feather-moss) [6216] 			
Lough Corrib SPA (Site Code: 004042)	<ul style="list-style-type: none"> • Gadwall (Anas strepera) [A051] • Shoveler (Anas clypeata) [A056] • Pochard (Aythya ferina) [A059] • Tufted Duck (Aythya fuligula) [A061] • Common Scoter (Melanitta nigra) [A065] • Hen Harrier (Circus cyaneus) [A082] • Coot (Fulica atra) [A125] • Golden Plover (Pluvialis apricaria) [A140] • Black-headed Gull (Chroicocephalus ridibundus) [A179] • Common Gull (Larus canus) [A182] • Common Tern (Sterna hirundo) [A193] • Arctic Tern (Sterna paradisaea) [A194] • Greenland White-fronted Goose (Anser albifrons flavirostris) [A395] • Wetland and Waterbirds [A999] 	c. 2.4 km south-east.	Yes - via ground water.	
Ross Lake and Woods SAC (Site Code:001312)	<ul style="list-style-type: none"> • Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. [3140] 	c. 1.2 km north-west of appeal site.	Yes - via ground water.	

	<ul style="list-style-type: none"> Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303] 			
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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 SPA, 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.

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).

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 and SPA. I have applied the source-pathway-receptor model in determining possible impacts and effects of the proposed development.

Impact mechanisms arising from the works would likely have included temporary noise and disturbance during the blast events and a lower level of ongoing noise from rock processing, possible release of construction related contaminants from machinery, increase in waterborne sediments collecting in any surface water from dust and rock breaking and the associated percolation of any such pollutants and sediments into the receiving groundwater. Noting the limited extent of the works in discrete areas within the existing void of the quarry and the temporary nature of the works, the magnitude of any such potential contaminant release would be low and temporary in nature.

Pathways - The primary pathway to Lough Corrib SAC and SPA, 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 distance between the development site and Lough Corrib SAC and SPA, and Ross Lake and Woods SAC may not be sufficient for contaminated run-off to be subject to the effects of dilution. 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. As Lough Corrib SAC and SPA, 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.

In relation to receptors, Lough Corrib can be divided into two parts: the southern basin, located east of the quarry is relatively shallow, underlain by Carboniferous limestone, and the northern basin, larger and deeper, underlain by more acidic granite, schists, shales and sandstones to the north. The southern basin is characterised by the qualifying interest lake habitat of Hard oligo-mesotrophic waters with benthic vegetation of *Chara* spp [3140], the hydrological regime of which is driven by groundwater flows. The conservation objective is to restore this habitat to favourable conservation condition. The *Chara* beds of the southern basin are an important source of food for waterfowl and the site is designated SPA for the following species: Greenland White-fronted Goose, Gadwall, Shoveler, Pochard, Tufted Duck, Common Scoter, Hen Harrier, Coot, Golden Plover, Black-Headed Gull, Common Gull, Common Tern and Arctic Tern. The site is also of special conservation interest for holding an assemblage of over 20,000 wintering waterbirds. The main threats to the quality of the southern basin are from water pollution resulting from intensification of agricultural activities on the eastern side of the lake, uncontrolled discharge of sewage which is causing localised eutrophication of the lake, and housing and boating development, which is causing the loss of native lakeshore vegetation (NPWS 2022). The Fen at Gortachalla, located within 800m north of the quarry, is host to the rare and Annex II-listed Slender Green Feather-moss (*Hamatocaulis vernicosus*, formerly known as *Drepanocladus vernicosus*), a qualifying interest species of the SAC where it is widespread around the margins, and constitutes a large and significant population in the national context. The conservation objective is to maintain the favourable conservation condition of this habitat within the SAC.

Based on the location and distance and absence of ecological connections to other groundwater dependent habitats, the works undertaken were outside of any zone of influence for other qualifying interest habitats of Lough Corrib SAC.

Ross Lake and Woods SAC is also designated for [3140] Hard Water Lakes as the waterbody is underlain by limestone. The conservation objective is to restore the favourable conservation condition of this habitat. The SAC is also designated for an internationally important population of Lesser Horseshoe Bat (*Rhinolophus hipposideros*) [1303]. 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 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.

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.

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.

The only impact mechanism that requires further consideration in terms of possible significant effects on Lough Corrib SAC and SPA and Ross Lake and Woods SAC is fugitive emissions from plant operations and implications for receiving groundwater. In relation to hydrocarbons and fuels, it is reasonable to assume that on-site housekeeping with regard to storage of fuels was implemented for overall site safety, and that the risk of any major fuel or hydrocarbon spill occurrence during the period of the works undertaken was very low. It is also noted that the screening report prepared by Ingram Ecology (2020) for the (invalidated) application for retention permission to Galway County Council stated that there were no spillages or accidental emissions during the works. In the event that there was a release of

emissions, such an occurrence would have been temporary and of a likely low magnitude within the wider groundwater resource, (notwithstanding the extreme vulnerability of karst), indirect hydrological connections and distance to groundwater dependant water bodies associated with the European sites and conservation objectives for those habitats. The conservation objective set to restore the favourable conservation condition of Hard oligo-mesotrophic waters with benthic vegetation of Chara spp [3140] for Lough Corrib SAC and Ross Lake and Woods SAC was not undermined by the rock extraction and processing works based on the following:

- The maintenance of the hydrological regime necessary to support the qualifying interest habitats as groundwater flows were not disrupted as the minor nature of the works did not affect the water table or disrupt or change groundwater flows.
- The conservation objectives related to the maintenance of water quality are largely focused on limiting nutrient enrichment (nitrogen and phosphorous), factors that the works would not have contributed to.
- As for other water quality indicators, the minor nature of the works combined with indirect ground water flow distance would not undermine the default target for (hard water) lake habitat 3140 of high status.
- The conservation objective to maintain the favourable conservation condition of Alkaline Fen habitat such as is present at Gortachalla Fen north of the quarry site would not have been undermined as targets to maintain hydrological regimes and ground water flows were not affected and the maintenance of appropriate water quality, particularly nutrient levels, to support the natural structure and functioning of the habitat were not affected by the nature of the rock extraction works.
- As there are no surface water features comprising streams or rivers present at the quarry site, there was and is no risk to conservation objectives set for freshwater species dependant on river water quality including Freshwater Pearl Mussel, White-clawed Crayfish, Sea Lamprey, Brook Lamprey and Salmon.

By excluding the potential for significant effects on the Lake habitat, effects on the Lough Corrib SPA and special conservation interest bird species dependant on water

quality can also be excluded with confidence as there would have not been a significant impact on the quality or functioning of the wetland habitat within the SPA.

In relation to in combination effects, the rock extraction works would not have added to the existing main threats to lake water quality which is nutrient enrichment from agriculture and sewage emissions. The minor and temporary works would not have added to any existing quarry related pressures in the wider area in a manner that could cumulatively result in significant effects on European sites.

Overall Conclusion

Any minor impacts that may have been generated would have been of a low level, temporary in nature and quickly dissipated within the wider groundwater system. Such impacts alone or in combination with other projects would not have had potential to result in significant effects on ground water dependent habitats or species that rely on those habitats in view of the conservation objectives of Lough Corrib SAC, Lough Corrib SPA and Ross Lake and Woods SAC.

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 not have resulted in significant effects on Lough Corrib SAC and SPA, and Ross Lake and Woods SAC in view of the Conservation Objectives of the qualifying interests of these sites. It is therefore determined that Appropriate Assessment (Stage 2) under Section 177V of the Planning and Development Act, 2000, as amended is not required.

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

4. Recommendation

Having regard to the above it is recommended that retention permission is granted based on the following reasons and considerations and subject to the attached conditions. This recommendation supersedes the recommendation in my report dated 28th February 2024, that being to refuse retention permission.

5. Reasons and Considerations

Having regard to:

- (a) the extent of the proposed development, specifically the small scale of rock extraction,
- (b) the location of the site within a quarry, which is largely screened from view within the wider landscape, and location within an area where quarries are prevalent,
- (c) the separation distance to Moycullen Nursing Home, Moycullen GAA Pitch and residences in the vicinity,
- (d) the minimal traffic impacts arising from the proposed development, and the duration over which material was removed (i.e. 8 months),
- (e) the limited blasting (i.e. 2 no. blasts) used to extract the rock, which is unlikely to have resulted in any significant impact on Peregrine Falcons within the quarry,
- (f) the occurrence of the works during the day, which would limit disturbance to bats from artificial light, including Lesser horseshoe bats, should they have been present within the quarry during the course of works,
- (g) the source of extracted rock from the vertical sections/faces of the quarry, as opposed the surface where Limestone Pavement is present, and the extent of Limestone Pavement which may have been removed relative to the extent of Limestone Pavement in the vicinity, the loss of Limestone Pavement would not have been significant,
- (h) the provisions of the Galway County Development Plan 2022-2028, including Objective MEQ2 and DM Standard 18,
- (i) the conclusion of the Appropriate Assessment Screening undertaken by the Board,

it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenity of property in the area, would not negatively impact the visual amenities of the area, would not result in significant traffic impacts in the vicinity, would not have a significant impact

on the environment, ecology or on European sites in the vicinity, and, would be in accordance with the proper planning and sustainable development of the area.

6. Conditions

1	<p>The development shall be carried out/retained in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the Planning Authority, the developer shall agree such details with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2	<p>The development hereby permitted retention permission is as described in the public notices and indicated on <i>Drawing No. RP – 110 – 00</i>, submitted to the Planning Authority on the 6th of April 2022. No other works/development is hereby authorised by this grant of retention permission.</p> <p>Reason: In the interest of clarity.</p>
3	<p>The developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the Planning Authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the</p>

	Development Contribution Scheme made under section 48 of the Act be applied to the permission.
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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

18th December 2024