



An
Bord
Pleanála

Inspector's Report

ABP-317088-23

Development	An aggregate storage shed and partial realignment of private laneway, within an application area of c. 0.2ha, at the existing quarry landholding.
Location	Aghamore Upper, Aughnacliffe, Co. Longford.
Planning Authority	Longford County Council
Planning Authority Reg. Ref.	22195
Applicants	Lagan Materials Ltd
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Wild Ireland Defence CLG
Date of Site Inspection	4 th September 2023 & 16 th February 2024
Inspector	Dolores McCague

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1.0 Site Location and Description

- 1.1.1. The site is located at Aghamore Upper, Aughnacliffe, Co. Longford, accessed from a county road to the south-west of Aughnacliffe and north of Ballinalee.
- 1.1.2. the site area relates to the proposed aggregate storage shed (batching plant) and not the overall quarry.
- 1.1.3. The site is given as 0.2ha.

2.0 Proposed Development

- 2.1.1. The proposed development is described in the application as the installation of an aggregate storage shed (area 902 m²) and partial realignment of existing private laneway, within an application area of c. 0.2ha, at the existing quarry landholding.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decision, dated 12th April 2023, was to grant permission, subject to 11 conditions, including:

2 - The overall development of the site shall be governed by the conditions attached to PL07-831. All relevant conditions of the above planning application, with regard to monitoring requirements and opening hours as they relate to the current site shall be fully complied within the development.

6 - Inland Fisheries shall be contacted prior to the commencement of the proposed development and all requirements shall be ascertained and strictly adhered to in the carrying out of the development.

9 - No discharge of contaminated or wash water from the site shall be allowed to surface waters or watercourses in the vicinity of the site unless a licence under the Water Pollution Act has first been obtained from Longford County Council in respect of any such discharges.

Reason: In the interests of control of pollution.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. There are two planning reports on the file. The first, dated 5th October 2022, recommending further information, which issued, includes:

- A concrete batching plant was previously in place at the quarry and was operated by the former quarry owner. This plant was removed in 2014 prior to the current owner acquiring the site.
- EIA and Stage 2 AA not required.
- The shed has a stated height of 5.85m and a total floor area of 902m².

3.2.3. Other Technical Reports

None.

3.3. Further Information

3.3.1. A further information request, on 2 points, issued 6th October 2022:

- In relation to the possible ecological sensitivity of the area and considering the nature of your proposal, and the lack of specific information relating to the discharge of both surface water from the overall site the planning authority, are concerned that your proposed development may cause a negative impact on proximal SAC & SPA. You are now therefore requested to carry out Appropriate Assessment Screening Report of your proposal and to submit the details to the planning authority so that any potential ecological effects can be assessed. This report shall be carried out by a suitably qualified ecologist.
- Finished floor level of the proposed development has not been indicated. Submit finished floor level.

3.3.2. A further information response was received 22nd March 2023, including:

- A letter from Quarry Consulting. The letter refers to the screening report and states that the finished floor level of the proposed structure will be 167m OD.
- An Appropriate Assessment Screening Report, by Woodrow APEM Group.

3.3.3. The Appropriate Assessment Screening Report, lists as sites with potential to be affected:

- Lough Forbes Complex SAC
- Lough Oughter & Associated Loughs SAC
- Ardgullion Bog SAC
- Upper Lough Erne SAC
- Lough Kinale and Derragh Lough SPA
- Lough Oughter Complex SPA
- Lough Oughter Complex SPA Lough Oughter Complex SPA
- Ballykenny-Fisherstown Bog SPA
- Upper Lough Erne SPA (UK)
- Lough Oughter Ramsar Site (853) - Criterion 1 -representative, rare or unique natural or near-natural wetland types; Criterion 2 - rare species and threatened ecological communities; Criterion 3 – biological diversity; Criterion 4 – support during critical life cycle stage or in adverse conditions. Connected via watercourse, c28.9 north-east (c.19.7km straight line distance).
- Upper Lough Erne Ramsar site (896) - Criterion 1 – the site is a particularly good representative, example of a eutrophic lake and associated swamp, fen and wet grassland; Criterion 2 - the site supports an appreciable assemblage of rare, vulnerable or endangered species or sub-species of plant and animal; Criterion 3 – the site is of special value for maintaining the genetic and ecological diversity of Northern Ireland because the quality and peculiarities of its flora and fauna; Criterion 6 – the site regularly supports internationally important numbers of wintering Whooper Swan *Cygnus cygnus*. Connected via watercourse c58.4 north-east (c.36km straight line distance).

3.3.4. Assessment of Likely effects

3.3.5. Lough Oughter & Associated Loughs SAC (000007)

Assessment of direct effects – given the terrestrial distance there is no potential for direct effects. Via watercourse it is beyond recorded ranges for otter (7.5km for breeding females), and therefore not considered to be within the range of the mobile QI population. In addition, there is no suitable habitat for otter within the application site and no potential for otter to utilise the application site. There is also limited potential to utilise the streams lying in close proximity, due to disturbance from the existing quarry and lack of suitable habitat. There is not considered to be any potential for significant impacts associated with habitat loss or direct mortality for this QI species.

Assessment of indirect effects - there is no potential for indirect effects through noise or visual disturbance to otter, given the distance of c.19.6km between the application site and the SAC.

There is a distant hydrological connection via the Aghamore stream. Surface water runoff associated with the works does not percolate into the ground but will make its way into the quarry sump, which is discharged into a field drain in the north of the site. The field drain is connected to the Aghamore stream, which flows into the Aghnacliffe Stream, which is hydrological connected to Lough Oughter. Although there is a hydrological connection significant effects on aquatic or water-dependent habitats and species are not expected as a result of the proposed works, given the scale of the works, hydrological separation distance of c29.5km and existing water quality protection measures. The course of this connection also contains one large lake (Lough Gowna), the dilution factor of which will further dissipate any potential for water quality related effects on this European Site. There is therefore no potential for indirect effects on the QIs of this SAC as a result of the proposed storage shed.

3.3.6. Lough Oughter Complex SPA (004049)

Assessment of direct effects – the site lies outside of reported core foraging ranges for wintering whooper swan (<5km) and will not result in the loss of any foraging habitat for foraging wintering waterbirds such as whooper swan, lapwing or golden plover within the application site. There are also no suitable waterbodies for QI

species such as wigeon and great crested grebe to occur. There is therefore no potential for direct effects on the QIs birds as a result of the proposed storage shed.

Assessment of indirect effects – given the distance (c 19.7km) there is no potential for noise or visual disturbance on any QIs waterbird populations.

There is a distant hydrological connection via the Aghamore stream. Surface water runoff associated with the works does not percolate into the ground but will make its way into the quarry sump, which is discharged into a field drain in the north of the site. The field drain is connected to the Aghamore stream, which flows into the Aghnacliffe Stream, which is hydrological connected to Lough Oughter. Although there is a hydrological connection, significant effects on aquatic or water-dependent habitats and birds are not expected as a result of the proposed works, given the scale of the works, hydrological separation distance of c28.9km and existing water quality protection measures. The course of this connection also contains one large lake (Lough Gowna), the dilution factor of which will further dissipate any potential for water quality related effects on this European Site. There is therefore no potential for indirect effects on the QIs of this SAC as a result of the proposed storage shed.

- 3.3.7. Lough Oughter Ramsar Site (853) - given the terrestrial distance (19.6km) there is no potential for direct effects to habitats. The site lies outside of reported core foraging ranges for wintering whooper swan (<5km) and will not result in the loss of any foraging habitat for the Lough Oughter population. Additionally there is no suitable foraging for wintering waterbirds such as whooper swan, lapwing or golden plover within the application site. There are also no suitable waterbodies for QI species such as wigeon and great crested grebe to occur.

Assessment of indirect effects – given the distance (c 19.7km) there is no potential for noise or visual disturbance impacts on any waterbird or mammal populations.

There is a hydrological connection via the Aghamore stream. Surface water runoff associated with the works does not percolate into the ground but will make its way into the quarry sump, which is discharged into a field drain in the north of the site. The field drain is connected to the Aghamore stream, which flows into the Aghnacliffe Stream, which is hydrological connected to Lough Oughter. Although there is a hydrological connection significant effects on aquatic or water-dependent habitats and species are not expected as a result of the proposed works, given the

scale of the works, hydrological separation distance of c28.9 km and existing water quality protection measures. The course of this connection also contains one large lake (Lough Gowna), the dilution factor of which will further dissipate any potential for water quality related effects on this European Site. There is therefore no potential for indirect effects on the QIs of this SAC as a result of the proposed storage shed.

3.3.8. Conclusion

Based on the distance, the limited extent and short-term nature of the construction works, and existing appropriate water quality measures in place, there is no potential for direct or indirect impacts on the QIs of these European sites through water quality deterioration affecting the associated habitats and species.

3.3.9. In-combination effects

One other significant development was identified in proximity to the application site which could result in cumulative effects on the integrity of the previously identified European sites:

2279 - permission for the installation and operation of a readymix concrete batching plant and all ancillary works within an application area of c0.25ha. which has potential to cause a release of hydrocarbons, effluent, and wastewater into the surface water system.

However such combined effects are unlikely given the small scale and localised nature of both projects, appropriate water quality measures in place, and the absence of a strong and direct hydrological connection between these projects and the nearest European designated sites.

3.3.10. Conclusion of Screening

It has been concluded that there is no potential for significant effects on the QIs / SCIs of any European Sites as a result of the proposed development due to the small scale and highly localised nature of the project as well as the considerable distance between the site and any European Sites.

There is no requirement to progress to Stage 2 of the AA process.

3.4. Further Reports

- 3.4.1. The second planning report, dated 6th April 2023, recommending permission, which issued, includes:

An Appropriate Assessment (AA) Screening has been carried out in accordance with the Habitats Directive to determine whether the proposed development would have significant effects on conservation objectives of any European sites. The AA screening concludes that the proposed development will not result in any significant effects on a European site and Stage 2 of the Appropriate Assessment process (Natura Impact Statement) is not required.

Satisfied with the responses.

3.5. Third Party Observations

- 3.5.1. Third party observations on the file have been read and noted.

- 3.5.2. Damien Hetherton Derreenavoggy:

- Observer lives approx. 600m away. The last rock blast was estimated at 960,000 tons of rock, and lifted the observers floor tiles. No notification was given. Is there any control on the amount of explosives used?
- It is proposed to build the shed on an active right of way.
- Lagan import chips from their quarry in Castlepollard. Do they propose to store these materials in the dry shed as there is a problem with air borne dust and the shed will contribute to this?
- Increased quarry traffic and noise.
- The areal extent of the quarry is questioned as the last blast was from only a few metres from the Derreenavoggy boundary.

- 3.5.3. Peter Sweetman on behalf of Wild Ireland Defence CLG:

- The threshold for screening for AA is set out in Kelly v An Bord Pleanála (2014 IEHC 400), which states at:

26 There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.177U but its

resolution is not strictly necessary in these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paras 47-49:

47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect;

This point is further explained in CJEU decision in case C-323/17 People Over Wind and Peter Sweetman v Coillte Teoranta which states:

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.

The threshold that any decision to grant permission must pass in this context is explained in paragraph 44 of CJEU Case 258/11.

So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned.

This is a strict standard and the planning authority does not have legal jurisdiction to give permission if it is not met.

It is necessary for the planning authority to establish that the site has full compliance with the planning acts.

The development must be assessed for compliance with the requirements of the Water Framework Directive.

3.5.4. ASE Design Consultants on behalf of Hanly Quarries Ltd:

- This is an attempt to procure planning permission by stealth for a number of developments within the subject site where at no stage has environmental or habitat impacts been properly and cumulatively assessed. NIS is required taking into consideration the erection of unauthorised plants.
- The quarry has been abandoned since 2012. There is no authorisation for the current location of the asphalt plant and the additional works to same carried out in 2021.
- The applicant previously applied for planning permission for a concrete plant and should have done so for the asphalt plant as currently located.
- There is a proposed NHA approx. 7 miles to the east and a SAC to the east and west of same. An Appropriate Assessment on a previous application referred to no impact based only on a desktop study. Hydrology studies would be necessary to establish: level of water table within the quarry floor; impacts on the SAC through bedrock connectivity and impacts of pumping of 1,400,000cu.m into the local water system over a 60 day period – approx. 23,000 cu. m daily vis a vis the discharge licence of 3,500 cu. m per day.
- Technical evidence on hydrology, air emissions activity, and cumulative impacts of the quarry on the SACs is required.

4.0 Planning History

22-79 – planning permission granted for the installation and operation of a readymix concrete batching plant and all ancillary works within an application area of c0.25ha. copy of file provided. A report for screening for Appropriate Assessment was submitted with this application with a finding of no significant effects and no significant cumulative effects in combination with other plans and projects. The planning report recommending permission states that the proposed development will not result in any significant effects on any European sites and stage II AA is not required.

07-831 - planning permission granted for development, consequent to the provisions of Section 261 of the Planning and Development Act, 2000. The Section 261 Registration Number of the subject site is Longford County Council QY/02. The

development consists of the continuation of quarrying activities over an area of 11.8ha. The development also consists of the retention and continuation of quarrying activities over an area of 10.9ha. copy of file provided.

07-12 – retention of planning permission granted for a second vehicular access to create a one-way traffic system; copy of file provided.

06-836 - planning permission granted for development consequent to the provisions of Section 261 of the Planning and Development Act, 2000, Registration Number QY/02, for the continuation of extraction from the existing quarry void.

97-13844 - planning permission granted for an extension to quarry; copy of file provided.

96-13327 - planning permission granted for a further quarry development: copy of file provided.

92-11962 - planning permission granted for a concrete batching plant and tar batching plant; copy of file provided.

90-11384 - planning permission granted for workshop, offices and ancillary site works; copy of file provided.

90-11223 - planning permission granted for quarry development; copy of file provided.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. Longford County Development Plan 2021-2027 is the operative plan. Relevant provisions include:

9.3.7 Extractive Industries - The Council acknowledges the need for extractive industries in terms of supply of aggregate materials for the construction sector, transport infrastructure projects, and for the export market. However, the potential for conflict in the operation of these industries with wider environmental issues needs careful consideration. The County contains a variety of raw materials critical to the construction industry in the form of sand, gravel, stone reserves including high purity

limestones and shale used in cement and magnesia manufacture and base metal deposits.

CPO 9.39 Recognise the role and facilitate the exploitation of County Longford's natural aggregate resources in a manner which does not unduly impinge on the environmental quality and the visual and residential amenity of an area, while continuing to regulate the extraction of aggregates and to seek the delivery of environmental benefits in the form of sustainable habitat creation in conjunction with the restoration phases of development.

CPO 9.40 Facilitate the sourcing of aggregates for and the operation of the extractive industry in suitable locations, subject to the protection of landscape, environment, road network, heritage, visual quality and amenity of the area.

CPO 9.41 Ensure that development for aggregate extraction, processing and associated concrete production does not significantly impact the following:

Existing and Candidate European Sites (Special Areas of Conservation (SACs) and/or Special Protection Areas (SPAs)),

Existing and proposed Natural Heritage Areas (pNHAs),

Other areas of importance for the conservation of flora and fauna and biodiversity value,

Zones of archaeological potential,

Important aquifers and sensitive groundwater resources,

The vicinity of a recorded monument,

Sensitive landscape areas,

Established rights of way and walking routes.

CPO 9.43 Ensure that extraction activities address key environmental, amenity, traffic and social impacts and details of rehabilitation.

In the assessment of planning applications for new development, intensification of use or diversification of activity, the Council will have regard to the nature of the proposal, the scale of activity proposed, the impact on the adjoining road network, the effect on the environment including important groundwater and aquifer sources, natural drainage patterns and surface water systems and the likely effects that any

proposed extractive industry may have on the existing landscape and amenities of the county, including public rights of way and walking routes.

5.2. Planning and Development Regulations 2001-2023

Article 22 (2)

A planning application referred to in sub-articles (1) and (1A) shall be accompanied by –

- (1) (g) where the applicant is not the legal owner of the land or structure concerned –
- (i) The written consent of the owner to make the application.

5.3. Natural Heritage Designations

- 5.3.1. Ballykenny - Fisherstown Bog SPA (site code 004030) c15km straight line distance to the south west, L Kinale and Derragh Lough SPA (site code 004061) c14.7km straight line distance to the south east; Lough Oughter and Associated Loughs SAC, (site code 00007) c19.6km straight line distance to the north east, and Lough Oughter Complex SPA, (site code 004049), c19.75km straight line distance to the north east, are the nearest Natura sites.

- 5.3.2. Lough Gowna pNHA is c 3.5 km straight line distance to the east.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the development and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage, and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The third party appeal was submitted by Peter Sweetman & Associates. The grounds include:
- 6.1.2. The decision is not legal. Appropriate Assessment Screening was required to be carried out by the planning authority and was not.
- 6.1.3. The legal case for screening is found in Advocate General Sharpston in the opinion to L-258/11 Sweetman & Others v An Bord Pleanála:

47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect.

- 6.1.4. This is implemented into Irish law by Finlay Geoghegan J in Kelly v An Bord Pleanála (2014 IEHC 400), at:

26 There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.177U but its resolution is not strictly necessary in these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paras 47-49:

47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect;

- 6.1.5. Condition no. 9 is quoted, the reason: 'in the interests of control of pollution', is proof that the decision is ultra vires.

6.1.6. The planner's report includes:

An Appropriate Assessment (AA) Screening has been carried out in accordance with the Habitats Directive to determine whether the proposed development would have significant effects on conservation objectives of any European sites. The AA screening concludes that the proposed development will not result in any significant effects on a European site and a Stage 2 of the Appropriate Assessment process (Natura Impact Statement) is not required.

6.1.7. The Appropriate Assessment (AA) Screening Report submitted states:

6.1.8. Table 2 2279 Aughnacliffe Quarry Aghamore Upper Longford, description the installation and operation of a readymix concrete batching plant and all ancillary works within an application area of c0.25ha. Potential Impacts – potential to cause a release of hydrocarbons, effluent, and wastewater into the surface water system. The ecologist failed to find the quarry that this development is actually in. The ecologist failed to use the correct interpretation of the test.

6.1.9. Lough Oughter and Associated Loughs SAC, site code 00007, and Lough Oughter Complex SPA, site code 004049. Conservation objectives for Lough Oughter and Associated Loughs SAC, include otter.

The report states:

indirect – given the distance and lack of suitable habitat there is no risk of noise or visual disturbance to otter.

direct – no risk to the destruction of any QI habitats due to distance from application site and no suitable habitat for otter to occur within the site.

Otter is given strict protection in the Habitats Directive.

6.1.10. 'The scale of the works, current water management practices within the existing quarry and assimilative capacity of the 29.5km of intervening waters, including one lough, will preclude any hydrological impacts to this European site'.

The current 'water management practices within the existing quarry' could be described as 'measures intended to avoid or reduce the harmful effects of the plan or project on that site'.

6.1.11. CJEU case C-323/17 People Over Wind and Peter Sweetman v Coillte Teoranta is quoted:

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.

The following Natura sites are within 15km:

Ardagullion Bog SAC (site code IE0002341).

No appropriate assessment has ever been carried out on the cumulative effect of these developments.

6.2. Applicant Response

6.2.1. The applicant has responded to the grounds of appeal, including:

6.2.2. Legality of decision – that Appropriate Assessment Screening was required to be carried out by the planning authority and was not. The competent authority requested further information, item 1 of the further information request is quoted.

The conclusion of the Appropriate Assessment Screening, submitted in response to the request for further information, is quoted.

The planner's report is quoted, which states 'I am satisfied, having regard to the accompanying documentation submitted with the application, that the proposed development will not have a significant negative environmental impact, no significant impact on any designated Natura 2000 site or a negligible impact on surrounding residential amenity.

Given that the competent authority requested further information in relation to AA, reviewed all information available including documentation supplied with the application for permission, and the recommendation of the planner, it is clear that the competent authority were satisfied that there was no doubt with respect to the potential for significant effects on Natura 2000 sites and on this basis it is incorrect to

state that the planning authority did not carry out an appropriate assessment screening exercise.

6.2.3. A response from Woodrow APEM Group is attached:

It states the number of site visits.

It refers to the assessment of indirect effects in the report appropriate assessment screening submitted.

It refers to the assessment in relation to Ardagullion Bog SAC in the report.

The report submitted is sufficient to inform appropriate assessment screening.

6.3. Planning Authority Response

6.3.1. The planning authority has not responded to the grounds of appeal.

7.0 Assessment

7.1.1. I consider that the main issues which arise in relation to this appeal are appropriate assessment, the principle of the development, natural heritage, and other issues, and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment Screening

7.2.1. In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site, there is a requirement on the Board, as the competent authority in this case, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision, by carrying out appropriate assessment.

7.2.2. Appropriate assessment is the subject of the grounds of appeal. The appellant states that the planning authority failed to carry out appropriate assessment; disagrees with the assessment that Otter will not be affected; considers that reliance on current water management practices within the existing quarry represents mitigation, which

should only be considered at stage two AA rather than at screening; and that cumulative impact was not considered.

- 7.2.3. A document titled 'Appropriate Assessment Screening' was submitted in response to the request for further information.

Appropriate Assessment - Screening

- 7.2.4. The following Natura sites are within a possible zone of influence of the proposed development by virtue of their proximity or location downstream via a hydrological connection:

Lough Forbes Complex SAC (site code 001818),

Lough Oughter & Associated Loughs SAC (000007),

Lough Ree SPA (site code 004064),

Ardgullion Bog SAC (002341),

Upper Lough Erne SAC (UK0016614),

Lough Kinale and Derragh Lough SPA (004061),

Lough Oughter Complex SPA (004049),

Ballykenny-Fisherstown Bog SPA (004101),

Upper Lough Erne SPA (UK9020071).

- 7.2.5. The screening report identifies sites with potential for impact, and the qualifying interest/special conservation interest species (QI/SCI) for these sites as set out in the following table:

European Site	Site Code	Relevant QI & SCI	Distance
Lough Forbes Complex SAC (001818)	Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation Active raised bogs Degraded raised bogs still capable of natural regeneration Depressions on peat substrates of the Rhynchosporion	c.15km straight line south west	No - although the Derreenavoggy stream, located 350m south of the application site is hydrologically connected to this SAC, there is no potential for any surface water run-off to this stream during construction and

	Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> .		operation. Additionally, the application site lies within a different WFD subcatchment (Erne_SC_020) to the stream (Camlin_SC_010)
Lough Oughter & Associated Loughs SAC (000007)	Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation Bog woodland Otter	c.19.6km north-east straight line c29.5 north-east via watercourse	Yes – there is a downstream hydrological via the Aghamore stream
Ardgullion Bog SAC (002341)	Active raised bogs Degraded raised bogs still capable of natural regeneration Depressions on peat substrates of the Rhynchosporion	C12.2 km south-east, straight line C14.9km via watercourse	No – there is an upstream hydrologically connection via the Derreenavoggy stream, 350m south of the application site. As there is no potential for surface water run-off due to the works, and the SAC lies upstream, this precludes a pathway for the propagation of impacts.
Upper Lough Erne SAC (UK0016614)	Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> . Otter Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles	c.36km north-east, straight line c58.4 north-east via watercourse	No – although there is a distant hydrological connection via the Aghamore stream, there is no potential for significant effects on the habitats and species of interest due to the small scale, localised nature of the works and the

			assimilative capacity of the intervening waters.
Lough Kinale and Derragh Lough SPA (004061)	Pochard Tufted Duck Wetland and Waterbirds	c.14.7km south-east, straight line	No – there is no hydrological connection
Lough Oughter Complex SPA (004049)	Great Crested Grebe Whooper Swan Wigeon Wetland and Waterbirds	c.19.7km north-east, straight line c28.9 via watercourse	Yes – there is a downstream hydrological via the Aghamore stream
Ballykenny-Fisherstown Bog SPA (004101)	Geenland White-fronted Goose	c.15km south-west, straight line	No - the Derreenavoggy stream, located 350m south of the application site is hydrologically connected to this SPA, there is no potential for any surface water run-off to this stream during construction and operation. Additionally, the application site lies within a different WFD subcatchment (Erne_SC_020) to the stream (Camlin_SC_010). The site has also been reported to have been abandoned by the known flock (part of the Loughs Kilglass and Forbes population) in the 1990's, with the last records being from the winter of 1990-91 (NPWS, 2012).

Upper Lough Erne SPA (UK9020071)	Whooper Swan	c.36km north-east, straight line c58.4 km via watercourse	No – although there is a distant hydrological connection via the Aghamore stream, there is no potential for significant effects on the habitats and species of interest due to the small scale, localised nature of the works and the assimilative capacity of the intervening waters.
Lough Oughter Ramsar Site (853)	<p>Criterion 1 -representative, rare or unique natural or near-natural wetland types.</p> <p>Criterion 2 - rare species and threatened ecological communities</p> <p>Criterion 3 – biological diversity</p> <p>Criterion 4 – support during critical life cycle stage or in adverse conditions.</p>	c.19.7km north-east, straight line c28.9 north-east via watercourse	Yes – there is a downstream hydrological via the Aghamore stream
Upper Lough Erne Ramsar site (896)	<p>Criterion 1 – the site is a particularly good representative, example of a eutrophic lake and associated swamp, fen and wet grassland.</p> <p>Criterion 2 - the site supports an appreciable assemblage of rare, vulnerable or endangered species or sub-species of plant and animal.</p> <p>Criterion 3 – the site is of special value for maintaining the genetic and ecological diversity of Northern Ireland because the</p>	c.36km north-east, straight line c58.4 via watercourse	No – though there is a distant hydrological connection via the Aghamore stream, there is no potential for significant effects on the habitats and species of interest due to the small scale, localised nature of the works and the assimilative capacity of the intervening waters.

	<p>quality and peculiarities of its flora and fauna.</p> <p>Criterion 6 – the site regularly supports internationally important numbers of wintering Whooper Swan <i>Cygnus cygnus</i>.</p>		
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7.2.12. I am satisfied that the Board has before it sufficient information to enable it to carry out screening for appropriate assessment.

7.2.13. Based on the nature of the proposed development and on lack of connectivity, other than Lough Oughter & Associated Loughs SAC, Lough Oughter Complex SPA, Upper Lough Erne SAC, Upper Lough Erne SPA, no further consideration of the remaining Natura sites is required.

7.2.14. I am satisfied that no other protected sites need to be considered.

Description of the Development

7.2.15. The applicant provides a description of the project in section 2.2 of the NIS, as previously outlined in section 2 of this report.

7.2.16. The site is at a high point in the landscape where the land drains in two directions. Within the quarry, drainage is contained and discharges eastwards as an existing licensed discharge. This management regime of surface waters is existing and is not designed to mitigate the potential impact of the proposed development.

7.3. Potential Impacts of the Proposed Development

Effects of Construction

7.3.1. There is potential for contaminants to enter surface water and to impact protected downstream sites - The surface water arising will discharge to the existing surface water drainage system, from which there is a licensed discharge to waters (WP 02/20) subject to existing limits, therefore, impact on surface waters and protected downstream sites is not likely to occur.

7.3.2. There is potential for disturbance to fauna - In the context of the activities at the existing quarry, disturbance to qualifying interest species is not likely to occur. Impact on Otter is raised as a concern in the grounds of appeal. Otter is a qualifying

interest of Lough Oughter & Associated Loughs SAC (000007), c29.5km downstream; and Upper Lough Erne SAC (UK0016614), c58.4km downstream. The distance from these protected sites and the nature of the watercourses in the immediate vicinity of the site, mean that impact on otter by disturbance from the construction phase of the proposed development is not likely to occur.

- 7.3.3. The qualifying interest species of Lough Oughter Complex SPA (004049), Great Crested Grebe and Whooper Swan are wetland species and are not likely to be impacted by disturbance from the construction phase of the proposed development. The qualifying interest species of Upper Lough Erne SPA (UK9020071), Whooper Swan is a wetland species and not likely to be impacted by disturbance from the construction phase of the proposed development.

Effects of Operation

- 7.3.4. There is potential for contaminants to enter surface water and to impact protected downstream sites - The surface water arising will discharge to the existing surface water drainage system, from which there is a licensed discharge to waters (WP 02/20) subject to existing limits, therefore, impact on surface waters and protected downstream sites is not likely to occur.
- 7.3.5. There is potential for disturbance to fauna - In the context of the activities at the existing quarry, disturbance to qualifying interest species is not likely to occur. Impact on Otter is raised as a concern in the grounds of appeal. Otter is a qualifying interest of Lough Oughter & Associated Loughs SAC, 29.5km downstream; and Upper Lough Erne SAC, 58.4km downstream. The distance from these protected sites and the nature of the watercourses in the immediate vicinity of the site, mean that impact by disturbance from the operational phase of the proposed development is not likely to occur.
- 7.3.6. The qualifying interest species of Lough Oughter Complex SPA Great Crested Grebe and Whooper Swan are wetland species and are not likely to be impacted by disturbance from the operational phase of the proposed development. The qualifying interest species of Upper Lough Erne SPA Whooper Swan is a wetland species and not likely to be impacted by disturbance from the proposed development.

7.4. Cumulative Impact

- 7.4.1. Cumulative impact was raised as an issue in the grounds of appeal.
- 7.4.2. In relation to the potential for cumulative impact, this is a rural area with little development other than the existing quarry, the existing development has been subject to screening for appropriate assessment in the most recent application 22/79. This is the existing situation and forms the baseline for any future development. A discharge licence applies to the surface water discharge. The proposed development is not likely therefore to operate in combination with the existing quarry or with other plans or projects to impact on protected sites.

7.5. Conclusion

- 7.5.1. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment, it has been concluded that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on European Sites Nos. 000007, UK0016614, 004049, UK9020071, or any other European site, in view of the sites' Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.
- 7.5.2. This determination is based on the following:
- Distance of the proposed development from European sites and lack of meaningful ecological connections to those sites.
- 7.5.3. This screening determination is not reliant on any measures intended to avoid or reduce potentially harmful effects of the project on a European Site.

7.6. Principle of the Development

- 7.6.1. Extractive Industries are referred to at section 9.3.7 of the County Development Plan, which acknowledges the need for extractive industries in terms of supply of aggregate materials for the construction sector, transport infrastructure projects, and for the export market; the potential for conflict in the operation of these industries with wider environmental issues needs careful consideration; and that aggregates can only be worked where they geologically occur.

County Policy Objectives include:

CPO 9.43 to ensure that extraction activities address key environmental, amenity, traffic and social impacts and details of rehabilitation. In the assessment of planning applications for new development, intensification of use or diversification of activity, the Council will have regard to the nature of the proposal, the scale of activity proposed, the impact on the adjoining road network, the effect on the environment including important groundwater and aquifer sources, natural drainage patterns and surface water systems and the likely effects that any proposed extractive industry may have on the existing landscape and amenities of the county, including public rights of way and walking routes.

- 7.6.2. The subject site is an established quarry. No significant impacts arise from the proposed development on the adjoining road network, on the environment, important groundwater or aquifer sources, natural drainage patterns or surface water, the existing landscape or amenities, including public rights of way and walking routes; therefore the proposed development is acceptable in principle.

7.7. Natural Heritage

- 7.7.1. In addition to the protected sites considered under the heading Appropriate Assessment Screening, Lough Gowna pNHA (000992) is c 3.5 km straight line distance to the east. Located along the River Erne, it is designated for peat bog habitat with a woodland fringe in places. It is important for wintering waterfowl with nationally important populations of wintering waterfowl, nationally important populations of Great Crested Grebe, Whooper Swan and Golden Plover.
- 7.7.2. Having regard to the nature of the site and of the proposed development it is not likely that the proposed development will impact on these species.

7.8. Ownership

- 7.8.1. The applicants have stated that they are the owners of the site.
- 7.8.2. On the application form it is stated that the site is located within an existing operational quarry.
- 7.8.3. The site is located partly within the existing operational quarry and partly on a laneway which forms the boundary of the operational quarry.

- 7.8.4. The proposed development includes a proposal to provide a laneway in replacement of the laneway being built on, a short distance away from the existing laneway/right of way. Details are not provided of the proposed laneway, other than a line on a 1:500 aerial photograph, and a notation which states that the laneway will be a hardcore type surface. The proposed laneway, as indicated on the 1:500 aerial photograph, is narrower than the existing laneway.
- 7.8.5. The existing laneway has a gate to the road and boundaries along either side, where it passes through lands in the applicant's ownership. It provides access to agricultural lands to the south and south-west of the application site. There is also an ESB substation located at the side of the laneway.
- 7.8.6. The EIS submitted with a previous application, PA reg. ref. 07/831, listed three parties as having rights of way on this laneway: two landowners and ESB Networks. None of these is an observer in the subject application.
- 7.8.7. Notification of the application was published in The Irish Times on 17th August 2022 and that a notice was erected on the roadside boundary of the quarry site. It should be noted that the notice was erected at the roadside of the existing quarry but not at the laneway entrance.
- 7.8.8. In any case notices do not satisfy the requirement for the owners of property rights to consent to the making of the application. In my opinion the application is invalid.
- 7.8.9. The Board will be aware of Section 34(13) of the Planning Act which states that a person is not entitled solely by reason of a permission to carry out any development. The Board will also be aware that the Development Management Guidelines, prepared by the Department of the Environment, Heritage and Local Government in June, 2007, at Section 5.13, state that 'the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land. These are ultimately matters for resolution in the Courts'. This is, however premised on the application process involving those with ownership rights.
- 7.8.10. The application was not accompanied by consent from the owners of the right to access and repass along the laneway (the dominant tenement), to the making of the application for the proposed development.

7.8.11. In my view it would be inappropriate for the Board to grant planning permission for the proposed development having regard to the serious deficiencies in the procedures adopted by the applicant. If the Board are minded to grant planning permission in this instance, it should formally request that the applicant submit the consent of owners of the right of way to the making of the planning application.

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.

Planning Inspector

4th March 2024

Appendix 1 Photographs

Appendix 2 Longford County Development Plan 2021-2027. extracts

Appendix 3 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	317088		
Proposed Development Summary	An aggregate storage shed and partial realignment of private laneway, within an application area of c. 0.2ha, at the existing quarry landholding		
Development Address	Aghamore Upper, Aughnacliffe, Co. Longford		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)	Yes	/	
	No	No further action required	

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?			
Yes			EIA Mandatory EIAR required
No	/	It is associated with a development under Schedule 5, Part 2, class 2 of the planning and development Act as amended i.e. extractive Industry 'extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares', but does not involve extraction.	Proceed to Q.3
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]?			
		Threshold	Comment (if relevant)
No	/		No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	Proceed to Q.4

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

Inspector: _____ Date: _____