



To: Mary MacMahon, Assistant Director of Planning

From: Robert Speer, Senior Planning Inspector

Date: 18th December, 2025

Re: ACP Ref. No. ABP-322657-25

Referrer: Keegan Quarries Ltd.

Section 5 Referral: Whether the requirement for the importation of subsoil and topsoil under the Article 27 process, to enable the restoration to be completed at Ballyonan, is or is not development and is or is not exempted development, at Ballyonan, Broadford, Co. Kildare.

On 4th November, 2024 an application was lodged by Keegan Quarries Ltd. with Kildare County Council seeking a declaration under Section 5 of the Planning and Development Act, 2000, as amended, with respect to proposals for the importation of subsoil and topsoil (under Article 27 of the European Communities (Waste Directive) Regulations, 2011, as amended) for the restoration of a pre-1964 sand and gravel pit (Ref. No. QR45) at Clonard, Ballyonan, Co. Kildare. More specifically, the application sought a determination in relation to certain matters which can be summarised as follows:

1. Whether the importation of 91,825m³ of material to comply with Condition No. 33 as imposed pursuant to Section 261 of the Planning and Development Act, 2000, as amended, on the operation of the above quarry (Quarry Registration No. QR45) is exempted development.
2. Whether the amount of material to be imported onto the site would affect the status of the development and therefore change its exempted development status.

3. In the event the restoration required by Condition No. 33 of Quarry Registration No. QR45 allows for the importation of material onto the site (thereby eliminating the need for a new planning application) whether the works would constitute exempted development.
4. Whether as a consequence of the need to cease works and restore the quarry, the works required to comply with Condition No. 33 can be classed as exempted development.
5. Whether the use of material under Article 27 of the European Communities (Waste Directive) Regulations, 2011, as amended (in accordance with the '*National By-Product Criteria for Greenfield Soil & Stone: BP-N002/2024*' issued by the EPA in 2024) constitutes exempted development in circumstances where the restoration of the sand and gravel pit is necessary and needs to be complied with.
6. Whether the importation of material to be spread across the site to a depth of no greater than 2m constitutes exempted development.

Following consideration of the application, on 2nd May, 2025 Kildare County Council issued a declaration in exercise of its powers under Section 5(2)(a) of the Act that the proposal to import subsoil and topsoil (under Article 27 of the European Communities (Waste Directive) Regulations, 2011, as amended) for the restoration of the pre-1964 sand and gravel pit (Ref. No. QR45) at Clonard, Ballyonan, Co. Kildare, constituted development which was not exempted development.

Accordingly, on 27th May, 2025 Keegan Quarries Ltd. referred the matter to the Commission for a determination.

Having reviewed the available information, while it is apparent that the subject matter of the referral concerns the proposed importation of subsoil and topsoil to enable the restoration of a sand and gravel pit (Ref. No. QR45), it is my opinion that the issue in question actually pertains to a dispute over a point of detail as regards compliance with Condition No. 33 of the decision of the Planning Authority dated 30th April, 2007 to impose conditions on the operation of that quarry pursuant to Section 261 of the Planning and Development Act, 2000, as amended. In this regard, Condition No. 33 refers to the agreement of a landscaping & restoration plan with the Planning Authority and states the following:

a) *Within six months of the date of this decision the quarry operator shall submit for the written agreement of the Planning Authority a restoration and landscaping scheme, this scheme shall include, inter alia, details:*

- *The proposed extractive scheme for the quarry,*
- *Interim and proposed final site levels for excavation and restoration,*
- *Landscaping proposals and a timescale for implementation of those proposals,*
- *All existing trees and hedgerows on the site, specifying those proposed for retention, together with measures for their protection during the period in which the development is carried out.*

b) *The restoration proposals shall include the following:*

- *The purpose, aims and objectives for the after-use of the quarry complex,*
- *A review of the nature conservation opportunities and constraints of the site,*
- *Details of the proposed final landform and phased progression of workings toward this form,*
- *Details of water (ground and surface water) management,*
- *Details of soil movement and management, associated with restoration,*
- *Description of target habitats and range of species appropriate of the site,*
- *Details of habitat linkages and continuity of habitat within and outside the site,*
- *Selection of appropriate strategies for maintaining or introducing target habitats and species,*
- *Techniques and practices for establishing habitats and species,*
- *Sources of soil forming materials, plant stock and other species introductions,*

- *Method statement for ground forming, soil preparation and habitat and species establishment,*
- *Prescriptions and programme for initial aftercare and longer term management,*
- *Timing of the restoration operations in relation to phased working of the site,*
- *Proposals for monitoring the success of all restoration works,*
- *Disposal of wastes arising from the restoration.*

c) *The site shall be restored and landscaped in accordance with the agreed scheme.*

d) *Details of material to be imported for restoration purposes shall be submitted to and agreed in writing with the Planning Authority as part of the scheme.*

e) *The restoration and landscaping scheme shall also include an estimate of the total cost of the restoration plan along with an estimate of all individual phases. A qualified and indemnified Quantity Surveyor or other professional acceptable to the Planning Authority shall prepare the estimate.*

Reason: To regulate the development and to allow the Planning Authority assess the proposed restoration plan and to ensure that the site is restored in the interest of visual amenity and proper planning and sustainable development of the area.

Within the particulars submitted in support of the application, reference is made to a dispute having arose between the referrer (Keegan Quarries Ltd.) and Kildare County Council in relation to conditions imposed under Section 261 (mistakenly referenced as Section 261A in the application particulars) and the timeline for the closure and restoration of the pit. Although agreement was subsequently reached with respect to most of these conditions, Condition No. 33 remains unresolved. It was also agreed by way of Court Order that the operation of the site would cease on 30th April, 2027 and that the property would be restored in accordance with the restoration and landscaping scheme agreed pursuant to Condition No. 33 of Ref. No. QR45 on or before 31st December, 2027.

With a view to complying with the requirements of Condition No. 33, the applicant commissioned Mullin Design Associates, Chartered Landscape Architects, to

prepare a 'Landscape Restoration' plan (a copy of which has accompanied the Section 5 referral). This plan (dated June, 2024) provides for the reinstatement of the land to low intensity agricultural grazing and includes proposals for the importation of approximately 91,825m³ of approved inert fill (under Article 27 of the European Communities (Waste Directive) Regulations, 2011, as amended) in order to augment the existing stockpiles of material on site so as to achieve the final site levels.

Following consideration of this restoration plan as regards compliance with Condition No. 33 of Ref. No. QR45, the applicant was informed by way of correspondence dated 11th July, 2024 that the proposal was not acceptable to Kildare County Council on the basis that the importation of such a significant volume of material onto the site was excessive and unnecessary for the purposes of achieving the final landforming and phased progression of the restoration of the former quarry. While it was conceded that the Planning Authority could consider the importation of some material to the site for landforming and landscaping purposes, it was emphasised that the volumes involved would be considerably less than those set out in the restoration plan as submitted. Accordingly, the applicant was invited to submit a revised landscape restoration plan and associated drawings which would utilise the existing stockpiles of material on the site and adjoining lands for the purposes of restoration and the appropriate regrading of all boundary slopes.

Following the Council's rejection of the aforementioned restoration plans as regards compliance with Condition No. 33 of Quarry Registration Ref. No. QR45, the subject application for a declaration under Section 5 of the Planning and Development Act, 2000, as amended, was lodged as regards the proposed importation of subsoil and topsoil (under Article 27 of the European Communities (Waste Directive) Regulations, 2011, as amended) for the restoration of the quarry in accordance with Condition No. 33 as imposed by Section 261 of the Act. This Section 5 application was accompanied by the same 'Landscape Restoration' plan previously submitted and it is apparent from a review of the information on file that its assessment was informed by a report received from the Transport, Mobility and Open Space Department of the Local Authority which raises concerns as regards the volume of material proposed to be imported to the site.

On the basis of the foregoing, it is my opinion that the substance of the subject referral relates to a dispute over a point of detail as regards compliance with

Condition No. 33 of Quarry Registration Ref. No. QR45 and that the matter should have been referred to the Commission for a determination under Section 34(5) of the Planning and Development Act, 2000, as amended, as opposed to Section 5 of the Act. Therefore, it is my recommendation that the subject referral should be dismissed under Section 138 of the Planning and Development Act, 2000, as amended, for the reasons and considerations set out below, and the referrer informed accordingly.

Reasons and Considerations:

The sand and gravel pit at Clonard, Ballyonan, Co. Kildare, is subject to Quarry Registration Number 45 and was registered pursuant to Section 261 of the Planning and Development Act, 2000, as amended, which included for the imposition of Condition No. 33 in relation to landscaping and restoration. Condition No. 33(d) of that decision requires details of the material to be imported to the site for restoration purposes to be submitted to and agreed in writing with the Planning Authority. Having regard to the nature of the submission made in relation to this referral, it is considered that the referral is in fact a dispute on a point of detail in relation to this condition and should more properly be considered under Section 34(5) of the Planning and Development Act, 2000, as amended. The Commission is satisfied that this referral should be dismissed under Section 138 of the Planning and Development Act, 2000, as amended.

Signed: _____

Date: _____