



An
Bord
Pleanála

Inspector's Report LS19.LS0033.

Development	Quarry
Location	Clonfinlough, Co. Offaly
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	N/A
Applicant(s)	Dermot Nally Stone Ltd.
Type of Application	Application for leave to apply for substitute consent under Section 177C(2)(b) of the Planning and Development Act as amended
Date of Site Inspection	26 th October 2017
Inspector	Ciara Kellett

1.0 Site Location and Quarry Operation

- 1.1. The subject site is a sand and gravel pit at Clonfinlough, Co. Offaly near the border of Offaly with Roscommon and Westmeath. It is c. 11km due south of Athlone and c. 4km east of the heritage site at Clonmacnoise and the River Shannon. It is c. 7km west of the N62 road and borders the R444 road which links the N62 to Shannonbridge. There are a substantial number of one-off houses either side of the R444 road and surrounding the quarry. The area is generally in agricultural and peat harvesting uses. There is a berm along the northern boundary of the quarry with the R444 road which aids screening of the development.
- 1.2. A large ridge of trees forms the southern boundary of the quarry which is the Clonfinlough Esker (pNHA) and Tullaghmore Hill lies to the east. The land is undulating.
- 1.3. The proposed Natural Heritage Area Clonfinlough Esker (Site Code 000892) adjoins the quarry to the south. Fin Lough SAC (Site Code 000575) is c. 1km to the south-west. Mongan Bog SAC (Site Code 000580) is c. 0.7km to the north-west, as is Mongan Bog SPA (Site Code 004017). Pilgrim's Road Esker SAC (Site Code 001776) is located c. 0.85km north of the site. River Shannon Callows SAC (Site Code 000216) is located c. 2km to the west, as is the Middle Shannon Callows SPA (Site Code 004096).
- 1.4. The pit has been accepted as having pre 1963 origins and totalling c.10.81Ha in area. Two further planning permissions for extensions to the quarry were made. The first extension for an area of c.2.74Ha to the north-east was granted permission in July 1991 subject to 6 conditions, but notably with no expiry date. The second extension to the quarry for an area of c. 2.039Ha to the south-east was granted permission by the Board, Ref. PL19.205910, following an appeal, in June 2004. This second application was accompanied by an Environmental Impact Statement (EIS). This second permission included a finite term. This permission included condition no's. 2 and 3 which stated that development in the quarry for prospective extraction, and ongoing quarrying on adjacent lands, is to expire in December 2009. Under Section 261, this finite date was also applied as a condition.
- 1.5. The operator continued to work from stockpiles and to extract post the conditioned cessation date of December 2009, and continued to wash, process and stockpile

aggregates within the overall site. Mr. William Smyth, the agent acting on behalf of the operator, states that the scale of the operation has not changed, nor has the area extracted post August 2012 increased substantially and remains of a very small size to this day.

- 1.6. Appendix A includes maps and photos, including a map of the pre '63, 1991 permission and the 2004 permission areas.

2.0 Background and the Application

- 2.1. Mr. William Smyth the agent acting on behalf of the operator, considers that having a site permission post April 28th 1998 suggests that the site did not require registration under Section 261. The operator however did register the site under Section 261, Ref. QY78. Conditions were applied including a term limit to December 2009 after which operations on the site were to cease. The agent considers that the conditions may only be deemed as potentially applicable to the pre '63 area, and to the area under the 1991 permission (where extraction activities continued post 2009). Furthermore, it is stated that the term limit applied to the pre '63 authorisation and first permission was totally against the spirit and intention of Section 261, and an unwarranted interference in the operation of the pit without appropriate environmental justification.
- 2.2. It is considered that that this operational interference was ultra vires the Section 261 legislation generally and Section 261(6) in particular, and led to the notion that the continued extraction post 2009 was unauthorised extractive development, as all extraction post 2009 was in the area of the first permission in 1991.
- 2.3. The agent submits that Offaly County Council's (OCC) mistake in the Section 261 process was ultra vires, and such action is not made legal by a failure of the operator to appeal or seek review, reference Fingal County Council -v- William P. Keeling & Sons Ltd.
- 2.4. The agent submits that the right to extract and quarry within the pre '63 and the 1991 permitted areas must continue to exist, and submits that the continued operation of these areas post 2009 remains authorised. It is further noted that it is unfortunate that the operator did not apply for a Section 42 time extension, as this would have

the effect of maintaining definite complete authorisation for all activities until late 2014, virtually eliminating the current retention area.

- 2.5. In 2011, OCC issued a Warning Letter on the basis of the term expiry to which the operator responded that restoration was ongoing but was delayed due to the recession. No enforcement letter was issued.
- 2.6. Under Section 261A Offaly County Council (OCC) examined the development and concluded that 'No Further Action' was required under that section, even though small scale development was continuing out of term but within the previously authorised area which had undergone EIA. In addition, OCC found that no Natura Impact Assessment (NIA) offence had occurred.
- 2.7. The operator continued to operate with an expectation that the site was authorised, or at least capable of being regularised by a retention application under Section 34, until in 2015, OCC issued another Warning Letter.
- 2.8. The operator committed to regularise the situation. This was based on the assumption arising from Section 261A regarding no requirement for EIA or NIA. The operator lodged a planning application with OCC accompanied by an EIS, which the operator states OCC requested despite no justification of the about turn from the 2012 determination. The application included a small prospective extraction area.
- 2.9. The Section 34 Application was described as:

Winning and working of aggregates from an area of 0.54 hectares, retention and continuation of the winning and working of aggregates from an area of 0.43 hectares, retention and planning permission for quarrying operations on site of 10.15 hectares, continuation of use of an existing aggregate washing plant and processing area consisting of 1.11 hectares, vehicle and plant storage area consisting of 1.31 hectares, phased restoration of the entire site (13.54 hectares) on completion of extraction, all associated ancillary facilities/works. The application is accompanied by an Environmental Impact Statement (EIS). The sand and gravel pit (15.34 hectares) was registered under section 261 by Offaly County Council and was assigned the reference number QY78.
- 2.10. Following submissions from the Department of Arts, Heritage and the Gaeltacht, OCC requested a Stage 2 Natura Impact Statement (NIS) as Further Information.

The operator states that an NIS was requested even though there was no significant change to the site, all development was within the previously authorised area and OCC had ruled out NIA as an issue previously as part of Section 261A.

- 2.11. OCC granted permission, but upon appeal the Board overturned the decision to grant based on there being a retention element within an application for development with EIA and NIA under Section 34(12).
- 2.12. The operator remains of the view that neither EIA or NIA was required for the development which contained a small area for retention. Alternatively, if EIA and/or NIA was required, then OCC's conclusion in Section 261A in 2012 was flawed, and the site should have had the benefit of the provisions of section 261A, namely the opportunity to refer any Section 261A(2)/(3) determination and decision to the Board, and to have abided by that outcome including a Substitute Consent application, i.e. the 'sunset clause' provisions available to previously authorised sites.
- 2.13. The operator considers that the only planning process now available towards regularisation and continuance of development is to Apply for Leave to Apply for Substitute Consent to the Board under Section 177(C). The operator states that it is hoped the Board will have regard to the very limited nature and scale of development at the site, the clear contradictions in the approach of OCC, and the expert reports which would have been used in Section 261A(6) application for review, had the referral provisions of Section 261A been available to the operator.
- 2.14. The operator states that the Board, as the competent authority, can decide if an EIA and/or NIA offence exists through a 'de novo' assessment. It is further stated that the finding by the Board as to whether or not an offence exists will decide whether the application should in fact be dealt with under this section. If an EIA and/or NIA offence exists, then the Board proceeds to decide if exceptional circumstances exist which would allow for a positive decision to allow the applicant to proceed and apply for Substitute Consent under Section 177(E).
- 2.15. It is submitted that the Board might arrive at one of two conclusions:
 - (i) That no EIA or NIA offences exist on the site and that section 177(C) does not apply to the site, thereby allowing the applicant to seek section 34 regularisation without EIA or Stage 2 NIA; or

(ii) That an offence may have occurred and that section 177(C) does apply to the site, but that exceptional circumstances exist as to allow the applicant apply for substitute consent on all of the developed area.

3.0 Planning Authority Submission

The Planning Authority responded to the application. In summary, it states:

Specifically responds to a number of points made by the operator.

- 3.1. Point 1: Notes that in the Section 261A decision, OCC concluded 'No Further Action' be taken in respect of EIA/AA based on operations to that date (PA emphasis). The recent application (PL19.248069) involved proposed new areas of extraction and in that light the Council was entitled to form an opinion that EIA and NIS were required. OCC did not reverse its 261A decision, rather the Council assesses the proposal and application 4 years hence.
- 3.2. Point 4: Notes the applicant did not apply for an extension of appropriate period of the PL19.205910 (2003 permission).
- 3.3. Point 5: Repeats point 1 comment relating to operations at that date. Notes the applicant did receive a warning letter on 21st August 2011 for non-compliance with conditions 2 and 3 of PL19.205910.
- 3.4. Point 6: A Warning Letter issued on 21st August 2015 for non-compliance with conditions 2 and 3 of PL19.205910.
- 3.5. An Enforcement Notice issued on 24th November 2015 regarding cessation of all quarrying by 14th April 2016 inclusive of a 3-month extension of time.
- 3.6. Point 7: Regard should be had to OCC's screening for EIA in the recent planning application PL19.248069 rather than speculation as to why an EIA might have been required, noting that the Council screened a planning application which was inclusive of new development and retention.
- 3.7. Concludes that development has taken place since the expiry of the planning permission and appears to continue to take place, hence the request for leave to apply for substitute consent. The applicant submitted a planning application which OCC saw fit to assess and grant, but the Board decision was that no such

application should have been considered. OCC now conclude that in assessing the recent planning application that EIA and AA were required, and as such, the council concur that leave to apply for substitute consent is now an appropriate option.

States that should the Board deem that it is appropriate to allow leave to apply OCC would welcome such, particularly in light of the Board's decision on PL19.248069.

4.0 **Planning History**

It is noted that there appears to be another quarry owned by the applicant in the near vicinity in Carrowkeel, c.1.5km to the east, which is referred to throughout the documentation. The following planning history relates to the subject quarry development only.

4.1. **Pre 1963 quarry:**

It is stated that there were two pits which eventually joined under the Nally family ownership totalling 10.81Ha.

4.2. **OCC Reg. Ref. 91/000049:**

Permission for an extension to the quarry of 2.74Ha on neighbouring land was applied for and granted by OCC in July 1991. This application was not subject to EIA. No expiry date was conditioned as part of this permission.

4.3. **ABP Ref. PL19.205910, OCC Reg. Ref. 03/191:**

Permission granted by the Board in June 2004 for retention permission for a sand and gravel extension. An EIS was submitted with the application. Condition no.2 and no.3 required all operations to cease in December 2009 and for the restoration of the quarry.

4.4. **Section 261 Registration, Ref. QY78:**

The quarry was registered under Section 261 with a condition included to cease all activities in December 2009.

4.5. **UD11/67:**

A Warning Letter was issued by OCC in August 2011 regarding unauthorised development consisting of non-compliance with condition no's. 2 and 3 of Planning Permission PL19.205910.

4.6. **Section 261A**

In 2012, OCC carried out their Section 261A assessment. It noted that no EIA or NIA offence had occurred on the site and concluded that 'No Further Action' was required.

4.7. **ABP Ref. PL19.248069, OCC Reg. Ref. 16/102:**

The operator submitted a planning application for the winning and working of aggregates from an area of 0.54 hectares, retention and continuation of the winning and working of aggregates from an area of 0.43 hectares, and other quarrying activity over a total area of 13.54Ha. OCC granted permission but the Board, on appeal, refused permission in May 2017. The Board refused permission for the following reason:

It is considered that the subject application includes retention of development for the winning and working of aggregates, retention and planning permission for quarrying operations, and the continuation of an existing aggregate washing plant and all associated works, and that the development the subject of the application would have a requirement for an Environmental Impact Assessment and an Appropriate Assessment if it had been made in respect of development, before it was commenced.

Accordingly, by reason of section 34 (12) of the Planning and Development Act 2000, as amended, the Board is precluded from granting planning permission.

5.0 **Assessment**

The Board is asked by the applicant to arrive at one of two conclusions:

- (i) That no EIA or NIA offences exist on the site and that section 177(C) does not apply to the site, thereby allowing the applicant to seek section 34 regularisation without EIA or Stage 2 NIA; or
- (ii) That an offence may have occurred and that section 177(C) does apply to the site, but that exceptional circumstances exist as to allow the applicant apply for substitute consent on all of the developed area.

The applicant states that should (ii) be arrived at, it is requested that the Board indicates what area of the site the substitute consent application requirement applies. The applicant considers that it would appear to only apply to any extraction area caused by the development post 2009.

Each of these will be examined below.

5.1. Scope of Application

It is noted that the application as described in this instance includes a permission element, 'Area A: Winning and Working of aggregates 0.54Ha', in addition to the various retention elements as set out. As an application for substitute consent can only be made in respect of development that has already been carried out, the Board's determination in this case, whether or not to grant leave to make such an application, must be confined solely to the retention elements of the development.

5.2. Tests for Leave

Section 177D(1) of the Act specifies that the Board can only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment was or is required in respect of the development concerned, and where it is further satisfied that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

Section 177D(2) provides that in considering whether exceptional circumstances exist the Board must have regard to the following:

- (a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;
- (b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;

- (c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;
- (d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;
- (e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;
- (f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;
- (g) such other matters as the Board considers relevant.

5.3. Observations

5.3.1. I draw the Board's attention to enclosure 3 of the applicant's submission, which is a map of areas associated with each permission for ease of understanding the various areas.

The following observations are made in respect of this quarry:

5.3.2. A Planning Application for an extension to the quarry was submitted by the applicant in 2003 for an extension to quarrying operations to the south-east of the existing quarry site and adjoining the pNHA. This application was accompanied by an EIS and from the documentation it can be concluded that an EIA of the entire quarry site was undertaken as part of that application. The Board granted permission in June 2004, and included two conditions effectively requiring the entire quarry to cease activities in December 2009. The agent considers that this condition is beyond the powers of the Board, as it sought to remove ongoing authorisations from other ground where development was not completed (i.e. the pre '63 quarry and the '91 extension). I do not agree with the applicant's agent that the condition is beyond the powers of the Board, having regard to Section 34(4)(a) of the Planning and Development Act, 2000 as amended.

- 5.3.3. This permission required that all activities ceased in December 2009. As such, any activities carried out after this date did not have the benefit of planning permission.
- 5.3.4. In 2012, under Section 261A the Council issued a determination to the applicant that 'No Further Action' was required, as it was deemed that no EIA/NIA offence occurred. This was shortly after the Council had issued a Warning Letter stating that quarrying activities were ongoing and restoration works had not been completed, in accordance with the 2004 grant of permission.

5.4. Requirement for EIA

- 5.4.1. The agent on behalf of the applicant submits a map (agent's enclosure 5) with a breakdown of the areas and the activities being carried out. This map was also included in the most recent planning application PL19.248069, which was refused permission by the Board, on the basis that there was a retention element to the project and an EIS and/or NIS accompanied the application.
- 5.4.2. The map identifies the overall quarry area as being 13.54Ha with 5 areas identified for ease of understanding what the actual planning application entailed. The map describes where quarrying activities are taking place. It states that Area A is for the winning and working of aggregates in an area of 0.54Ha, and Area B is for the retention and continuation of winning and working of aggregates in an area of 0.43Ha, i.e. a total area for extraction of 0.97Ha. Reviewing the 2003 information (PL19.205910) this would appear to be in an area not previously identified for extraction and immediately inside the perimeter, but within the red line boundary. This area is much closer to residences to the north and appears to have been identified as an embankment 4m wide in the 2003 application.
- 5.4.3. Part 1 of Schedule 5 of the Planning and Development Regulations, 2001 as amended, requires a mandatory EIS for quarries in excess of 25Ha, and Part 2 of Schedule 5 requires a mandatory EIS for an area of extraction greater than 5Ha. I accept that in the first instance an EIS is not required. The overall quarry area is stated as being 13.54Ha and the 0.97Ha area identified for ongoing/future extraction activities is well below the threshold of 5Ha, and does not fall under Class 13a(ii) either. It will not increase the size by 25%, nor is it close to 50% of the relevant threshold of 2.5Ha in this case. As noted above in Section 5.1, the Board can only

grant leave to apply for substitute consent in respect of development that has already been carried out. This has the effect of reducing the extraction area under consideration to 0.43Ha. I further note that retention permission for quarrying activities is part of the application in an area of 10.15Ha.

- 5.4.4. I have had regard to Article 109 of the Planning and Development Regulations, 2001, as amended. The site is immediately adjacent to the Clonfinlough Esker pNHA. The site is within 1km of Fin Lough SAC, Mongan Bog SAC, Mongan Bog SPA, and Pilgrim's Road Esker SAC (Site Code 001776) SAC, as well as being within 2km of the River Shannon Callows SAC. Furthermore, there are a substantial number of residences in the area. The extraction is identified in an area that was previously identified as forming part of the embankment and is now closer to those residences.
- 5.4.5. I note that the entire site was already subject to EIA as part of the 2003 application. No part of the site has the benefit of planning permission currently, and I would consider that the reasons for an EIS being submitted in 2003 have not altered and a new EIS is likely to be required, or at the very least a determination as to whether an environmental impact assessment is required.
- 5.4.6. Having regard to the above considerations, I am of the opinion that the likelihood of significant effects on the environment cannot be excluded by the Board and that an *environmental impact assessment or a determination as to whether an environmental impact assessment is required*, is necessary in this case for the Areas B, C, D and E, i.e. all areas seeking retention. The Board's determination must be confined solely to the retention elements of the development.

5.5. **Appropriate Assessment (AA)**

- 5.5.1. As noted above, the site is within 1km of Fin Lough SAC, Mongan Bog SAC, Mongan Bog SPA, and Pilgrim's Road Esker SAC, as well as being within 2km of the River Shannon Callows SAC. I have reviewed the Site Conservation Objectives for these sites.
- 5.5.2. OCC requested that a Stage 2 Natura Impact Statement (NIS) was submitted as part of a Further Information request for the most recent planning application. OCC

requested the NIS in relation to potential hydrological impacts affecting the integrity of Natura sites – Mongan Bog SAC and Mongan Bog SPA, and Fin Lough SAC.

- 5.5.3. The applicant submitted an NIS in response to the Further Information request. The Stage 1 Screening as part of that submitted NIS concluded that due to the close proximity and reliance on a constant and non-compromised hydrological regime of the Mongan Bog SAC and SPA and the Fin Lough SAC, an assessment of the hydrogeological regime of the area was required in order to determine connectivity and vulnerability between the sites and the pit.
- 5.5.4. The Fin Lough SAC is designated for the Alkaline Fens and *Vertigo Geyeri* (Geyer's Whorl Snail). Mongan Bog SAC is designated for Active and Degraded Raised Bogs and the SPA was designated as it was being used by Greenland White-Fronted Goose (noted as no longer currently used).
- 5.5.5. The applicant submitted an NIS which concluded that the development could not be screened out at Stage 1. Having regard to the contents of the NIS, I consider that it is required as it cannot be excluded on the basis of objective information that the development would have had or would have a likely significant effect on the SACs and SPA, having regard to the qualifying criteria of each designated site, the Conservation Objectives for each site and having regard to a potential pathway between the pit and the designated sites.
- 5.5.6. The NIS included an ecological and hydrogeological assessment of the existing and proposed pit. These assessments were carried out as a result of Stage 2 being required, which assisted the Planning Authority (as the competent authority) to conclude that there would not be a significant effect on the integrity of any European sites.
- 5.5.7. In conclusion, a Stage 2 NIS was submitted by the applicant and I consider and concur with the Planning Authority that it is required for the subject site.

5.6. Conclusions

The development, therefore, does qualify for consideration for leave to apply for substitute consent being a development in respect of which *an environmental impact assessment or a determination as to whether an environmental impact assessment is required* and a Stage 2 NIS is required.

5.7. Exceptional Circumstances

Section 177D(2) of the Planning and Development Act provides that, in considering whether exceptional circumstances exist, the Board shall have regard to the matters as listed in Section 5.2 above.

My consideration on each of these are as follows:

- a) *whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;*

I do not consider that the regularisation of the development concerned would circumvent the purpose and objectives of either the EIA Directive or the Habitats Directive, in that the applicant has prepared an EIS and NIS in accordance with the Directives and the statements would be evaluated and determined on their merits in any subsequent substitute consent application.

- b) *whether the applicant had or could reasonably have had a belief that the development was not unauthorised;*

The applicant was in receipt of planning permission for quarrying activities under ABP Ref. PL19.205910 which clearly included conditions stating that quarrying was to cease in December 2009. Quarrying activities have extended beyond that timeline and the applicant received warning letters as early as 2011. The applicant could not reasonably have been of the belief that quarrying beyond December 2009 was authorised development.

- c) *whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;*

Having regard to the planning history of the site and the fact that the applicant has applied for retention of planning permission under which third party observations could have been submitted, I do not consider that the provision for public participation in such an assessment has been substantially impaired. If leave to apply for substitute consent is permitted in this instance a remedial EIS (if required

following a determination) and remedial NIS would be submitted with the application that would follow. This application would allow for public participation within the process.

d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;

From the details available to date, there is no indication that these previous quarrying activities, that would be subject to the substitute consent application, have resulted in any significant direct or indirect effects on the environment (or continue to have such effects) or would have affected the Conservation Objectives of the features for which any European Site in the vicinity has been designated.

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

From the details available to date, there is no indication that these previous quarrying activities have had any significant effects on the environment or adverse effects on a European Site. The application for substitute consent and the Board's determination on such an application, which would include a remedial EIS and remedial NIS, would allow for definitive conclusions to be drawn.

f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;

The applicant has been in receipt of planning permission for quarrying at this location with a condition for it to cease in December 2009. Quarrying has extended beyond this timeframe. The applicant has carried out unauthorised development by exceeding this time limit on quarrying.

g) such other matters as the Board considers relevant.

I consider the outcome of the Section 261A process to be of particular relevance in this case. In 2012 OCC determined that 'No Further Action' was required by the applicant, even though extraction and quarrying activities had continued past the expiry date of December 2009. This outcome effectively meant that the applicant was excluded from applying for substitute consent at that stage.

Having regard to the small scale of the extraction area involved (0.43Ha), I consider it reasonable that the applicant had a reasonable expectation that the site was capable of being regularised under a Section 34 retention application, in light of the outcome of the Section 261A process. The applicant states that he has not exceeded the overall boundary nor the area of the Section 261A assessment significantly since then.

Furthermore, the agent for the applicant states that the applicant considered that entering into the substitute consent process was the same as a section 34 retention and continuance application.

I consider that these circumstances should be considered by the Board in determining whether to grant leave to apply for substitute consent.

6.0 Recommendation

Having regard to section 177 D(1)(a), which provides that the Board shall only grant leave to apply for substitute consent where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required in respect of the development concerned, I am satisfied to conclude that an EIA, a determination as to whether EIA is required, and AA is required in this instance. I consider that exceptional circumstances exist that would permit the making of an application for substitute consent.

7.0 Reasons and Considerations

Having regard to Section 177D, Planning and Development Act, 2000, as inserted by Section 57, Planning and Development (Amendment) Act, 2010, the Board is satisfied that:

- a) the development is one where an EIA or a determination as to whether EIA is required and an appropriate assessment is required, and
- b) that exceptional circumstances exist by reference, in particular, to the following:

- the fact that the regularisation of the development would not circumvent the purpose or objectives of the Environmental Impact Assessment or Habitats Directive;
- that the ability to carry out EIA and AA and provide for public participation has not been substantially impaired;
- the applicant's reasonable expectation, following the Section 261A process, that the development was capable of being regularised under normal Section 34 application for retention;
- and the limited nature of the actual/likely significant effects on a European site resulting from the development.

The Notice to the applicants advising of the decision should also direct that:

- a) the application be made within 12 weeks of the giving of the notice or such longer period as the Board may, on request, consider appropriate, and
- b) The application includes a remedial EIS if determined as necessary, and a remedial NIS. This may include reference to proposed mitigation measures where appropriate.

Ciara Kellett
Senior Planning Inspector

27th October 2017