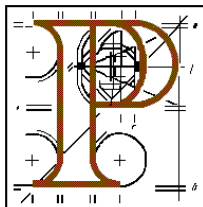


# An Bord Pleanála



## Inspector's Report

### Addendum Report following the receipt of Further Information

**Site Address:** Cloonascragh, Ballinasloe, Co. Galway.

**Proposal:** Quarry

#### Application

Planning Authority: Galway County Council.

Planning Authority Reg. Ref.: QSP57

Applicants: Furse Whyte

Type of Application: Application for Substitute Consent

Planning Authority Decision: Not applicable

Submissions: Geological Survey of Ireland  
An Taisce  
Department of Arts, Heritage, and the  
Gaeltacht.

Date of Site Inspection: 18<sup>th</sup> September 2013

**Inspector:** G. Ryan

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## **1.0 INTRODUCTION**

### **1.1 Overview**

1.1.1 This report concerns itself with an application to the board for 'substitute consent' in respect of a quarry at Cloonascragh, Ballinasloe, Co. Galway. This is not a 'standard' appeal, and arises due to a specific process, provided for by legislation, which arises from the 'Derrybrien' case. The European Court of Justice ruled that Ireland was in breach of EU law in permitting retention permission for projects accompanied by an Environmental Impact Assessment.

1.1.2 The 'Substitute Consent' procedure in the 2010 Act seeks to provide a mechanism whereby the position in respect of EIA development can be regularised. However, leave to apply for consent from the board is only allowed in exceptional circumstances. In the specific case of quarries there will be a 'sunset period' whereby quarry owners will be given a last opportunity to regularise any unauthorised works without having to meet the exceptional circumstances test.

1.1.3 Within this process, the planning authority (and the board if subsequently challenged) make a determination that EIA or AA (or Screening for same) was required, but not carried, out. In such instances, the owner or operator of the quarry is directed them to apply to the Board for substitute consent in respect of the quarry.

1.1.4 This process is predicated on the precondition that either planning permission was obtained for the quarry or that it pre-dates October 1964 and the quarry operator, if required to do so, applied for registration under Section 261. Quarries that never had planning permission or failed to register under Section 261 of the Planning and Development Act 2000 do not qualify for substitute consent. In this instance, all these pre-requisites apply, as set out in section **Error! Reference source not found.**

### **1.2 Further information phase**

1.2.1 I reported on this case initially by way of a report dated 31<sup>st</sup> December 2013, which should be read in conjunction with this addendum report. I had outlined a number of areas of concern in relation to the case (see Section 9.0 of my original report – items 'a' to 'f'), but proceeded to recommend that substitute consent be granted.

1.2.2 The board considered the case and my report in a meeting on 4<sup>th</sup> September 2014 and decided to defer the case, and in the meantime to seek further information from the applicant as per the items 'a' to 'f' that I had raised in my report.

1.2.3 The applicant responded to this request on 7<sup>th</sup> September 2015 (a year had been allowed for a response). This report concerns itself with that response.

### **1.3 Addendum report**

1.3.1 This report should be read in conjunction with my initial report of 31st December 2013. In the interests of brevity, I have confined this report to matters impacted upon by the further information, although in order to achieve a clear and comprehensive assessment of some issues, a wider remit is required on some topics, which will by necessity involve some repetition.

1.3.2 I have structured this report such that the numbered section heading should broadly correspond with those of my initial report, for ease of reference.

## **2.0 FURTHER INFORMATION REQUEST FROM THE BOARD**

2.1.1 The board issued a direction to seek the following further information from the applicant

- a) *Clarification of the surface water drainage network in the immediate vicinity of the site in terms of flow directions, linkages, ultimate discharge points to the River Suck, and relationship to the surface and groundwater flows within the quarry site.*
- b) *Additional spring/summer studies of flora and fauna in the habitats in and adjoining the site, and consequent analysis and comment. Specific reference to grassland and fen habitats, and associated species as identified, would be relevant.*
- c) *Additional spring/summer studies regarding *Vertigo Geyeri* (Whorl snail) in and adjoining the site, particularly within the pNHA, and consequent analysis and comment.*
- d) *Information regarding the description and cumulative impact of applicant's operations in the vicinity (vehicle yard, batching plant, other quarries).*
- e) *Information regarding the cumulative impact of other quarries and extraction areas within the vicinity, say a 5km radius.*
- f) *Information and comment regarding the impacts on, and potential cultural significance of, the esker ridge, with specific reference to the route(s) of the Esker Riada and the location of a vestigial route along the ridge as showing on the 6" mapping series.*

2.1.2 In addition to this request, the board also directed the following actions

2. *Attach copy of letter dated 13th May 2013 from the Department of Arts, Heritage and the Gaeltacht to An Bord Pleanála for the information of the applicant.*
3. *Following receipt of the additional information sought please circulate to the parties.*
4. *Following receipt of any additional submissions from the parties please revert file to Inspector for addendum report.*

*Note:*

*The Board noted the Inspector's suggestion that a temporary cessation notice under s.177J of the Act be issued to the applicant in the event that further information was sought. The Board did not agree that such a notice was warranted in the present circumstances.*

### **3.0 FURTHER INFORMATION SUBMISSION FROM THE APPLICANT**

- 3.1 The applicant presented a single document by way of further information. The response can be summarised as follows, based on the 6 items of the request.

*a) Clarification of the surface water drainage network in the immediate vicinity of the site in terms of flow directions, linkages, ultimate discharge points to the River Suck, and relationship to the surface and groundwater flows within the quarry site.*

3.1.1 This item is addressed by way of Appendix 1, a report from AWN consulting. The 'northern drain' and the 'western drain' are shown in Figure 1 of this report, along with the perceived flow direction, east, and south respectively. Ponding was noted in the northern drain, and the western drain appears to have been largely dry. It is understood that these drains behaved differently when Cloonascragh Bog was being harvested than they do now.

3.1.2 The report discusses groundwater flows and the interaction between surface and groundwater systems. The latter part of the report discusses crossover with the Vertigo Geyeri surveys in August 2015

3.1.3 I note that this report refers to 2012 field visits only.

*b) Additional spring/summer studies of flora and fauna in the habitats in and adjoining the site, and consequent analysis and comment. Specific reference to grassland and fen habitats, and associated species as identified, would be relevant.*

3.1.4 Two habitat surveys were undertaken. The first focused on the botanical composition of the site with specific emphasis on the presence of Annexed grassland habitats and the habitat type present in

the pNHA. This was undertaken in July 2013 in anticipation of a request for further information. The sandbank faces were surveyed in June and September 2013 to examine potential for use by sand martins. A further habitat survey was undertaken in July 2015 to establish the extent and cover of orchids on the site and revisit nest holes for sand martins.

3.1.5 An area located at the centre of the active quarry contains a grassland habitat which corresponds to EU Annex I habitat 6210. In one section, a 10 x 10m area contained 19 orchids from 3 species.

3.1.6 As no habitats of ecological importance occur in the fore of the quarry (X on the habitat map), continued quarrying will not adversely affect the biodiversity of the area. Previous quarrying activities appear to have resulted in high quality Annex I habitats elsewhere on site. Further quarrying in this area would remove this habitat. The botanical diversity of unquarried parts of the esker is depended on agricultural practices and quarrying methodologies.

*c) Additional spring/summer studies regarding Vertigo Geyeri (Whorl snail) in and adjoining the site, particularly within the pNHA, and consequent analysis and comment.*

3.1.7 This matter is covered by way of Section 4 of the further information response. Appendix 2 consists of 'A Molluscan Survey of Cloonascragh Fen and Quarry Area, near Ballinasloe, County Galway', carried out in August 2015. It concludes that a remnant population of Vertigo Geyeri exists in the residual fen area, but at a density significantly less than during the 1970 survey. The habitat must have an ongoing stable hydrogeology, as Vertigo Geyeri has a high demand for groundwater evenness. Due to the lack of nearby sites for the species, re-colonisation in the intervening years is not likely to have occurred, so this small patch of stable hydrogeology is important, but vulnerable to extreme weather events.

3.1.8 The quarry operator proposes to exclude the wet grassland / pNHA fen area from the application area and is committed to maintaining the status quo with regard to the drainage ditch bordering the site.

3.1.9 This item is also addressed by way of Appendix 1, the report from Awn consulting referred to at item a) above. A number of recommendations to ensure optimum chance of survival of the Whorl snail are given on Page 4.

*d) Information regarding the description and cumulative impact of applicant's operations in the vicinity (vehicle yard, batching plant, other quarries).*

*e) Information regarding the cumulative impact of other quarries and extraction areas within the vicinity, say a 5km radius.*

3.1.10 The applicant's operations in the vicinity include a temporary parking bay and a batching plant at Kellysgrove to the west. There are 3 other quarry operations within 5km. The owner/operator has a 2<sup>nd</sup> quarry to the west of Ballinasloe. In total, the applicant has two quarry operations and one concrete manufacture operation (listed). He previously leased a quarry in the Black Wood area, but operations ceased in 1995.

3.1.11 All batching, washing, screening, crushing, and fuel and aggregate storage takes place at the applicant's Garbally location. Aggregates from Garbally are then transported via lorry to the concrete manufacturing plant at Kellysgrove. Cloonascragh is only used infrequently as a quarry for fine sand when needed for specialist applications, and these operations benefit from the larger quarry operation at Garbally Demesne.

f) *Information and comment regarding the impacts on, and potential cultural significance of, the esker ridge, with specific reference to the route(s) of the Esker Riada and the location of a vestigial route along the ridge as showing on the 6" mapping series.*

3.1.12 The former track along the ridge may once have formed part of the Slí Mór leading west from a ford on the River Suck between Coreenbeg and Cloonascragh (RMPs GA088-048 and RO056-027001). The course of the route to the west of the ford is a matter of conjecture, but based on local topography and the presence of the esker, it is likely that the route would have utilised the high ground.

3.1.13 The submission goes on to discuss the Esker Riada / Slí Mór (an esker-based route from Dublin to Galway) in general terms, and concludes that the route in general is unclear, with some sources placing it in the vicinity of the subject site

#### **4.0 HISTORY**

4.1.1 I refer in the first instance to Section 4 of my original report. The only section requiring any addition is Section 4.3.2 'Kellysgrove', where Substitute Consent has been granted in the intervening period since my original report under reference PL07.SU0090.

#### **5.0 REPORT OF THE PLANNING AUTHORITY UNDER S177I(1)**

5.1.1 No further reporting is required under this section

#### **6.0 SUBMISSIONS TO THE BOARD**

6.1.1 The further information received by the board was cross circulated to parties and to prescribed bodies. I note that the DoAHG, who had been critical of the application for Substitute Consent in the first instance did

not make a submission following the receipt of further information. One submission was received, as follows

## **6.2 Geological Survey of Ireland**

6.2.1 Items '2 Surface Water Drainage' and '5 Cumulative Impacts' read satisfactorily with regards to currently available data and understanding of the local environment. The GSI have no observations or further comment to make.

## **7.0 POLICY**

7.1.1 My original report referenced the 2009 Galway County Development Plan. In the interim, the 2015 Galway County Development Plan has been adopted. Policies relevant to the subject application are largely comparable, with Sections 6.20 and 6.21 covering Mineral Extraction and Quarries. The following additional policies are of interest.

### **Objective EQ2 – Management of Aggregate Extraction (item c)**

*Have regard to the Landscape Character Assessment of the County and its recommendations including the provision of special recognition to the Esker areas as referenced in Galway County Council Galway's Living Landscapes – Part 1: Eskers;*

### **Objective NHB 4 – Geological and Geo-Morphological Systems**

*Protect and conserve geological and geo-morphological systems, sites and features from inappropriate development that would detract from their heritage value and interpretation and ensure that any plan or project affecting karst formations, eskers or other important geological and geo-morphological systems are adequately assessed with regard to their potential geophysical, hydrological or ecological impacts on the environment.*

### **Objective NHB 7 – Eskers**

*Assess applications for quarrying and other proposed developments that are in close proximity to eskers that have the potential to impact on their landscape, scientific or amenity value.*

## **8.0 ASSESSMENT**

### **8.1 Legislative Context**

8.1.1 No additional assessment is necessary on this issue on foot of information submitted to the board since my initial inspector's report.



## **8.2 Assessment structure**

8.2.1 Again, I draw the board's attention to my initial report. All following sections should be read in conjunction with the corresponding section of that report.

## **8.3 Principle of Development**

8.3.1 In my initial report, I raised concerns regarding the other quarries in the area, and the relationship between the subject site and the applicant's other premises. This formed the basis for items d) and e) of the further information request.

8.3.2 The applicant provided this information, and a full picture is now available. It is clear that the subject site operates in conjunction with the applicant's main aggregate quarry to the west of Ballinasloe, and the applicant's batching plant at Kellysgrove to the west of the subject site. As such, the cumulative impacts are known, and in my opinion do not represent an undue impact on the environment. As such, I consider the proposed development to be acceptable on this topic.

## **8.4 Policy**

8.4.1 I note the adoption of the 2015 County Plan since my initial inspector's report, which puts more of an emphasis on protecting the county's system of eskers. I will return to consider this matter under Section 8.9 below.

8.4.2 Otherwise, no additional assessment is necessary on this issue on foot of information submitted to the board since my initial inspector's report. I consider the proposed development to be acceptable on this topic.

## **8.5 EIA - Soils & Geology, Water (Hydrology & Hydrogeology) (Chapters 6, 7)**

8.5.1 In response to item a) of the further information request (see section 3.0 above), the applicant has provided additional details regarding the surface water and groundwater systems within and adjoining the site, and in my opinion, the previous lacuna has been filled, and a comprehensive picture of how this system operates is now available to the board.

8.5.2 It is evident that the major influence on surface and groundwater in the vicinity during the lifetime of the quarry has been the draining of the adjacent Cloonascragh bog to the north, including the cutting of the north and west drains, adjacent to the site. In my opinion, there is no evidence to suggest that impacts from the quarry works have been significant.

8.5.3 I consider the proposed development to be acceptable on this topic.

## **8.6 EIS – Compliance with Planning and Development Regulations 2001**

8.6.1 No additional assessment is necessary on this issue on foot of information submitted to the board since my initial inspector's report.

8.6.2 I consider the proposed development to be acceptable on this topic.

## **8.7 EIA - Flora and Fauna (Chapter 5)**

8.7.1 In response to items b) and c) of the further information request (see section 3.0 above), the applicant has provided additional details regarding flora (in particular orchids) and fauna (in particular the Vertigo Geyeri Whorl snail). The summer surveys have filled the previous lacuna, in my opinion, and a comprehensive picture of flora and fauna on site, along with a picture of the quarry's likely impact in this area, is now available to the board.

8.7.2 It is notable that the population of Vertigo Geyeri has fallen significantly, but also that a vestigial population remains. This new survey information is very valuable to the assessment of this application. As with the issue of surface and groundwater, it is clear that the major impact on this species (via its supporting flora) has been the draining of the Cloonascragh bog. Nevertheless, I note the relatively recent encroachment of quarry operations (spoil heaps) within the footprint of the pNHA, adjacent to the snail's habitats.

8.7.3 In my opinion, the quarry has not had an undue impact on flora and fauna, and the ongoing mitigation proposed by the applicant is appropriate and sufficient protection in this area. I consider the proposed development to be acceptable on this topic.

## **8.8 EIA - Human Beings, Noise & Vibration, Air Quality (Chapters 4, 8, 9)**

8.8.1 No additional assessment is necessary on this issue on foot of information submitted to the board since my initial inspector's report.

8.8.2 I consider the proposed development to be acceptable on this topic.

## **8.9 EIA - Landscape and Visual Impact, Cultural Heritage, Material Assets (Chapters 10, 11, 12)**

8.9.1 I note the material supplied by the applicant on foot of item f) of the further information request. It is clear that it is highly likely that the esker that forms the basis for this quarry is part of the system that was once the Esker Riada or 'Slí Mór', an ancient route running from Dublin to Galway, and the route in this area was associated with a ford across the River Suck to the east of the site.

8.9.2 Nevertheless, and notwithstanding the policies of the current development plan to protect these features within the county, I consider

that the quarry has not had an undue impact on this feature such that would warrant a refusal of substitute consent in this instance. I consider the proposed development to be acceptable on this topic.

## **8.10 EIA - Interaction of the Foregoing (Chapter 13)**

8.10.1 No additional assessment is necessary on this issue on foot of information submitted to the board since my initial inspector's report.

8.10.2 I consider the proposed development to be acceptable on this topic.

## **8.11 AA – Appropriate Assessment**

8.11.1 I refer the board to the AA conducted under my initial report. The further information submitted under item a) provides a clearer picture of potential pathways between the subject site and the SAC/SPAs at the River Suck / Shannon callows, but the underlying assessment of potential impacts remains the same. On the basis of the assessment in my initial report, I conclude that the proposed development would not be likely to have significant effects on any European Site in light of its conservation objections, and that Stage 2 Appropriate Assessment is not required.

## **8.12 Possible Conditions**

8.12.1 No additional assessment is necessary on this issue on foot of information submitted to the board since my initial inspector's report. I consider that my previously recommended conditions remain appropriate, along with an additional condition copperfastening the undertakings given in relation to habitat protection.

## **9.0 CONCLUSION AND RECOMMENDATION**

9.1.1 I recommend that substitute consent be granted in accordance with the conditions below. The applicant has successfully addressed my previous areas of concern.

## **10.0 REASONS AND CONSIDERATIONS**

Having regard to nature and scale of the development and to the environmental impacts which have occurred, it is considered that subject to compliance with the conditions set out below, the development which has been undertaken will not give rise to an unacceptable level of environmental impact, and is, therefore, in accordance with the proper planning and sustainable development of the area.

## Conditions

1. Recyclable or waste material must be removed off site to licensed or permitted facilities.

Reason: in the interest of orderly development and environmental protection.

2. There shall be a prohibition on bringing in waste material other than usable waste extractive materials.

Reason: in the interests of orderly development and environmental protection.

3. A detailed restoration scheme for the site shall be submitted to the planning authority for written agreement within three months of the date of this order. The following shall apply in relation to the design and implementation of the restoration plan:

- (a) The site restoration shall provide for the immediate re-vegetation of the site where suitable and / or the provision of features to control sediments which could result in surface water pollution.

- (b) The capacity of any settlement ponds installed shall be demonstrated to be adequate to cater for extreme rainfall events. Management measures relating to release of stored water shall be described.

- (c) Prior to the commencement of restoration works a further survey of the site by an ecologist shall take place to establish, in particular, the presence of badgers, nesting birds, bats, amphibians or other species of ecological value, including flora, which may recently have taken up occupancy on the site. The restoration plan shall have regard to the results of this survey.

- (d) Details of site safety measures shall be provided.

- (e) A timescale for implementation and proposals for an aftercare programme of five years shall be agreed with the planning authority.

Reason: In the interest of the visual amenities of the area, to ensure public safety and to ensure that the quarry restoration projects and enhances ecology.

4. A management plan with the objective of protecting the population of *Vertigo Geyeri* and associated habitats within and adjoining the site shall be prepared, agreed with the planning authority, and implemented in full. It shall be based on the following principles, with reference to Appendix 1 of the further information submission.

- Delineation of a 'buffer zone' for Area D and C which should be defined by a suitably qualified ecologist on the basis of understanding the local hydrology and hydrogeology in this area;
- Prevent any further sand & gravel or rock quarrying/ excavation work along the northern extent of the current quarry footprint area encompassing Area D and C specifically in said buffer zone;
- Ensure no dewatering at the site and that the northern boundary drainage feature is not excavated for maintenance or enlarged;
- Commence a programme of water level monitoring to monitor the winter and summer water levels in both the overburden and bedrock in order to collect site-specific data and better understand the local hydrology and hydrogeology regime and water type contribution to the habitat; and
- Maintain, at a minimum, the current summer water level within the drainage feature along the northern boundary line allowing the species to succeed.

Reason: in the interests of protecting the biodiversity of the site and its surroundings

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G. Ryan  
Planning Inspector  
23<sup>rd</sup> September 2016