



An
Bord
Pleanála

Updated Inspector's ADDENDUM Report SU05E.SU0138

DEVELOPMENT:

Quarry

Location

Gortletragh, Stranorlar, Lifford, Co.
Donegal.

Planning Authority

Donegal County Council

Applicant(s)

Patton Bros. Quarry Limited

Type of Appeal

Application for Substitute Consent

Inspector

Gillian Kane

This report is to be read in tandem with the Inspectors Report SU05E.SU0138 dated 20 August 2020

1.0 Background to this Addendum Report

- 1.1.1. Following the enactment and commencement of the provisions of the Planning and Development, and Residential Tenancies Act 2020 on the 19th of December 2020, the Board invited the applicant under section 177K(1C) (a) of the Planning and Development Act (as amended), to submit such information considered material for the purpose of the Board satisfying itself on the question of the existence or not of exceptional circumstances that would justify a grant of substitute consent by the Board. On the 30th July 2021, the applicant was issued with the request.
- 1.1.2. On the 26th August 2022, an agent for the applicant responded. The submission is summarised in section 2.0 below.
- 1.1.3. In June 2022 a direction from the Board states that the submissions on the file were considered at a Board meeting of 9th June 2022. The Board considered that the documentation on file was sufficient to enable them to assess the exceptional circumstances test.
- 1.1.4. In July 2022 an additional site notice and newspaper notice were published. The notices note that additional information has been submitted to the Board in accordance with an invitation under section 177K(1C) of the Act and that the application is accompanied by a remedial EIAR.

2.0 Applicant Response

- 2.1.1. The submission of the applicant can be summarised as follows:

2.1.2. BACKGROUND

- In accordance with section 177C, an application for leave to apply for substitute consent was submitted on the 31st March 2016. (LS.0027 refers)
- The Board granted leave to apply for substitute consent on the 23rd February 2017.
- As the quarry has not been operating since 2016 , significant parts of the 2016 application are restated in the subject application.

- The ‘Exceptional Circumstances Test’ element of the 2016 application remains relevant as it addresses the past activity of the quarry, some of which was carried out prior to the coming into effect of the EIA Directive (1 Feb 1990) and the Habitats Directive (26th February 1997) and the balance of the extraction was carried out pursuant to planning permission.
- It is submitted that the scale of the quarry was misinterpreted by the Planning Authority and the An Bord Pleanála and that has led to the quarry being out of operation for more than 5 years. This application is for an extraction area of 2.52ha and an area of topsoil removal of 1.62ha (now revegetated).
- The criteria for assessing exceptional circumstances under section 177D(2) of the act are the same criteria used by the Board to assess the application for leave to apply for substitute consent in 2016-2017.
- In 2017 the Board reasons and considerations “concluded that exceptional circumstances exist” by reference to listed matters. This is still the case. The quarry has been on hold awaiting a decision. The previously cleared topsoil area that forms part of this application for substitute consent has been revegetated. It is submitted that, that in itself is exceptional considering that if substitute consent is granted, a further application will be made for continuation of quarrying on the lands.
- The submission that exceptional circumstances exist is supported by a series of maps and aerial photographs which trace the evolution of the quarry from the 1840’s to the present.
- As per the s261A report prepared by Donegal County Council, quarrying occurred from the 1840’s. Mapping showed a quarry on site in 1909 but 1930’s mapping shows the quarry as disused. Extraction from the quarry recommenced when planning permission was granted in 2000
- 0.33HA of quarry had been extracted before 1997 and should have been deducted from future calculations of reckonable area for the purposes of the EIA and Habitats Directive.

- Planning Authority reg. ref. 99/2647: On the 10th January 2000 permission was granted to re-open the quarry of 1.2082ha (including the previously quarried area of 0.33ha.)
- QY31: Notwithstanding that permission has been granted in the preceding five years, the quarry was registered in accordance with section 261. The total area was stated to be 4.906ha, with an extraction area of 1.351ha.
- Planning Authority reg. ref. 05/60249: on the 20th February 2006 planning permission was granted for the retention and continuation of works, for a period of three years (until 5th April 2009). The total site area was 2.6134ha (smaller than the 4.609ha registered under s261) with an extraction area of 1.26ha.
- While the s261 process started prior to the 2005 application, it concluded after the 05/60249 permission was granted. In 2007, Donegal County Council restated conditions of the quarry, none of which limited the life of the quarry to three years as had been the case in condition no. 1 of 05/60249. Condition no. 4 of the s261 registration refers to an area to be excavated of 4.906ha, compared to the 05/60249 permission which was 2.6134ha.
- It is submitted that the Planning Authority misunderstood the implications of restating conditions. A letter from Donegal County Council issued to the Patton Bros. Quarry in October 2007 stated that the registration of the quarry did not confer a planning consent / permission. This is contrary to section 261(6)(b) of the Act which states that where conditions are restated, that the planning permission shall be deemed to have been granted under section 34. It is submitted that this misinterpretation stemmed from the 2004 Quarry Guidelines which refer to the registration process being a snapshot of current land use for quarrying.
- It is submitted that in restating conditions, Donegal County Council were effectively granting a new planning permission to the quarry as and from that date.
- The life of the 05/60249 planning permission would have expired on the 5th April 2009. However, as the conditions were restated, this means that the life of permission 05/60249 recommenced on the date they were restated rather than on the 20th February 2006.
- The restated conditions can be viewed in three possible ways:

- The life of the permission was three years from February 2007 (s261 registration) and expires in March 2010
- Without a specific condition referring to a duration of permission, the life of the permission would by default be 5 years, therefore expiring in March 2012,
- The life of the permission is until the quarry is exhausted.
- It is submitted that this demonstrates the confusion that existed at the time.
- It is clear that the County Council, in issuing enforcement proceedings (UDSR0928, 7th July 2009) assumed that the life of the quarry had expired (contrary to section 261(6)(b)). It is submitted that the applicant was inappropriately served with enforcement proceedings as the permission granted under 05/60249 had not yet expired.
- In March 2009 the applicant applied for planning permission (09/60062) for the continuation of the quarry (1.86ha), retention of quarry (2.78ha) and retention of fill area (0.8ha) on a total site area of 5.44ha. It is submitted that the applicant should not have been required to apply for retention of 2.78ha - this area should have been included in the overall quarry area to be continued. The applicant should not have paid a triple application fee. The retention of fill area (0.8ha) is not extraction. The additional area of extraction was 1.86ha. Permission was granted subject to 11 no. conditions and the life of the permission expired on the 11th December 2014.
- It is submitted that the above demonstrates that the applicants were not familiar with the actual planning status of their quarry.
- When the pre-1964 area of 0.33ha is deducted from the actual area of extraction in 2009, the extent of quarrying that had occurred since the quarry reopened in 2000 is 2.03ha. If this area is added to the 1.86ha requested to be quarried in the future, the total is 3.89ha – not the 4.64ha understood by the Planning Authority and later An Bord Pleanála. It is submitted that as 3.89ha is so far below the 5ha mandatory EIA threshold, it is possible that a sub-threshold EIA would not have been required. The Board had decided that significant environmental impacts could be ruled out under s261A.

- Following an assessment of the quarry registration by Donegal County Council under s261A, the finding was sent to An Bord Pleanála for review. As part of their assessment Donegal County Council prepared a map of the quarry showing a site area of 3.7ha and an area of extraction of 2.4ha. It is submitted that the pre-64 area of 0.33ha should have been deducted leaving a s261A area 2.006ha. This is only 0.03ha greater than the quarry assessed by the Council in the 2009 planning application. It is submitted that this small area of increase confirms that little or no activity occurred in the three year period since the Planning Authority granted permission.
- It is submitted that a significant error was made by the Planning Authority and An Bord Pleanála in using the 2009 area of 4.64ha instead of 2.06ha. It is submitted that the failed to confine their assessments to the actual area of extraction in 2012 but instead focussed on the area that was subject to the 2009 grant of permission.
- Following from the decision of the Board (13th June 2013) the applicants were required to apply for substitute consent. As there was 18 months left in the 2009 permission, the applicants did not apply for substitute consent. All works before the December 2014 expiration of that permission were authorised and any further extraction within the quarry after that date would have been unauthorised.
- It is submitted that the applicants only became aware of the consequences of their failure to act on the s261A decisions in July 2015. An application for permission and retention permission (Planning Authority reg. ref. 15/50834) was accompanied by an EIA and an NIS.
- The applicants were unaware that the Board had decided that an AA was not necessary (in setting aside the determination of the Planning Authority). Donegal County Council notified the applicants that they could not consider the application given that it contained an element of retention – stated in the application form to be 5ha.
- It is submitted that the application form was incorrect in stating that permission for retention was being sought for an area of 5ha. The agent states that as the retention area includes a large area of ground that is exhausted, it should have been included in the lands for continuation rather than retention. It is submitted

that only those areas that are unauthorised should be subject to retention. It is submitted that the area of extraction in June 2015 was 2.52ha.

- It is submitted that had the s261A review been carried out on the basis of what was extracted rather than what had permission for extraction the quarry operators would not find themselves in the current position of requiring a substitute consent.
- Aerial imagery from 2021 shows that regrowth has occurred on lands that were clear in 2015. This reflects the wind-down of operations undertaken by the applicants. There has been no new quarrying activity since 2015.

2.1.3. EXCEPTIONAL CIRCUMSTANCES

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

- The Planning Authority and the Board erred in assessing an extraction area of 4.64ha instead of the correct area of 2.06ha – 41.2% of the EIA threshold. In addition the Board had determined that AA was not necessary.
- As of June 2015 the extraction area is 2.52ha, only 50.4% of the EIA threshold. The quarry has been closed pending a decision on substitute consent.
- The authorised removal of 1.62ha of topsoil has since revegetated.
- The 2017 EIA was updated in 2018 to reflect changes in the EIA directive.
- Noting the above there is no reason why the regularisation of the quarry through substitute consent 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;

- The applicants have relied on the professional expertise of the Planning Authority and the An Bord Pleanála. The complexity and changing nature of the legislation is such that both the Planning Authority and An Bord Pleanála misinterpreted it.
- As none of the planning professionals involved in the quarry since 1999 are aware of the planning status of the quarry, it is reasonable to conclude that the quarry operators who are not planning experts, had a belief that the development was authorised.

(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;

- Given that an area of 4.64ha was deemed by the Board to need an rEIAR and not to require an AA, and that the actual area of extraction is 2.52ha, the ability to carry out an assessment has not been impaired.
- Public participation in the assessment has not been impaired, noting section 177H(1) of the Act amended in Dec 2020.

(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;

- A detailed assessment of the likely significant impacts was undertaken in the remedial EIS and modified EIAR.
- The Board decided that a quarry of 4.64ha did not require an AA.
- There are few houses within 1km of the quarry. Of those that are, many have been built since the quarry recommenced in 2000.
- A high quality system of ponds and regular monitoring of water quality ensures that the water leaving the site will not have a detrimental impact on the environment.
- The Board is aware that a licence was issued to the quarry operators to discharge trade effluent to a tributary stream of the River Finn SAC.
- The Board is referred to the modified EIAR submitted in August 2018.

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

- The Board has already determined that a quarry of 4.64ha would not have a significant effect on a European site. As the actual quarry is 2.52ha, the same principle applies.
- It has been demonstrated in the rEIAR that all of the environmental matters raised in the s261A report can be remediated by appropriate design.

- As the quarry is closed, the visual impact is reduced and matters such as dust noise and traffic are no longer an issue.

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

- The quarry operators operate within the confines of several planning permissions.
- A letter from the Planning Authority to the quarry operators dated October 2015 confirms that no complaints have been made to the Council about non compliance with conditions.
- As the quarry is closed no further enforcement matters arise.

(g) such other matters as the Board considers relevant

- Had the correct area of 2.06ha been assessed under s261A, the Board may have determined that an EIA was required and the operators would not be in this situation.
- The quarry operators had permission up to December 2014. As there was little quarry activity since then, they should have been entitled to have the 2015 application assessed by the Planning Authority.
- The legislation does not provide for those situations where an error of interpretation was made. It is submitted that the quarry operators have consistently done the right thing, subject to best advice.

Conclusion

- Substitute consent applies to an area of 2.52ha, well below the 4.64ha assessed by both the Planning Authority and the Board.
- The applicant meets all seven of the exceptional circumstances set out in s177D(2) of the Planning and Development Act 2000, as amended.
- Extraction on the site has ceased.
- The Board has already determined that a larger area of extraction did not need AA.

- The Board is requested to issue a grant of substitute consent to allow the quarry operators to proceed to the next stage, where the entire quarry will be once again subject to environmental assessment and the full rigours of the planning system.

3.0 Submissions

3.1.1. Environmental Health Services of the HSE:

- Considers the application to be a new application with the relevant assessment criteria under the Planning and Development Residential Tenancies Act 2020.

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

- There is no implied or explicit content in the process that consent will follow if exceptional circumstances are demonstrated. If development is regularised, it will have to meet the objectives of the EIA and Habitats Directives prior to consent being given. There is no evidence that the applicant has tried to circumnavigate the objectives of the EIA or Habitats Directives.

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

- The applicants submission contains full details as to why the applicant believed 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;

- There is no reason to conclude that a full remedial EIA cannot be carried out. This should be carried out as an important health protection measure. If the applicant is not given consent to apply for substitute consent, then health and environmental risks will not be assessed within the defined criteria of the EIA Directives. The carrying out of an rEIA will identify any mitigation or remediation required. Decisions can then be made on this.
- The EHS concurs with the conclusion of page 31 of the 26th August 2021 submission.

(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;

- The above criteria can only be considered once environmental assessment has been carried out as part of the substitute consent process.
- Proper public scoping of an rEIA followed by assessment is the most effective way of assessing this criteria. This can only be done if consent to make a substitute consent application is given.

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

- The size of the existing quarry does not indicate that any adverse effects can be remediated if required. There is no evidence that there will be a requirement to remediate any European site or that one has actually been impacted – as stated by the applicant on page 32 of the August submission.

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

- EHS notes the planning history in the August submission. No additional comments.

3.1.2. **An Taisce:** The definition of exceptional circumstances as per section 177D(2) of the Planning and Development Act 2000, as amended and as used in the subject case is inconsistent with the views of the European Court. It is submitted that An Bord Pleanála should seek a referral to the High Court in this regard.

4.0 Further Submissions

4.1.1. **Donegal County Council:** Notes the submission of An Taisce and states that they have no further comment to make.

5.0 Applicant Response to Submissions

5.1.1. Following the preparation of the addendum report by this Inspector in November 2022, the Board were advised that a submission from Joe Bonner Town Planning Consultant on behalf of Patton Bros Quarry Ltd. Made on 3rd October 2022 was not on the file and thus was not seen by this Inspector in her assessment of the case.

- 5.1.2. In the interest of clarity, this report is updated to include the submission of the applicant dated 30th September 2022. The report is updated from section 5.0 onwards.
- 5.1.3. The submission is in response to the letter of the Board dated 12th September 2022 which enclosed a submission from the HSE and a submission from An Taisce. The response of the Planning Consultant to the two submissions can be summarised as follows:
- It is the applicants understanding that, at the Boards direction, this response is limited to a response to the two submissions circulated to the applicant by the Board, namely the HSE and An Taisce.
 - The applicant notes the broad agreement of both submissions within the context of the applicants submission of August 2021.
 - It is submitted that there is no basis other than to proceed and determine the application in accordance with the applicants submission of August 2021.
 - Neither submission raises an issue with the Boards original decision, nor can such be questioned given the passage of time.
 - The submission of the HSE appears entirely supportive of the applicants position. It follows the structure of the applicants submission and in each section concurs with the approach adopted by the applicant. The HSE submission requests the Board to consider the matter on the basis of the applicants submission.
 - As noted by the HSE the Board has already determined that AA is not required and no questions as to the validity of that decision of raised. Equally no issue is raised with regard to the EIA directive.
 - The applicant agrees with the submission of the HSE that the regularisation of the development concerned would not circumvent the purposes and objectives of the EIA or Habitats Directive. In the absence of any submission to the contrary, the Board should adopt of the position of the Applicant as set out in their submission in August 2021.
 - Neither submission raises any issues regarding the applicant could reasonably have had any belief that the development was not authorised. The planning

legislation and case law in this area is complex and there is ample evidence that the applicant could have believed that the continued operation was lawful. It is submitted that Test B has been met.

- This small-scale development does not fall within the mandatory obligation of both directives. There is no difficulty in complying with the requirements of subparagraph C.
- The requirements of paragraph D have not been questioned.
- The submission of An Taisce refers to the exceptional circumstances set out in section 177D(2) of the Planning and Development Act 2000, as amended and that the submission is inconsistent with the view of the European Court on the thresholds for exceptional circumstances. The applicant notes that this is a matter for the Government and the Oireachtas.
- In relation to substitute consent and the subject development, there is no public controversy, no public objections, no effect on the environment, no effect on any European site. It is submitted that An Taisce accepts that the subject development falls into and complies with each of the categories required.

6.0 Further Assessment

6.1.1. The following issues will be assessed:

- Compliance with Board request
- Consideration of Exceptional Circumstances

6.2. Compliance with Board request

6.2.1. The Board requested the applicant to provide such information considered necessary for the purpose of the Board to satisfy itself on the question of the existence or not of exceptional circumstances that would justify a grant of substitute consent.

6.2.2. The applicants response to that request is summarised in section 2.0 above. I am satisfied that the response complies with the Boards request. I note that the submission of the applicant was circulated to parties in July 2022 and the submissions received in response are summarised in sections 3.0, 4.0 and 5.0 above.

- 6.2.3. A key submission of the agent for the quarry operators is that an error was made by both the Planning Authority and the Board in assessing the subject quarry under s261A of the Planning and Development Act 2000, as amended. The agent submits that due to the complexity of the legislation at the time, and due to the changes that occurred subsequent to that first legalisation, that confusion arose over the extent of areas that should have been assessed. The agent provides a comprehensive outline of the journey of the quarry through the planning system – in terms of quarry registration, planning permission and planning enforcement. The detail provided in the submission is lengthy, however it is my reading that the agent's ultimate conclusion is that a quarry area of 2.06ha should have been subject to an assessment under s261A, rather than the 4.64ha that was assessed by the Board.
- 6.2.4. It is my reading of the agent's submission that he is not ascribing any fault to the Planning Authority or the Board but that the degree of confusion over the legalisation at the time was such that an error was made. And that this error has resulted in the applicants now being subject to a substitute consent process. It is also my reading of the agent's submission that he does not wish to re-visit the previous decisions or determinations of the Planning Authority or the Board, but only to highlight that at all times the quarry operators acted in good faith and within their understanding of the consent process at that time. The quarry operators are not submitting that there has been any error of fact, law or procedural error (section 177D(1)(a)(ii)) but rather 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, namely section 177D(1)(b) of the Planning and Development Act 2000, as amended.
- 6.2.5. It is my understanding of the submission that the quarry has ceased operations since 2015 and that the quarry operators wish the planning status of the quarry to be regularised to allow them to once more enter the planning system.
- 6.2.6. I note the submission of An Taisce that the Board should seek a referral to the High Court on the grounds that the definition of exceptional circumstances as per section 177D(2) of the amended act is inconsistent with the views of the European Court on same.

- 6.2.7.** Should the Board decide not to accede to this submission, I propose to apply the criteria set out under S.177D (2)(a) to (g) of the Planning and Development Act, 2020 (as amended) the consideration of the existence of exceptional circumstances in respect of this application for substitute consent.

7.0 Consideration of Exceptional Circumstances

7.1. Whether regularisation of the development concerned would circumvent the purpose and objectives of the EIA Directive or Habitats Directive.

- 7.1.1. The EIA Directive seeks to provide for an assessment of the likely significant effects of a development on the environment prior to decision making, and to take account of these effects in the decision-making process. The application is accompanied by a remedial EIAR. Any decision by the Board to grant or refuse permission for substitute consent for the development would be on the basis of an assessment of the likely effects of the development on the environment, as a result of past works.
- 7.1.2. Notwithstanding the submission of the applicants agent, it is not within the remit of this application to revisit the decisions or determinations made previously by the Board. Decisions and determinations were made on the details, plans and documentation submitted to the Board by the quarry operators and their agent at that time.
- 7.1.3. I note the decision of An Bord Pleanála to grant leave to apply for substitute consent under ref. LS05.LS0027. This decision directed that the application for substitute consent be accompanied by an rEIS, only, and did not require an rNIS. In considering the application LS05.LS0027 the Board was obliged to, and did, carry out a screening for Appropriate Assessment and concluded that Appropriate Assessment/the submission of an rNIS was not required. A Remedial EIAR was submitted to the Board in December 2019, consequent to the EIA Directive 2014/52/EU.
- 7.1.4. Having regard to the foregoing, I am satisfied that the regularisation of the development would not circumvent the purpose or objectives of the EIA Directive or Habitats Directive.

7.2. Whether the applicant had or could reasonably have had a belief that the development was not unauthorised

- 7.2.1. I note that the quarry, having a permission in 2000 (Planning Authority reg. ref. 99/2647), was not required to register under section 261, yet an application to register was made and subsequently accepted by the Planning Authority (QY31). I further note that the report prepared under QV05E.QV0012 this Board Inspector notes that “The Planning Authority responded to the appeal stating that they do not dispute that the Operators have permission to quarry within the permitted boundary of the site....”. The quarry operators agent states that the quarry has ceased operations, as it is their understanding that development consent for all works expired at that time. As stated above, it is reasonable to concur that the quarry operators have at all times acted in good faith, within their understanding of the consent process at that time.
- 7.2.2. Having regard to the foregoing, I am satisfied, that the applicant had or could reasonably have had a belief that the development was not unauthorised.

7.3. 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

- 7.3.1. I am satisfied that there is no substantial impairment to the applicant's ability to carry out an assessment of the environmental impacts of the development.
- 7.3.2. The rEIAR submitted to the Board in Dec 2019 as part of the application for substitute consent states that it has been prepared to assess the potential impacts associated with the activities that have been undertaken on a day to day basis for quarrying activity on an extraction area of 2.52ha and associated topsoil removal on an area of 1.62ha. the period of activity is after 1st February 1990 to approx. June 2015. Section 4.3 and 4.4 of the rEIAR submitted to the Board in Dec 2019 outlines comprehensive history of the evolution of the site, chronologically and in planning history terms.
- 7.3.3. In section 8.2 of the first Inspectors Report on this application, I found that that the report is consistent with the requirements of section 177F of the Planning and Development Act 2000 in that it contains a statement of the significant effects on the

environment which have occurred or which are occurring or which can reasonably be expected to occur because the subject development was carried out. In that report I noted that “by reference to Section 172(1D) of the Act which places an obligation on the Board to consider the adequacy of an EIS, and which by inference includes an rEIS (noting the inclusion of references to substitute consent within Section 172), I am satisfied that the rEIAR adequately identifies and describes the direct and indirect effects of the subject development on the environment. I am also satisfied that there is sufficient information before the Board, including that contained in the rEIAR and the submission received to enable the Board to carry out an EIA and make a decision on the application for substitute consent”.

- 7.3.4. I concluded that section of the report with this statement “Having regard to the Environmental Impact Assessment carried out above, and to submissions made in connection with the substitute application, I note that quarrying activity is long established at this location and the expansion of the quarrying activities may have been considered more acceptable than the development of a separate site. I consider that the residual environmental effects arising from the development as described to be acceptable”. I am satisfied that the statement remain to be an accurate assessment of 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
- 7.3.5. Following the enactment and commencement of the Planning and Development, and Residential Tenancies Act 2020, the Board was obliged to invite the applicant to submit information related to the existence or not of exceptional circumstances under section 177K(1C) (a) of the Act, that would justify a grant of substitute consent by the Board, and the public were given an opportunity to make submissions.

7.4. 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 and The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated

- 7.4.1. As stated in section 6.1.3 above, the decision of An Bord Pleanála to grant leave to apply for substitute consent under ref. LS05.LS0027 decision directed that the

application for substitute consent be accompanied by an rEIS, only, and did not require an rNIS. In considering the application LS05.LS0027 the Board was obliged to, and did, carry out a screening for Appropriate Assessment and concluded that Appropriate Assessment/the submission of an rNIS was not required.

7.5. *Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development.*

- 7.5.1. There is no evidence to indicate that the applicant has not substantially complied with the terms and conditions of the previous planning permission. As stated above, I am satisfied that the applicant had or could reasonably have had a belief that all development undertaken on site was authorised.

7.6. *Such other matters as the Board considers relevant*

- 7.6.1. As noted above, the quarry has ceased operations since 2015. The quarry operators seek to regularise the planning status of the quarry and bring a “clean slate” to any future operations on site. With the exception of the submission from An Taisce that the Board seek a referral to the High Court, no other parties have raised a concern or any other matters that the Board should consider.

7.7. *Conclusion:*

- 7.7.1. Having regard to the foregoing and having regard to all submissions made, I am satisfied that the applicant has provided a robust response to the Board’s request for information considered material for the purpose of the Board satisfying itself on the question of the existence or not of exceptional circumstances that would justify a grant of substitute consent by the Board.

8.0 Recommendation

- 8.1.1. Having regard to the foregoing and to the Inspectors Report SU05E.SU0138 dated 20 August 2020, I am satisfied that the applicant has demonstrated that exceptional circumstances exist, in accordance with section 177D(1)(b) of the Planning and Development Act 2000, as amended.

Gillian Kane

Senior Planning Inspector
10 March 2023