

Validation Checklist

Lodgement Number : **LDG-061071-23**
Case Number: **ABP-315708-23**
Customer: **~An Taisce**
Lodgement Date: **07/02/2023 17:08:00**
Validation Officer: **Aisling Reilly**
PA Name: **Donegal County Council**
PA Reg Ref: **2250933**
Case Type: **Normal Planning Appeal PDA2000**
Lodgement Type: **Appeal**



An
Bord
Pleanála

multiple appeal

Validation Checklist	Value
Confirm Classification	Confirmed - Correct
Confirm ABP Case Link	Confirmed-Correct
Fee/Payment	Valid - Correct
Name and Address available	Yes
Agent Name and Address available (if engaged)	Not Applicable
Subject Matter available	Yes
Grounds	Yes
Sufficient Fee Received	Yes
Received On time	Yes
3rd Party Acknowledgement	Yes
Eligible to make lodgement	Yes
Completeness Check of Documentation	Yes
Valid Lodgement Channel	Yes

- BLO 4M - Task No: 316989-23 - enclose copy of receipt and enclose copy of other 3rd party appeals (enclose 6 other appeals)
- BLO 6 - Task No: 317120-23 - enclose copy of 6 further appeals to applicant, PA and Rachel and Hugh White & others

Run at: 10/02/2023 13:03

Run by: Aisling Reilly

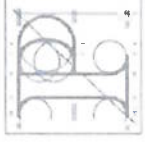
3

1

Lodgement Cover Sheet - LDG-061071-23

ABL315705-13

Moltebe 3rd Party appeal



An Bord Pleanála

Details

Lodgement Date	07/02/2023
Customer	An Taisce
Lodgement Channel	In Person
Lodgement by Agent	No
Agent Name	
Correspondence Primarily Sent to	
Registered Post Reference	

Lodgement ID	LDG-061071-23
Map ID	
Created By	Robyn Hayden
Physical Items included	No
Generate Acknowledgement Letter	
Customer Ref. No.	
PA Reg Ref	

Categorisation

Lodgement Type	Appeal
Section	Processing

2250933

PA Name	Donegal County Council
Case Type (3rd Level Category)	

Fee and Payments

Specified Body	No
Oral Hearing	No
Fee Calculation Method	System
Currency	Euro
Fee Value	0.00
Refund Amount	0.00

Observation/Objection Allowed?	
Payment	PMT-047802-23
Related Payment Details Record	PD-047692-23

BPOIM - Task No. 316989-23

Appeal

Run at: 07/02/2023 17:12

Run by: Robyn Hayden

Date of decision: 13/01/2023

Last day: 09/02/2023

PA Case Details Manual	
PA Case Number	
PA Decision	
PA Decision Date	
Lodgement Deadline	
Development Description	
Development Address	

Appeals Type	
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An Bord Pleanála
64 Marlborough Street
Dublin 1

AN BORD PLEANÁLA	
LDG-	<u>061071-23</u>
ABP-	
07 FEB 2023	
Fee: €	<u>110</u> Type: <u>dequeue</u>
Time:	<u>17:06</u> By: <u>hand</u>

7th February 2023

Ref.: 22/50933
App: PATRICK BONAR
For: (1) DEMOLITION OF EXISTING CONCRETE STRUCTURE (2) QUARRYING OF 5.37 HECTARES WHICH WILL BE SUBJECT TO EXTRACTION AND PROCESSING OF ROCK THROUGH DRILLING, BLASTING, CRUSHING AND SCREENING (3) CONSTRUCTION OF (A) SETTLEMENT PONDS AND WETLAND (B) A SHED FOR THE PURPOSES OF STORAGE FOR THE FACILITY INCLUDING ON-SITE MACHINERY MAINTENANCE (C) SITE OFFICE WITH CANTEEN, TOILET & DRYING FACILITIES (4) INSTALLATION OF A WASTEWATER TREATMENT SYSTEM & PERCOLATION AREA (5) PROVISION OF A WHEEL WASH AND WEIGHBRIDGE (6) LANDSCAPING OF THE QUARRY DURING THE OPERATIONAL PHASE AND RESTORATION OF THE QUARRY ON COMPLETION OF EXTRACTION (7) ALL ASSOCIATED ANCILLARY FACILITIES / WORKS OVER A 25 YEAR PERIOD. AN ENVIRONMENTAL IMPACT ASSESSMENT REPORT (EIAR) & NATURA IMPACT STATEMENT (NIS) ACCOMPANIES THIS APPLICATION
Site: MAGHERASOLIS & CRAIGS, RAPHOE, LIFFORD PO, CO. DONEGAL

A Chara,

In accordance with the provisions of Section 37(1) of the Planning and Development Act 2000 (as amended), An Taisce wishes to appeal the decision on 13th January 2023 of Donegal County Council to grant permission for the above proposal.

SITE LOCATION

The application site is the catchment of the Finn River SAC (site code 002301).

The only public road access entry to the application is site from the R236 within the 50km speed limit of the historic cathedral town of Raphoe.

The application site encompasses the ancient ecclesiastical lands attached to the pre-reformation Cathedral of Raphoe, now Church Of Ireland. To the south is the demesne of the early 17th Century Bishops Palace, in ruin since the mid 19th Century. To the north is the

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An Taisce – The National Trust for Ireland | *Protecting Ireland's heritage, safeguarding its future*

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Directors: Philip Kearney (Chair), Trish O'Connell (Vice-Chair),
Stuart McCaul (Secretary), Aoife O'Gorman (Treasurer), Hugh O'Reilly, John Sweeney, Olivia Rogers, Rónán O'Brien

demesne of the early 18th Century former Deanery at Oakfieldpark which has won several national awards for the restoration of its gardens and buildings, which also includes a miniature railway in the extensive grounds, and is one of Donegal's major visitor attractions.

PLANNING HISTORY

The application site was acquired by the current applicant in 2004 in circumstances that warrant further investigation.

A previous application for a 4.81 ha quarry (Donegal ref. 19/52015) was refused permission by An Bord Pleanála in August 2021 (ABP ref. 308326). This refusal was on two stated grounds only, namely surface water and impact on the Finn River system.

GROUND OFS OF APPEAL

1. THE DETERMINATION OF APPLICATION BY DONEGAL COUNTY COUNCIL UNDER THE EIA DIRECTIVE

The determination of this application by Donegal County Council is systematically deficient with regard to all of the considerations under the EIA directive, in particular impact on human beings, water, landscape and cultural heritage.

There has been a systematic failure by the Council to comply with the consultation obligations of the EIA Directive. The public advertisement of the application resulted in a significant level of submissions from local residents and other organisations in Raphoe. All of these raised fundamental considerations of the site based unsuitability of the location of an industrial scale development in excess of 5ha in the environs of an urban area.

The Council reports are devoid of any assessment and consideration of the consultation submissions. There is no basis to explain the reasons and considerations on which the Council decision notification was justified, no deliberative consideration demonstrated to explain or justify its decision notification to grant consent. The Council must accordingly be deemed to have systematically breached its obligations under the EIA Directive.

2. THE DETERMINATION OF DONEGAL COUNTY COUNCIL OF ITS OBLIGATION TO CARRY OUT APPROPRIATE ASSESSMENT UNDER ARTICLE 6 OF THE HABITATS DIRECTIVE

The application site is in the Finn River catchment 8.8. km to the north of the River Finn SAC (site code 002301).

The six page Appropriate Assessment by Donegal County Council of the 12th January 2023 is largely a cut and paste exercise containing the conservation objectives for the site.

Section 3 paraphrases the information supplied by the developer in tabulated form in concluding:

"that the proposed development when considered on its own and also when considered in combination with other existing and planned projects subject to all proposed mitigation measures being implemented in full, would not have a significant effect on the River Finn Special Area of Conservation."

There has been no deliberative or independent consideration by the Council to determine that the proposed development would not have negative impact on the Finn river SAC. In particular analysis of the hydrological regime is deficient.

3. UNSUITABILITY OF APPLICATION SITE IN PRINCIPLE

The application site is within the urban environs of Raphoe with the entrance proposed within the 50km speed limit on the northeast side of the town off the R236.

While the applicant is seeking to justify the proposal on the basis of historic quarrying on the site, this has no basis. Any past mid 20th quarry activity was for local use and bore no relation in scale and site impact of what is now proposed. Since the mid 20th Century the residential housing expansion of Raphoe and its environs has extended incrementally towards the application site. The development of an excess of 5ha quarry in this location would be multiply incompatible with residential amenity because of the HGV traffic generation including early hours, machinery noise vibration and other impacts.

The concerns of the tourism and visitor attraction at Oakfieldpark are also noted.

4. DONEGAL COUNTY COUNCIL FAILURE TO PROVIDE JUSTIFICATION FOR NON APPLICATIONS OF SECTION 35 PLANNING AND DEVELOPMENT ACT 2000 ON PAST FAILURES TO COMPLY

The Irish quarry and aggregate sector more than any other is notoriously non-compliant on planning. This was highlighted in an RTE Investigates Documentary in November 2019 which highlighted the existence of 151 quarries operating without planning approval with Donegal Kerry and Cork being the worst culprits. It established 30 unauthorised quarries in Donegal, the most of any county.

The real levels of noncompliance of operational and planning permission conditions is enormous. Once a quarry is permitted or its size or operating duration extended, whether by a Council itself or on appeal by An Bord Pleanála, the Council is responsible for condition enforcement. However, across the country major conflicts arise as Councils are the lead purchasers of quarry material.

An Taisce as a statutory consultee has gained a particular insight into the massive scale of condition compliance breaches for quarries nationally. The situation in Donegal is particularly serious. It was lax regulation and lack of oversight by Donegal County Council on quarry materials that has led to the mica block work scandal which will cost the Irish exchequer in excess of 2.5 billion euro and potentially significantly more.

Section 35 of the Planning and Development Act 2000 (as amended) provides for a planning authority to refuse an applicant for past failures to comply. This provision, if it had been effectively applied both nationally and in County Donegal, would have resulted in significantly enhanced quarry operational compliance.

The EIAR cites the 30 years' experience in quarrying by the applicant as supporting the justification for the development. The opposite case should apply.

Following extensive public submission on the applicant's compliance record, the Council correctly initiated the Section 35 process for refusal for past failure to comply in a notice of 22nd June 2022. This notice set out an extensive schedule of noncompliance by the applicant (SEE ATTACHED).

The compliance record of the applicant in this case provides a prima facie justification for the application of Section 35 by Donegal County Council. Despite this the Council made an unexplained and undocumented decision not to proceed with the Section 35 process.

In an appeal against a local authority the Board is given the function of determining the application "de novo". While An Bord Pleanála does not have the function to invoke Section 35, it is obliged to determine the procedural validity of the initial application and the decision notification from the local authority. In this case it is submitted that the Board does not have a valid decision notification before it on which to determine an appeal. Donegal County Council having initiated the Section 35 process, has failed to provide reasons and considerations for not proceeding with Section 35 and refusing for past failures to comply. This accordingly impugns the status of the decision notification in the first instance.

Please acknowledge this appeal and inform us of any decision made.

Yours sincerely,


Ian Lumley

Head of Advocacy

An Taisce - The National Trust for Ireland



Ref.No: 22/50933

REGISTERED POST

22nd July 2022

PATRICK BONAR
CALLENCOR
DRUMKEEN
CO DONEGAL

APPLICATION: PERMISSION for (1) DEMOLITION OF EXISTING CONCRETE STRUCTURE (2) QUARRYING OF 5.37 HECTARES WHICH WILL BE SUBJECT TO EXTRACTION AND PROCESSING OF ROCK THROUGH DRILLING, BLASTING, CRUSHING AND SCREENING (3) CONSTRUCTION OF (A) SETTLEMENT PONDS AND WETLAND (B) A SHED FOR THE PURPOSES OF STORAGE FOR THE FACILITY INCLUDING ON-SITE MACHINERY MAINTENANCE (C) SITE OFFICE WITH CANTEEN, TOILET & DRYING FACILITIES (4) INSTALLATION OF A WASTEWATER TREATMENT SYSTEM & PERCOLATION AREA (5) PROVISION OF A WHEEL WASH AND WEIGHBRIDGE (6) LANDSCAPING OF THE QUARRY DURING THE OPERATIONAL PHASE AND RESTORATION OF THE QUARRY ON COMPLETION OF EXTRACTION (7) ALL ASSOCIATED ANCILLARY FACILITIES / WORKS OVER A 25 YEAR PERIOD. AN ENVIRONMENTAL IMPACT ASSESSMENT REPORT (EIAR) & NATURA IMPACT STATEMENT (NIS) ACCOMPANIES THIS APPLICATION,

LOCATION: MAGHERASOLIS & CRAIGS RAPHOE LIFFORD PO

A Chara,

With reference to the above application I am to inform you that pursuant to Section 35(4) of the Planning and Development Act 2000 as amended ("the Act") notice is hereby served on you that the Planning Authority has good grounds for being able to form the opinion under Section 35(1) of the Act that there is a real and substantial risk that the development in respect of which permission is sought would not be completed in accordance with such permission if granted or with a condition to which such permission if granted would be subject and accordingly that planning permission should not be granted in respect of the development sought and the non-compliances with (a) previous permission(s) and substantial unauthorised development which the authority intends to take into consideration with regard to the proposed exercise of that power are as specified in the Schedule hereto.

Pursuant to Section 35 (4) (b) you are invited to make submissions to the Planning Authority within a period of eight (8) weeks from the date of this notice as to why you consider that the Planning Authority should not exercise this power (whether because you contend that the views of the authority in relation to the failure to comply by the applicant or any other person to whom this section applies with any previous permission, or any condition to which it is subject or the carrying out of substantial unauthorised development, as the case may be, are incorrect or that there are not good grounds for forming the opinion under *section 35 (1)*)

Consideration of your application is being deferred pending the period of eight (8) weeks from the date of this Notice.

Mise, le meas,



**For A/Senior Planner
Planning Services**

/mp

SCHEDULE

1. Non-compliance with the following permissions:

- (i) **Ud14125:** Warning letter issued to Barnes Limestone Quarry Ltd, Anne Marie Bonar, Patrick Joseph (PJ) Bonar and others for failure to comply with aspects of Planning Permission Reference No 06/51276 particularly: (i) Aspects of non-conformity with conditions nos. 3(ii), 5, 7, 9 (iv & v), 15(i & iv), 23, 24 and 25 , which presently forms part of a High Court Order (point no. (4) refers) in respect of requirement to "comply with the landscape and restoration plan submitted on 17/10/2014 pursuant to condition 5 of planning permission reference 06/51276" and which remains outstanding.
- (ii) **Ud2072:** Warning Letter issued to P Bonar Plant Hire Ltd (PJ Bonar joint company director, with Ann Marie Russell and secretary) and others in respect of a storage structure within the quarry at Calhame, Letterkenny, Co. Donegal regarding non-compliance with conditions of Planning Permission (Plan.Reg.No. 15/51448 refers) condition no's 1, 2 & 5 which presently forms part of High Court Order requiring its removal as part of landscape / restoration plan (Ud 19117 refers) and which remains outstanding.
- (iii) **Ud20167** – Urgent Enforcement Notice served on P Bonar Plant Hire Ltd (PJ Bonar joint company director, with Ann Marie Russell and PJ Bonar secretary) regarding non-compliance with condition No. 2(a) of Plan.Reg.No. 10/40186 and Extension of Duration Permission 15/50140, requiring the removal of all plant and apparatus associated with the concrete batching plant by 23/08/2020" which presently forms part a High Court Order requiring its removal as part of landscape / restoration plan (Ud 19117 refers) and which remains outstanding.

2. Unauthorised development as follows.

- (i) **Ud14107** in respect of an unauthorised quarry at Barnes Lower, Termon, Letterkenny P.O., Co. Donegal. Enforcement Notice served on Barnes Limestone Quarry Ltd, Anne Marie Bonar and Patrick Joseph (PJ) Bonar for the: "*the carrying out of unauthorised quarrying activities / excavation and all associated works including the washing, screening and processing of materials, which does not have the benefit of planning permission*" whereby substantial unauthorised development remains outstanding.
- (ii) **Ud19117** – this relates to unauthorised quarry at Calhame, Letterkenny, Co. Donegal. Urgent Enforcement Notice served on P Bonar Plant Hire Ltd (PJ Bonar joint company director, with Ann Marie Russell and PJ Bonar secretary) for: "*1. The quarrying of lands without the benefit of planning permission and 2. The making of a material change of use of land from disused to a use for quarrying related activities inclusive of the processing of quarried materials without the benefit of planning permission*" whereby substantial unauthorised development remains outstanding.
- (iii) **Ud20201** – this relates to a quarry at Drumkeen, Stranorlar, Co. Donegal whereby Urgent Enforcement Notice served on Patrick Bonner (Patrick Bonar) re: Unauthorised development at Drumkeen, Stranorlar, Co. Donegal comprising of : "*The use of land for quarrying and all related ancillary activities*" whereby substantial unauthorised development remains outstanding.
- (iv) **Ud20269** – this relates to an unauthorised quarry at Moyra Glebe, Glenties, Co. Donegal. Urgent Enforcement Notice served to Sean Mc Gee / Niamar Property re "*The use of land for quarrying and all related ancillary activities*" whereby substantial unauthorised development remains outstanding.



Ref.No: 22/50933

13/06/2022

An Taisce
The National Trust for Ireland
Tailors' Hall
Back Lane
Dublin
D08 X2A3

Re: PATRICK BONAR C/O MICHAEL FRIEL CREESLOUGH LETTERKENNY CO. DONEGAL F92 TF60 for PERMISSION for (1) DEMOLITION OF EXISTING CONCRETE STRUCTURE (2) QUARRYING OF 5.37 HECTARES WHICH WILL BE SUBJECT TO EXTRACTION AND PROCESSING OF ROCK THROUGH DRILLING, BLASTING, CRUSHING AND SCREENING (3) CONSTRUCTION OF (A) SETTLEMENT PONDS AND CONSTRUCTED WETLAND (B) A SHED FOR THE PURPOSES OF STORAGE FOR THE FACILITY INCLUDING THE ON-SITE MACHINERY MAINTENANCE (C) SITE OFFICE WITH CANTEEN, TOILET & DRYING FACILITIES (4) INSTALLATION OF A WASTEWATER TREATMENT SYSTEM & PERCOLATION AREA (5) PROVISION OF A WHEEL WASH AND WEIGHBRIDGE (5) LANDSCAPING OF THE QUARRY DURING THE OPERATIONAL PHASE AND RESTORATION OF THE QUARRY ON COMPLETION OF EXTRACTION (5) ALL ASSOCIATED ANCILLARY FACILITIES / WORKS OVER A 25 YEAR PERIOD. AN ENVIRONMENTAL IMPACT ASSESSMENT REPORT (EIAR) & NATURA IMPACT STATEMENT (NIS) ACCOMPANIES THIS APPLICATION at MAGHERASOLIS & CRAIGS RAPHOE LIFFORD PO

A Chara

I refer to your submission/observation regarding the above planning application and acknowledge receipt of same in accordance with Article 28 of the Planning & Development, Regulations, 2001 (as amended). The Planning Authority shall notify you in due course of their decision, in accordance with Article 31 of the Planning & Development, Regulations, 2001 (as amended).

Mise le meas

Deanaí Gelsmí

**For A/Senior Ex. Planner
Planning Services**

AN BORD PLEANÁLA

07 FEB 2023

LTR DATED _____ FROM _____

LDG- _____

ABP- _____