

File With _____

SECTION 131 FORM

Appeal NO: ABP-315708-23

Defer Re O/H

TO: SEO

Having considered the contents of the submission ~~dated~~ received 6/03/2023 from

Donegal County Council I recommend that section 131 of the Planning and Development Act, 2000 be not be invoked at this stage for the following reason(s): No new material planning issues

E.O.: Phil

Date: 21/3/23

To EO: _____

Section 131 not to be invoked at this stage.

Section 131 to be invoked – allow 2/4 weeks for reply.

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached submission

to: _____

Allow 2/3/4 weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File With _____

CORRESPONDENCE FORM

Appeal No: ABP -315708-23

M _____

Please treat correspondence received on 6/03/2023 as follows:

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| 1. Update database with new agent for Applicant/Appellant _____ | |
| 2. Acknowledge with BP <u>20</u> | 1. RETURN TO SENDER with BP _____ |
| 3. Keep copy of Board's Letter <input type="checkbox"/> | 2. Keep Envelope: <input type="checkbox"/> |
| | 3. Keep Copy of Board's letter <input type="checkbox"/> |

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| Amendments/Comments |
| |
| <u>Donegal County Council response to appeals</u> |
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| 4. Attach to file (a) R/S <input type="checkbox"/> (d) Screening <input type="checkbox"/> (b) GIS Processing <input type="checkbox"/> (e) Inspectorate <input type="checkbox"/> (c) Processing <input type="checkbox"/> | RETURN TO EO <input type="checkbox"/> |
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|-------------------------|---|
| | Plans Date Stamped <input type="checkbox"/> |
| | Date Stamped Filled in <input type="checkbox"/> |
| EO: <u>Karen Byrne</u> | AA: <u>Mark Lowler</u> |
| Date: <u>10/03/2023</u> | Date: <u>13-3-23</u> |

Stephen Sutton

From: Bord
Sent: Monday 6 March 2023 14:17
To: Appeals2
Subject: FW: Case Ref. ABP-315708-23
Attachments: DOC.pdf

From: JADE PEARSON <jpearson@Donegalcoco.ie>
Sent: Monday, March 6, 2023 2:10 PM
To: Bord <bord@pleanala.ie>
Subject: Case Ref. ABP-315708-23

A Chara,

Please find attached the observations of this Council in relation to Case Ref. No. ABP-315708-23.

Regards,

Jade Pearson
Community Development & Planning Services



**Comhairle Contae
Dhún na nGall
Donegal County Council**

Email Disclaimer
Clásal Séanta Ríomhphoist

2000



Our Ref. 22/50933
Your Ref. ABP-315708-23

6th March 2023

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

Re: Planning Authority's response to the appeal lodged with An Bord Pleanála on the Council's decision to grant permission to 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 at Magherasolis & Craigs, Raphoe, Co. Donegal under planning reference no. 22/50933 (ABP-315708-23)

Dear Sir/Madam

I refer to the above-stated matter and your correspondences of 7th and 14th February 2023 seeking, amongst other things, the observations of the planning authority in relation to the appeal, in accordance with S.129 of the Planning and Development Act 2000 (as amended), to assist the Board in its deliberations.

The appeals have been submitted by:

- An Taisce
- Lady Heather Robinson
- David Fisher
- Leslie Brown
- Raphoe Community in Action

Cuir freagra chuig: Áras an Chontae, Leifear, Contae Dhún na nGall, Éire F93 Y622
Please reply to: County House, Lifford, Co. Donegal, Ireland F93 Y622

2

- Gerard Moyne
- Gerard Convie
- Rachel & Hugh White

In relation to the appeals to the Board there are similar broad issues made by different appellants and the planning authority wishes to group these issues and deal with each of the issues to avoid repetition by dealing with each of the appeal separately. The broad issues raised and the planning authority's response these issues are summarised in the table below:

| Point of Submission: | Response of Planning Authority |
|---|--|
| <p>1. Deficiencies/Inaccuracies within the submitted Application</p> <p>Site Notice not erected/ not visible to members of the public</p> <p>Incorrect boxes ticked in respect of previous pre-planning meetings. No requirement for an EIA (same has been submitted), does <i>not</i> involve the demolition of a structure (although is stated in the notices and drawings that it does) etc.</p> | <p>Both site notices were inspected by the Executive Planner with the statutory time period (23/06/2022) and were considered to accord with the necessary requirements in terms of location, visibility and legibility in accordance the Planning & Development Regulations, 2001(as amended).</p> <p>Whilst the applicant/agent may have inadvertently ticked incorrect boxes in the application form, the application has been assessed and is considered to be Valid in terms of the necessary requirements stipulated under the Planning & Development Regulations, 2001(as amended).</p> |
| <p>2. Traffic Safety</p> <p>Road access/capacity and safety of existing access point and onto the regional road. The local road is unsuitable for an increase in volume, frequency and size of vehicles to access the proposed development.</p> <p>Concerns regard the potential impact of traffic volumes on the Heritage town of Raphoe in terms of</p> <ul style="list-style-type: none"> • Architecturally sensitive buildings • Proximity to schools • Mica affected dwellings • Traffic congestion in the town | <p>Proposals relating to the improvement of the width of the local road including piping of surface water drains, provision of additional pull in bays and improvements to the junction with the regional road in terms of radius and surface dressing have been proposed as part of the application.</p> <p>The quarry is served by the L-23749 which is a local tertiary road. This road leads directly onto the R236 regional road. The R236 in turn, links with the N14 primary route approximately 2.3 km to the NE. The N14 is the main transport link between Strabane in Northern Ireland and Letterkenny in Co. Donegal. It is therefore envisioned that this will be the main transport corridor for collection and delivery of loads.</p> |
| <p>3. Visual Impact/Structural Impact</p> <ul style="list-style-type: none"> • HSA value landscape | |

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| <ul style="list-style-type: none"> • Tourism/Heritage status of the Town • Architectural heritage of buildings (Bishops Palace, Cathedra, Oakfield Housel etc) • Archaeological heritage (Nat Mon) sites • Non-compliance with Policy EX-P-2 that prohibits quarries in High Scenic Amenity landscapes. • Applicant is not the owner and this is speculative development | <p>The Planning Authority considers that the existing quarry is well screened from public view. Furthermore, adjoining backdrop of rolling hills and forestry land are considered to aid in the integration of the development within the host landscape. Detailed consideration was given to same in the Planner's report below based on restoration plans and visual impact sections.</p> <p>As noted the main route is via the regional road to the N14 and as such it is not accepted that this development will compromise or exacerbate impact to existing historical buildings in Raphoe town.</p> <p>Detailed consideration of Archaeological Impact on Nat Monuments has been provided as part of the EIAr (An Archaeological Impact Assessment also accompanies the applicaiton) and was considered the Planner's assessment of the proposal. To note only one such structure is within the recommended 300m confines of the site.</p> <p>In terms of policy EX-P-2, it has been clearly established this is a <i>brownfield site</i> previously used for the purposes of quarrying and as such is open to consideration in this instance. It was noted that the Board's Inspector dealing with the appeal of the Planning Authority's of the previous application P1g Ref No. 19/52015 was also satisfied that this was not introducing a new form of development and stated '<i>The proposals would not introduce a new extractive industry activity at this location and, accordingly, the proposals could not reasonably be considered to materially contravene the initial terms of policy EX-P-2 of the County Development Plan. (S 7.2.2 of Inspector's Report, ABP-308326-20 refers).</i></p> <p>A number of alternative locations for the development were considered in the EIAr and noted in Planner's assessment however it is also noted that quarrying is a site-specific industry and this brownfield site has an established use for the purposes of quarrying.</p> |
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| <p>4. Residential Amenity Concerns</p> <ul style="list-style-type: none"> • Noise and dust (property and associated health risks) • Impact of noise from residents those with specific health considerations (autism, asthma etc) Impacts from operational hours/days of same • Proximity to adjoining homes/Structural damage to properties/mica • Use of this area by hill walkers. | <p>These issues were considered in detail in the Planner's assessment as detailed in the planning report under Noise, Blasting and Residential Amenity considerations and have been conditioned in accordance Quarry Guidelines for Planning Authorities and in line with best practice.</p> <p>It is a condition of the decision to Grant that the operational hours and days of work are in accordance with statutory guidelines.</p> <p>The Planning Authority is satisfied that the distance between the nearest properties and the quarry are sufficient to avoid structural damage. Damage to any structure (whether MICA affected or not) is a civil matter between the quarry operator carrying out the blasting and the property owners.</p> <p>This is a private site and such not a material planning consideration.</p> |
| <p>5. Impact on Water Quality</p> <ul style="list-style-type: none"> • Reference made in relation to concerns in terms of QI of the Foyle & River Finn SACs • Pollution and siltation from quarry works • Impact of water run off to existing ecosystems and river catchments and potential silt and chemicals polluting the same • Omission of consideration of wells with proximity of the site- notes reference is only made to one such borehole | <p>The Planning Authority note that the proposal represents works to a previously worked quarry, all submissions, statutory reports and the hydrological connectivity has been considered in detail in the EIAr, NIS and Planners report.</p> <p>Habitat surveys were carried out over a 6-month period (bird, badger, otter, bat mammals amphibian/reptile invasive species), the PA notes the comments from DOHLG for further monitoring as part of any permission and same has been conditioned.</p> <p>Through a further information request clarification was sought as to the proposed water supply source and whether dwellings in the vicinity were served by boreholes</p> <p>In terms of neighbouring boreholes, this comment has also been questioned by the HSE and Further Information will be requested in respect of same.</p> <p>Applicant responded to the Further Information request detailing that the 3 no. properties accessed of the L-23749-0 road are on the</p> |

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| | <p>public water mains. Checking the planning history associated with the existing dwelling closest to the R-236 road it is was indicated under Plg Ref No. 02/ 6598 that this dwelling was connected to the watermains. All 3 no. dwellings accessed off the L-23749-0 are family members to the overall landowner Andrew Magee.</p> <p>In terms of water volumes, it is estimated from guidelines on water use and based on the estimated 8 to 10 persons employed at the quarry that the total water required to be supplied by groundwater abstraction will not exceed 500 litres daily. This water will be tested to ensure it is fit for purpose before being used. There is no requirement to apply for an extraction license from the EPA as the daily maximum extraction amount of 500 litres is lower than the threshold required for such licenses.</p> <p>It is also is noted that a Trade Discharge Licence will be required from Donegal County Council for the final discharge.</p> <p>In terms of pollution control, it is proposed that outflow from the wetlands will be directed through the hydrocarbon interceptor. The bypass separator will trap any oils/hydrocarbons present in the effluent before the treated effluent is discharged off site to the surface water drain.</p> |
| <p>6. Impact on Tourism Oakfield park, Beltany Stone circle etc</p> | <p>It is accepted that the site is located within an area identified as High Scenic Amenity. However, as noted this is a brownfield site. The impact of the site in terms of noise, blasting, traffic, water safety, ecology has also been considered in the EIAR, NIS and Planner's report with associated mitigation measures. These mitigations have been conditioned in the Council's decision to grant permission.</p> |
| <p>7. Flooding and Increased risk of runoff</p> | <p>It has been established there is no flooding risk associated with these lands or the proposed development.</p> <p>Ground water run-off has been considered in detail in the EIAR, NIS and conditioned accordingly.</p> |

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| <p>8. Allegations of illegal dumping on the site – health and environmental impacts of quarrying of same</p> | <p>A condition was imposed on the copy of land transfer from Donegal County Council to the landowner in respect of the cleaning up of the area by the purchaser at his own costs and detailed receipts of same to be submitted to the Council. This is a separate issue and is not a matter for the Development Management Section of Planning to pursue nor does it form part of the assessment of the current application.</p> |
| <p>9. Ecological and Environmental considerations</p> <ul style="list-style-type: none"> • Proximity and potential impact of the proposed development on the River Finn SAC effects on the birds and other wildlife • Lack of dust monitoring protocols and air quality factors • Lack of noise impact assessment/ Lack of baseline noise monitoring | <p>The Planning Authority has carried out an appropriate assessment and is satisfied that the proposed development will not have a significant adverse impact on the QIs of the River Finn SAC.</p> <p>Noise levels and dust abatement/monitoring measures have been conditioned in the planning authority's decision to grant.</p> |
| <p>10. Impact on adjacent mobile phone masts</p> | <p>There is no evidence or reason to consider this would impact on this service. No submission/observation has been received from the mast operator and should disruption occur this considered to be a civil matter between both parties outside the remit of the Planning Authority.</p> |
| <p>11. Environmental Impact Assessment Report (EIAR)</p> <ul style="list-style-type: none"> • Application is deficient in this detail | <p>The Planning Authority note that the proposal represents works to an existing and long abandoned quarry and on the basis of submissions received and the precautionary principle consider that the applicant should submit a Screening Report Assessment for Environmental Impact Assessment (EIA) and Natura Impact Statement to support the decision making process and to eliminate any uncertainty regarding potential impacts this project may or may not have on nature conservation interests.</p> <p>Contents of the EIAR are consistent with Schedule 6 of the Planning & Development Regulations 2001 (as amended) which details the information to be contained within an EIAR</p> |

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| <p>12. Access to pre planning meeting records</p> | <p>There have been a number of FOI requests and requests for information under AIE and these requests have been dealt with under their respective legislative codes</p> |
| <p>13. Enforcement history of the Applicant/other quarrying operations he has been involved in and the invocation of S35 of planning & Development Act, 2000 (as amended).</p> | <p>The Planning Authority prior to the issuing of a Further Information request fully considered whether measures set out in Section 35 PDA were applicable as the applicant is the subject of on-going enforcement cases, one of which is the subject of a High Court Order and, following consideration of the applicant's enforcement history formed an opinion under S35(1) of the aforementioned Act that there was a real and substantial risk the development the subject of the permission would not be completed in accordance with the conditions, if granted. The Planning Authority afforded the applicant an opportunity to respond to same in writing and a response was received from the Agent on the 13/09/2022. Following a detailed consideration of the relevant issues contained within the response received and subsequent consultation with the Planning Enforcement Section as to the progression of enforcement matters, the Planning Authority considered that the application could, in this instance, proceed to be assessed and that this action afforded under S35 of the Act was not merited at this time.</p> |

The Planning Authority is satisfied that the proposed development complies with EU Habitats Directives and the EIA Directive on Climate. Furthermore the planning authority considers, subject to the conditions of the decision to grant permission, that the proposed development will not impact on traffic safety, will not impact on the residential amenities or scenic amenities in the area, will not give rise to dust or noise pollution, will not negatively impact on archaeological heritage or otherwise give rise to environmental (including water quality) or ecological concerns and therefore is in accordance with the proper planning and sustainable development of the area.

In conclusion the planning authority is content with its decision and respectfully asks An Bord Pleanala to uphold the Council's decision to Grant permission in this instance.

I trust the above is of assistance.

Yours Sincerely,

E. Neesh
 For A/Senior Ex. Planner
 Planning Services

/jp



Our Ref. 22/50933
Your Ref. ABP-315708-23

6th March 2023

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

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| AN BORD PLEANÁLA | |
| LDG- | _____ |
| ABP- | _____ |
| 07 MAR 2023 | |
| Fee: € | _____ |
| Time: | _____ <i>post</i> |

Re: Planning Authority's response to the appeal lodged with An Bord Pleanála on the Council's decision to grant permission to 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 at Magherasolis & Craigs, Raphoe, Co. Donegal under planning reference no. 22/50933 (ABP-315708-23)

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Please reply to: County House, Lifford, Co. Donegal, Ireland F93 Y622

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| <p>3. Visual Impact/Structural Impact</p> <ul style="list-style-type: none"> • HSA value landscape | |

- Tourism/Heritage status of the Town
- Architectural heritage of buildings (Bishops Palace, Cathedra, Oakfield House etc)
- Archaeological heritage (Nat Mon) sites
- Non-compliance with Policy EX-P-2 that prohibits quarries in High Scenic Amenity landscapes.
- Applicant is not the owner and this is speculative development

The Planning Authority considers that the existing quarry is well screened from public view. Furthermore, adjoining backdrop of rolling hills and forestry land are considered to aid in the integration of the development within the host landscape. Detailed consideration was given to same in the Planner's report below based on restoration plans and visual impact sections.

As noted the main route is via the regional road to the N14 and as such it is not accepted that this development will compromise or exacerbate impact to existing historical buildings in Raphoe town.

Detailed consideration of Archaeological Impact on Nat Monuments has been provided as part of the EIAr (An Archaeological Impact Assessment also accompanies the application) and was considered the Planner's assessment of the proposal. To note only one such structure is within the recommended 300m confines of the site.

In terms of policy EX-P-2, it has been clearly established this is a *brownfield site* previously used for the purposes of quarrying and as such is open to consideration in this instance. It was noted that the Board's Inspector dealing with the appeal of the Planning Authority's of the previous application Plg Ref No. 19/52015 was also satisfied that this was not introducing a new form of development and stated '*The proposals would not introduce a new extractive industry activity at this location and, accordingly, the proposals could not reasonably be considered to materially contravene the initial terms of policy EX-P-2 of the County Development Plan. (S 7.2.2 of Inspector's Report, ABP-308326-20 refers).*

A number of alternative locations for the development were considered in the EIAr and noted in Planner's assessment however it is also noted that quarrying is a site-specific industry and this brownfield site has an established use for the purposes of quarrying.

4. Residential Amenity Concerns

- Noise and dust (property and associated health risks)
- Impact of noise from residents those with specific health considerations (autism, asthma etc) Impacts from operational hours/days of same
- Proximity to adjoining homes/Structural damage to properties/mica
- Use of this area by hill walkers.

These issues were considered in detail in the Planner's assessment as detailed in the planning report under Noise, Blasting and Residential Amenity considerations and have been conditioned in accordance Quarry Guidelines for Planning Authorities and in line with best practice.

It is a condition of the decision to Grant that the operational hours and days of work are in accordance with statutory guidelines.

The Planning Authority is satisfied that the distance between the nearest properties and the quarry are sufficient to avoid structural damage. Damage to any structure (whether MICA affected or not) is a civil matter between the quarry operator carrying out the blasting and the property owners.

This is a private site and such not a material planning consideration.

5. Impact on Water Quality

- Reference made in relation to concerns in terms of QI of the Foyle & River Finn SACs
- Pollution and siltation from quarry works
- Impact of water run off to existing ecosystems and river catchments and potential silt and chemicals polluting the same
- Omission of consideration of wells with proximity of the site- notes reference is only made to one such borehole

The Planning Authority note that the proposal represents works to a previously worked quarry, all submissions, statutory reports and the hydrological connectivity has been considered in detail in the EIAr, NIS and Planners report.

Habitat surveys were carried out over a 6-month period (bird, badger, otter, bat mammals amphibian/reptile invasive species), the PA notes the comments from DOHLG for further monitoring as part of any permission and same has been conditioned.

Through a further information request clarification was sought as to the proposed water supply source and whether dwellings in the vicinity were served by boreholes

In terms of neighbouring boreholes, this comment has also been questioned by the HSE and Further Information will be requested in respect of same.

Applicant responded to the Further Information request detailing that the 3 no. properties accessed of the L-23749-0 road are on the

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| | <p>public water mains. Checking the planning history associated with the existing dwelling closest to the R-236 road it is was indicated under Plg Ref No. 02/ 6598 that this dwelling was connected to the watermains. All 3 no. dwellings accessed off the L-23749-0 are family members to the overall landowner Andrew Magee.</p> <p>In terms of water volumes, it is estimated from guidelines on water use and based on the estimated 8 to 10 persons employed at the quarry that the total water required to be supplied by groundwater abstraction will not exceed 500 litres daily. This water will be tested to ensure it is fit for purpose before being used. There is no requirement to apply for an extraction license from the EPA as the daily maximum extraction amount of 500 litres is lower than the threshold required for such licenses.</p> <p>It is also is noted that a Trade Discharge Licence will be required from Donegal County Council for the final discharge.</p> <p>In terms of pollution control, it is proposed that outflow from the wetlands will be directed through the hydrocarbon interceptor. The bypass separator will trap any oils/hydrocarbons present in the effluent before the treated effluent is discharged off site to the surface water drain.</p> |
| <p>6. Impact on Tourism Oakfield park, Beltany Stone circle etc</p> | <p>It is accepted that the site is located within an area identified as High Scenic Amenity. However, as noted this is a brownfield site. The impact of the site in terms of noise, blasting, traffic, water safety, ecology has also been considered in the EIAR, NIS and Planner's report with associated mitigation measures. These mitigations have been conditioned in the Council's decision to grant permission.</p> |
| <p>7. Flooding and Increased risk of runoff</p> | <p>It has been established there is no flooding risk associated with these lands or the proposed development.</p> <p>Ground water run-off has been considered in detail in the EIAR, NIS and conditioned accordingly.</p> |

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| <p>8. Allegations of illegal dumping on the site – health and environmental impacts of quarrying of same</p> | <p>A condition was imposed on the copy of land transfer from Donegal County Council to the landowner in respect of the cleaning up of the area by the purchaser at his own costs and detailed receipts of same to be submitted to the Council. This is a separate issue and is not a matter for the Development Management Section of Planning to pursue nor does it form part of the assessment of the current application.</p> |
| <p>9. Ecological and Environmental considerations</p> <ul style="list-style-type: none"> • Proximity and potential impact of the proposed development on the River Finn SAC effects on the birds and other wildlife • Lack of dust monitoring protocols and air quality factors • Lack of noise impact assessment/ Lack of baseline noise monitoring | <p>The Planning Authority has carried out an appropriate assessment and is satisfied that the proposed development will not have a significant adverse impact on the QIs of the River Finn SAC.</p> <p>Noise levels and dust abatement/monitoring measures have been conditioned in the planning authority's decision to grant.</p> |
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The Planning Authority is satisfied that the proposed development complies with EU Habitats Directives and the EIA Directive on Climate. Furthermore the planning authority considers, subject to the conditions of the decision to grant permission, that the proposed development will not impact on traffic safety, will not impact on the residential amenities or scenic amenities in the area, will not give rise to dust or noise pollution, will not negatively impact on archaeological heritage or otherwise give rise to environmental (including water quality) of ecological concerns and therefore is in accordance with the proper planning and sustainable development of the area.

In conclusion the planning authority is content with its decision and respectfully asks An Bord Pleanala to uphold the Council's decision to Grant permission in this instance.

I trust the above is of assistance.

Yours Sincerely,

E. Neill

For A/Senior Ex. Planner
Planning Services

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