

File With _____

SECTION 131 FORM

Appeal NO: ABP 315700-28Defer Re O/H ☐Having considered the contents of the submission dated/ received 27/05/24
fromRapha Community in ActionI recommend that section 131 of the Planning and Development Act, 2000
☒ not be invoked at this stage for the following reason(s): Pending Review by Inspector and Board.E.O.: Laura Gaddy LawlorDate: 07/06/24

For further consideration by SEO/SAO

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: _____ Task No: _____

Allow 2/3/4 weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File With _____

CORRESPONDENCE FORMAppeal No: ABP 318708-24

M _____

Please treat correspondence received on 27/05/24 as follows:

1. Update database with new agent for Applicant/Appellant _____	
2. Acknowledge with BP <u>23</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"/>

Amendments/Comments
3rd Party response to 2.131 received

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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Date: <u>29/05/24</u>	Date: <u>05/06/2024</u>

GERARD CONVIE

M.Sc. Environ. Man. (Distinction);

B.A. (Hons);

3. Town and Country Planning.



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AN BORD PLEANALA	
LDG-	_____
ABP-	_____
27 MAY 2024	
Fee: €	_____ Type: <u>Reg</u>
Time: <u>10.10</u>	By: <u>Post</u>

An Bord Pleanala,

64 Marlborough Street,

Dublin 1.

D01 V902

24th. May 2024

Dear Madam/Sir,

Re : Our Ref : Raphoe Community in Action c/o Mary Harte & Others

Your Case Number ABP – 315708 – 23

P.A. Reg Number 2250933

Further to your correspondence to us dated 09 May 2024, we wish, on behalf of our Clients, to make the following observations in respect of the additional information submitted to the Bord by the Applicant, Mr Patrick Bonar, dated 15th March 2024.

1.00 DUMPING OF WASTE WITHIN THE ABANDONED QUARRY.

1.01 To begin, we would refer the Bord again to our original submission, S.10.06, where we amplified the problems which exist with the dumping which occurred in the abandoned quarry from the 1970's onwards. Please refer again to the report we submitted by Professor Connolly.

1.02 Regrettably, the Applicant in its response to the Bord's concerns and those of the Appellants, about the dumping, fails to satisfy those concerns – it is now evident that there

has been zero investigation of the dumping to identify its contents, its extent and volume, no proposals for remediation including how the quality of water discharging from the site would be safeguarded during remediation. All we got from the Applicant was a statement by the Applicant's agent, Mr Michael Friel, who did not oversee the "removal" of waste he describes, but submits receipts from a waste disposal operator which do not inform the Bord or any of the Appellants in this Case, of the nature of the waste collected, volume etc. and what was not collected, including waste which was buried or how it was disposed of. A statement by the agent, who is not qualified in any field relevant to this matter, falls far short of providing the assurance the Bord and all Appellants rightly require to safeguard the environment and assuage any concerns regarding possible seepage of pollutants from this abandoned quarry via the hydrological pathways to the Foyle estuary and the SAC 's.

1.03 We look askance at the suggestion by the Applicant that he would agree to yet another condition regarding the matter of the dumping – to add to the almost 200 no. conditions which he would have to abide by should planning permission be granted.

1.04 In view of the lack of reliable information concerning the dumping in the abandoned quarry, the site of the current proposal, to permit the development would be contrary to the proper planning and sustainable development of the area and must be refused.

[We wish to inform the Bord that Appellants to this appeal are willing to swear Affidavits attesting to the dumping, and its nature, which occurred over a period of time in the abandoned quarry.]

2.00 Responses by Greentrack in respect of discharge of ground water and water management proposals.

2.01 While Greentrack presents figures for flow rate observed over a short period of time, it is generally accepted that a hydrologist would have more confidence in statistics based on minimum of 10 years of record, [USGS.] With acknowledgement of climate change and its impact on increased rainfall in island countries like Ireland, the 1 in 100 years storm event relied on by Greentrack is likely to increase over the 25 years permitted by Donegal County Council for the duration of quarrying operations. Recent studies have indicated that the 1 in

100 years storms may happen every one to 30 years, and the 1 in every 50 year storms may happen 1 in every 5 years, e.g. research by the Environmental Institute, Princeton, 2019. As such, the water management proposals will be inadequate, especially in the proposed Phase 1 of operations when insufficient management paraphernalia will have been installed to cope with stormwater.

2.02 Water management proposals as set out, relate solely to the site of the proposed quarry. However, we argue that statistics for calculating streamflow has to be based on the extent of the watershed which has not been defined by the Applicant. Contributors to the streamflow will include all adjacent and higher lands and their current/proposed uses which we believe have not been factored into the submitted calculations. Neither has the nature of the adjoining lands and their soil and their permeability and, as yet, unidentified fissures in the substrata or possible new ones created by the proposed blasting, been factored in.

2.03 This all makes for a very unpredictable future for our weather and resultant rainfall patterns which will negatively impact on the proposed quarrying operations and the resultant runoff. The Greentrack statistics implies certainty which we do not share and, along with the proven errant behaviour of the Applicant towards the environment, renders any decision to grant permission for this proposal as unsafe. It is timely to remind the Bord of the statement by the High Court Judge when the Applicant was charged with transgressions of the planning code and on the environment in his quarrying operations, viz. ***"the respondent, ..., has articulated a clear intention to flout the planning laws and the environmental provisions contained therein ... "*** [see enclosure, Document No. 1]

2.04 To grant planning permission for this development would, therefore, be contrary to the proper planning and sustainable development of the area."

3.00 Site Restoration.

3.01 In the EIAR submitted, it is remarkable that there is no mention of the "pond" that the Applicant now informs us would result on abandonment of the quarrying operation, its management, who would be responsible for this management, what are the ecological

implications for this "pond" etc., not to mention the safety implications. The Applicant has now put forward proposals for management of drainage following abandonment of operations. We submit that this is an after-thought and adds to the belief of the Appellants that, once abandoned, "abandonment" will mean exactly that, i.e. the Applicant will abandon the site entirely, and all the mitigation measures and conditions which might be attached to any grant of permission, having extracted maximum profit from it, leaving it to whoever likes to ameliorate the situation. In our experienced and professional opinion, no one will take responsibility for proper site restoration and no one will be held accountable for non-compliance, especially after the 25 years operation of the quarry which the Applicant asked for and was granted, when who knows who will be around to oversee restoration.

3.02 We enclose Document No. 2 which sets out the problems which Donegal County Council has with quarrying activity in our county. It shows that Donegal County Council has currently served either enforcement notices or warning letters in respect of 45 no. quarries operating in the county, some of which are operated by the same quarry owner, the extant applicant being one of them. We have already submitted to the Bord, in our original submission, a list of unlawful quarrying operations by Mr Bonar; it sets out seven cases related to him. What this information demonstrates is that many quarry operators in Donegal cock a snook at the planning code and regard a planning application for quarrying as an entitlement for permission, much like applying to tax a vehicle, i.e. as long as all the paper-work is present and correct, a grant must issue. And such sense of entitlement appears to be warranted by the apparent lack of permanent enforcement by the county council and a deference which is not afforded to the rest of the populous. The need for stone extraction in the county is acknowledged but not when the lives of adjoining neighbours and the environment is so disastrously affected. This is the wrong proposal in the wrong location.

3.03 To add to this state of affairs, one of the Court Cases in respect of unlawful quarrying, revealed that Mr Bonar's agent, i.e. Mr Michael Friel, was agent for more than a dozen quarry operators in Donegal. Mr Friel has no relevant qualification in either the environment, or planning or even architecture, even though he may now have received recognition from the RIAI. Some of the statements he has made to the Courts in defence of

some of his clients do a disservice to our professions in representing developers and operators in Donegal where we do so having regard for the law and relevant codes of conduct. Doc. 3, enclosed, shows a Court Case where Mr Friel attempted to defend one of his quarry clients who had been operating a quarry site four times the area which had originally been granted. All this gives reasonable cause for concern that the environment will be the loser if permission is granted for this proposal.

3.04 The further information supplied by the Applicant serves only to underscore the multitude of serious issues with the operation of a quarry at this location where there is anything but certainty in respect of site restoration and its management, which has to be ad infinitum. The proposal, therefore, has serious implications for the environment and would be contrary to the proper planning and sustainable development of the area and must be refused.

4.00 Access

4.01 In our original submission in respect of this appeal, we did not raise the issue of access, vision lines, etc., as the proposal had the blessing of the road engineers in Donegal County Council whom we assume act in the interests of traffic safety, irrespective of who the applicant is. However, thanks to the queries by the Bord regarding the access, we are informed that the existing county road, the L 2374, is no longer to be used by the Applicant as access to the proposed quarry. Instead he is proposing a new access ***which is outside the original site submitted.***

[Please note that the L2374, which leads to the proposed site is not a through-road; it gained the status of a county local road as the county council operated the quarry which used to exist there; however, it leads only to the disused quarry.]

4.02 This new entrance, like the current county road access, shows a vision line of 72m. on the south west side [Raphoe Town side] and 180 m. on the other side. The standards set out in the County Development Plan 2018 – 2024, Part B, Appendix 3, require visibility lines of between 120m and 160m in respect of development like that proposed, see Doc. 4, enclosed. ***[It is argued that the higher figure must apply in this case as there is a sharp***

corner on the south west side [Raphoe Town side] of the new entrance and there exists another county road opposite the new entrance, the L2374-4. Furthermore, the R 236-6 is a regional road, being the main road between Derry and Galway, through Raphoe Town, and the existence of an existing domestic entrance on this south west side, home of Mr Joe Magee, [marked 'Z' on Doc. 5, enclosed] adds to the traffic confusion at the proposed entrance which will undoubtedly pertain.]

[Astonishingly, the Planning Authority insists that traffic from the proposed quarry would turn left from the site and head towards the N14 and then southwards, if that was where its destination was; that is simply not believable; lorry drivers will do what lorry drivers do and take the most time-efficient route available as their pay depends on speed of delivery and the number of loads they can deliver in a day. So, quarry traffic to and from the proposed quarry would travel through Raphoe Town if coming from or going to south of the Town with the anticipated disastrous consequences for the historic fabric of the Town and its important listed buildings.]

4.03 The owner of the afore-said house is a Mr Joe Magee, uncle of the individual from whom the Applicant is proposing to acquire the proposed quarry site. He is known locally to be opposed to the development of the quarry on traffic safety grounds, inter alia, but, because of the familial tie in respect of the proposal, he has not submitted any objection to the application. However, that does not mean that the authorities charged with making a decision on this planning application, i.e. Donegal County Council and now An Bord Pleanala, should not consider the traffic safety implications of this proposal and new access arrangements which will seriously impact on safe access to his home as well as his residential amenities, as well as on the general users of the adjoining regional road. The Bord will note that the Applicant has not submitted any consent from Joe to any improvement in the vision lines over his property, and he also owns the land marked 'Y' on Doc. 5, enclosed. That is the side where vision lines at the entrance to the Site are grossly deficient and are certainly contrary to the standards set out in the County Development Plan 2018-2024.

4.04 The Applicant has not submitted all relevant letters of consent in respect of the new access arrangements. He has submitted a letter from Mr Andrew Magee consenting to the provision of sightlines by cutting hedges, but that can only be over his land, marked 'AM' on

Doc. 5, enclosed. However, the Applicant's newly submitted plan shows vision lines which trespass on land owned by Mrs Thompson, [home and land marked 'X' on Doc. 5, enclosed.] It is this sort of misinformation by the Applicant which adds to the serious concerns the opponents of this proposal have, and who will, for decades, have to police the quarry operations if permission is granted. That, we submit, is not how planning ought to be administered.

4.05 The access arrangements proposed add to the reasons, already set out in our original submission in respect of this appeal, why this proposal must fail; the proposal is contrary to the provisions of the County Development Plan in respect of access standards along a regional road, is prejudicial to traffic safety and is, therefore, contrary to the proper planning and sustainable development of the area and must be refused.

5.00 Location Of Sump During Operations

5.01 It is intended that one of the other appellants in this case will remark in fuller detail in respect of the sump arrangements. However, the confusion regarding the extraction of water from the quarry floor, existing and as operations continue, only go to confirm the total erratic nature of the proposal where no amount of mitigating conditions will resolve a situation where a quarry operator such as the Applicant can be relied on to ensure a text-book operation. Such an operation would demand an operator who has a proven track record in environmentally sound quarrying. That is not the case in this application.

5.02 In the circumstances, it is argued that there is far too much risk in granting this application and that serious doubt exists as to the bona fides of the Applicant. The proposal, therefore, would be contrary to the proper planning and sustainable development of the area and must be rejected.

6.00 Noise and Dust.

6.01 We have already set out the opposition to this proposal in respect to noise and dust in our original submission to the Bord and we have described the obscene proximity of the proposed industrial operation of a commercial quarry in relation to existing homes and institutions like the Royal and Prior School, inter alia, [quarrying operations will practically be on top of the school playing fields.] However, the recent information from the Applicant confirms further proof, if any were needed, of how erratic the operation of this quarry will be. It seems the plan is to start operations with a temporary crushing and screening plant in one location and later to install a permanent plant in some other location. However, it is not clear where this plant will be installed. Obviously, its location is vital in determining the negative impact on affected properties. Furthermore, properties affected by the second location of the plant will be different from the properties affected by the first location and will give rise to further complaints about the operations which were not envisaged initially.

[Furthermore, it cannot be stressed enough the unsustainable proximity of this proposal to homes and institutions and other properties like the tourist attraction which is Oakfield Park as well as the main-stay of life in the Lagan Valley, i.e. farming, which will negatively be impacted by the blasting explosions and excavations proposed and the noise and dust derived from those activities. We must again stress the negative impact of heavy HGV's trundling through the "narrow and picturesque streets of Raphoe Town" and quote again from English Heritage Noise, that "dust and the vibration caused by the regular passage of HGVs have the potential to damage the fabric of historic buildings, monuments and areas. Such traffic can also diminish our opportunities to enjoy and appreciate these assets." No amount of fore-warning of impending explosions can be used as an excuse to think that such activity can ever be considered acceptable and necessary for the public good when such activity will put lives on hold awaiting an explosion at the behest of the Applicant. [In that respect we urge the Bord to again examine the concerns expressed by the HSE about the impact on the residents of their facility.] The Planning & Development Act was enacted as "AN ACT TO MAKE PROVISION, IN THE INTERESTS OF THE COMMON GOOD FOR THE PROPER PLANNING AND DEVELOPMENT OF CITIES, TOWNS AND OTHER AREAS, WHETHER URBAN OR RURAL (INCLUDING THE PRESERVATION AND IMPROVEMENT OF THE AMENITIES THEREOF ... "] The Appellants fail to see, even at this

remove, how the common good is served by granting this proposal or how amenities are either preserved or improved – quite the reverse, it is contended.

6.02 The attention of the Bord is also drawn to the plethora of EU regulations in respect of the right of its citizens to clean air, free from pollutants including particulate matter, e.g. Ambient Air Quality Directive, 2008/50/EC, which brings the EU into line with the WHO recommendations, and under the Air Pollution Act 1987, local authorities must take whatever measures they consider necessary to prevent or limit air pollution., and includes monitoring by them. Similarly with regard to noise, under the European Commission's Zero Pollution Action Plan, [2021] reducing environmental noise is listed as a key objective; the Commission hopes to reduce the share of people chronically disturbed by transport noise by 2030. The Outdoor Noise Directive 2000/14/EC [OND] regulates the noise emissions into the environment by outdoor equipment like that used in quarrying operations. This is a quality of life that those, who would be bound to endure the proposed quarry operations, have right to expect as EU citizens. To achieve compliance with the extent of relevant regulations would require an effort which neither the planning authority nor the applicant will ever make.

6.03 The proposal, therefore, by reason of noise and dust, inter alia, is unsustainable and will negatively impact on the homes, lives, livelihoods and well-being of the existing and future population of Raphoe Town and area and their visitors and would, therefore, be contrary to the proper planning and sustainable development of the area and must be refused.

7.00 Conclusion

7.01 In conclusion, we submit that the Applicant has only added confusion in his further information submitted to the Bord. There has been absolutely no amelioration in anything new he has to offer which might address a single one of the major concerns expressed in our initial submission to the Bord, and which negatively impact on the neighbouring residents, properties, institutions, facilities as well as the natural and built environment in the area.

7.02 In respect of the environment, it worth repeating the conclusion of the Bord's inspector who dealt with the previous appeal, P.A. Reg Ref. 19/52015; ABP – 308326 – 20, viz:

“Notwithstanding the proposed measures to address surface water management and the various conditions that would also need to be addressed and complied with, the recommencement of quarrying operations would present uncertainty regarding the significance of the effects on the receiving surface waters, which could potentially be to the detriment of the ecological status of local waterbodies, including the achievement of the relevant target ecological status under the WFD. To accord with Article 5 of the European Communities Environmental Objectives (Surface Waters) Regulations, 2009, as amended, public authorities should not undertake functions in a manner that knowingly causes or allows deterioration in the chemical or ecological status or the ecological potential of a body of surface water. Based on the details provided, to permit the subject development would be contrary to these legislative provisions.”

That statement by the Bord' inspector is further underscored by the known facts regarding the past conduct of the Applicant as set out. The number of conditions and mitigation measures which would have to be policed render this proposal impossible – there are almost 200 such conditions as well as any which the Bord might add if it is minded to grant permission for this quarry, as well as those in the further information which the Applicant has submitted to the Bord, which we submit only serve to show that the proposed quarrying operations are being amended all the time and will continue to be so, with no respect for the receiving environment and its populous. We repeat the assertion contained in the EIAR that there would be no negative impact on the receiving environment ***“provided all the mitigation measures are strictly adhered to.”*** The extent of mitigation measures and conditions which would be required to ensure the attainment of that assertion is simply mind-blowing and proves that the statement by the former appeal inspector is well-warranted. We argue that the operation of a quarry at this location is unconscionable in a suburban area and would present a nightmare for the local population having to do, probably all, the policing of the conditions and mitigation as well as any other future activity in the quarrying operations not covered by the current proposal.

7.03 We strongly argue that this proposal is not a continuation of an existing quarry but a new development, the former small-scale quarry having ceased decades ago, exceeding the accepted rule in planning administration that a use ceases if discontinued for a period in

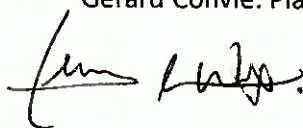
excess of twelve [12] years. Added to that rule is the real intensification of the use, as described in our original submission in respect of this appeal as well as the now suburban location of the new proposal, whereas the former quarry was in a rural location. As such, therefore, all adjoining lands would be blighted and the expansion of Raphoe Town would be halted in its tracks, [please note that the entrance to the proposed quarry is located at the 30 MPH speed limit to the town.]

7.04 So, as well as the points made in this submission, we urge the Bord to examine again the totality of points of objections made in our initial submission in respect of this appeal including the consideration of the use of S.35 of the Planning & Development Act 2000, as amended, to reject this proposal, in light of the evidence before it, and respectfully request that it refuse the application which we suggest should be refused on multiple grounds as set out, as well as being contrary to a multitude of aims, objectives and policies in the County Development Plan 2028 – 2014. It seems incredible that policies regarding the location of quarries and the nature of the subject landscape as set out in the County Development Plan 2018 -2024, and standards pertaining to traffic, inter alia, can so easily be contravened and dismissed by the planning authority for reasons as yet not fully understood, although there does appear to be extraordinary deference paid to the Applicant in the handling of this application. ***[Please note that information sought by us under FOI Acts regarding meetings and discussions held between the Applicant and the Planning Authority following the previous refusal by An Bord Pleanala, was refused by the Planning Authority until an appeal to the Information Commissioner resulted in the release of some records. That sort of carry-on only adds to suspicion and fear within the subject area and, to repeat, is not how planning ought to be administered whereby the public should be aware of planning proposals in their area and all goings-on in respect of them, with no secrecy or nods and winks.]***

Should you require any clarification or further information, please don't hesitate to ask.

Yours Sincerely,


Gerard Convie. Planning Services



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High Court: Injunction granted against quarry near conservation area

21 JUL 2020 Reading time: 6 minutes

AN BORD PLEANÁLA

27 MAY 2024

LTR DATED _____ FROM OBS

LDG- _____

ABP- 315708-23

WRITTEN BY:



Andrew McKeown BL

ARTICLE TAGS:

PLANNING

ILN

of Conservation (SAC).



About this case:

CITATION: [2020] IEHC 349
JUDGMENT: [External link](#)
COURT: High Court
JUDGE: Mr Justice Anthony Barr

Background

quarry situated at Calhame, Letterkenny, Donegal.

In 2003, the previous quarry operator, **Mountain Top Quarry Ltd**, applied for retention and extension of the existing quarry. An Bord Pleanála refused permission, stating that any future application should include an environmental impact statement.

In 2012, Mountain Top applied to Donegal County Council for an extension of the duration of the 2008 permission, and an extension of the 2008 permission until 9 June 2018 was granted.

In 2014 Bonar's Quarry took over operation of the quarry. In 2018, it applied to Donegal County Council for the continuation of

ILN

Considered in July 2018, but a third party appeal was lodged with the Bord Pleanála.

The 2008 planning permission expired on 9 June 2018. Bonar's Quarry ceased works at the quarry as of that date. In April 2019, An Bord Pleanála refused planning permission for the continuation of quarrying activities because it was not satisfied that the development would not adversely affect the integrity of the Leannan River SAC located 3.5 km away. Further, it found the Environmental Impact Assessment Report submitted inadequate.

While there was no quarrying for an initial period, quarrying operations recommenced on the site in April 2019. Members of the public complained to the County Council.

In June 2019, an Enforcement Notice was issued to Bonar's Quarry requiring the cessation of quarrying within six weeks, which was not complied with. District Court summonses issued in February 2020 in respect of the alleged offence of non-compliance with the enforcement notice, which was adjourned due to the pandemic.

Bonar's Quarry's "clearly stated intention" as expressed by Mr Boner was to continue operating the quarry so as to fulfil its contractual commitments until it was in a position to commence operations at a new quarry in September 2020.

Architect **Michael Friel**, in support of Bonar's Quarry, averred that on the expiry of the planning permission in June 2018, Bonar's Quarry reverted to the pre-1964 quarry while all operations in the extended area ceased. He referred to *Fingal County Council v William P Keeling & Sons Ltd* [2005] IESC 55 where the court held that where an application for planning permission was refused, the making of such an application did not disentitle the applicants from

ILN

1964, *Dunham v Quarry* did not accept as a defence that the quarry had acted as a bar, or form of estoppel, preventing it from relying on the status of the quarry prior to 1 October 1964. Mr Friel said that abandoning the quarry, without the proper grading of the rock face, would represent a potential serious health and safety issue. He stated that the County Council had not dealt adequately, or at all, with the repercussions arising.

Mr Justice Barr referred to the test in *Campus Oil v Minister for Industry and Energy* [1983] IR 82, which established that the court must ask three questions: is there a serious question to be tried; are damages an adequate remedy and where does the balance of convenience lie?

The court considered *Limerick County Council v Tobin* [2005] IEHC 281, wherein **Mr Justice Michael Peart** considered whether to grant interlocutory relief pursuant to s.160 of the Act of 2000, in respect of the operation of a quarry, where the respondent relied on an alleged pre-1964 user of the lands as a quarry. In granting the relief sought, the court said that even though the respondent may, and in all probability would, suffer some losses by the granting of interlocutory relief pending the hearing of this case, it was a loss which would be quantifiable in the event that the respondent was correct and could prove his case.

The court considered **Ms Justice Marie Baker's** dicta in *McCoy & South Dublin County Council v Shillelagh Quarries Ltd & Others* [2015] IEHC 838, which concerned an argument that the works and activity at the quarry had commenced prior to 1964. Ms Justice Baker noted that there was a public interest, in relation to quarries, in ensuring that their operation was carried on in a lawful manner. She held that where the likelihood of further damage to the environment had been established, the public interest in the observance of

Conclusion

“The respondent, through Mr Bonar, has articulated a clear intention to flout the planning laws and the environmental provisions contained therein, until it can carry on its commercial activities at another location.”

The court found that if it were to refuse the granting of an injunction, it would be “encouraging a person to flout the planning laws, which are designed to protect the public interest and would be ignoring the environmental issues which clearly arise in this case, given the nature of the works carried on at the site and its proximity to the Leannan River SAC, with possibly permanent and irreversible adverse consequences thereto.”

Mr Justice Barr was satisfied that the balance of justice lay in favour of the grant of interlocutory injunctive relief against Bonar’s Quarry.



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Planning Services

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FW: AIE 13/22 Conor Sharkey

1 message

Gerard <gmoyne@gpsi.ie>
To: gerard@planningservices.ie

16 May 2024 at 12:07

From: Gerard <gmoyne@gpsi.ie>
Sent: Monday, February 13, 2023 11:30 AM
To: 'Sean Gallagher' <[REDACTED]>
Cc: 'julian theseira' <[REDACTED]>; 'Cormac Conaghan' <[REDACTED]>
Subject: FW: AIE 13/22 Conor Sharkey

From: Conor Sharkey <c.sharkey@donegalnews.com>
Sent: 13 February 2023 09:37
To: Gerard <gmoyne@gpsi.ie>
Subject: Fwd: AIE 13/22 Conor Sharkey

Hi Gerard,

I got these figures back from Donegal County Council. I'll give you a call about them later today,

Conor

----- Forwarded Message -----

Subject: AIE 13/22 Conor Sharkey

Date: Mon, 23 Jan 2023 13:56:18 +0000

From: EILEEN HARKIN <EHARKIN@donegalcoco.ie>

To: Conor Sharkey <c.sharkey@donegalnews.com>

Our Ref: AIE 13/22

23rd January, 2023

Conor Sharkey

c.sharkey@donegalnews.com

Re: European Communities

(Access to Information on the Environment)

Regulations 2007 to 2014 (AIE Regulations) – AIE Regulations – Conor Sharkey

A chara,

I refer to your request under the European Communities (Access to Information on the Environment) Regulations 2007 to 2014 for information held by this Council. A decision has now been made by Mr. Fergal Doherty, Senior Engineer Roads and Transportation and Ms. Carol Margey, Senior Executive Planner.

I outline below Ms. Margey's response:-

Eileen

Please see the below:

Enforcement Notices served on quarries.

S.261 Ref	Quarry Name	Ud Ref No.
EUQY04	Gabriel Murray	Ud 2027 EN
EUQY07	Brian Kerrigan	Ud 2028 EN
EUQY17	McMonagle Stone	Ud 2049 EN
EUQY20	Wesley Henry	Ud 2272 EN
EUQY26	Noel Breslin	Ud 21131 EN
EUQY29	Michael McGroarty	Ud 20140 EN

EUQY31	Patton Bros	Ud 2032 EN
EUQY42	Paul Doherty	Ud 2066 EN
EUQY44	Ian Tinney	Ud 2061 EN
EUQY47	Mountain Top Quarry	Ud 19117 EN
EUQY55	JMG Masonary Building Ltd	Ud 1819 EN
EUQY56	J Barr & Sons	Ud 2060 EN
EUQY58	J Barr & Sons	Ud 2039 EN
EUQY59	Charles McDaid	Ud 2042 EN
EUQY60	Michael McDaid	Ud 2042 EN
EUQY61	Morrow Stone	Ud 21141 EN
EUQY70	Patrick Friel	Ud 21220 EN
EUQY72	James McGee	Ud 20269 EN
EUQY76	Hugh Harkin	Ud 2131 EN
EUQY78	Sinead O'Neill	Ud 20255 EN
EUQY81	Andrew & Kathleen Campbell	Ud 20251 EN
EUQY82	McFadden & McGinley	Ud 19138 EN
EUQY85	M F S Haulage	Ud 20248 EN
EUQY89	James Patton	Ud 2013 EN
EUQY94	James Greene	Ud 20252 EN
EUQY107	John Connor	Ud 19190 EN
EUQY113	Joe Greene	Ud 1774 EN
EUQY123	Daniel McDermott	Ud 22130 EN
EUQY142	Cassidy Bros	Ud 20179 EN
EUQY143	J Barr & Sons	Ud 2060A EN

EUQY144	Glenstone Co	Ud 20114 EN
EUQY156	MCMonagle stone	Ud 21131 EN
EUQY158	Brian Kerrigan	Ud 2028 EN
EUQY175	Wesley Henry	Ud 2272 EN
EUQY 180	M F S Haulage	Ud 20248 EN
	Eugene Ferry & Darren Sweeney	Ud 20158 EN
	Patrick Bonar	Ud 20201 EN
	Lusby Quarry	Ud 21116 EN
	Paddy Mc Gowan	Ud 17105 EN

Warning Letter served on quarries.

S.261 Ref	Quarry Name	Ud Ref No.
EUQY10	Con Friel	Ud 1895 WL
EUQY54	Roadstone Provinces Ltd	Ud 21275 WL
EUQY110	Jimmy Toland	Ud 2023 WL
EUQY 179	Cassidy Bros	Ud 18149 WL x 3
	Cassidy Bros	Ud 21233 WL
	Cassidys & H Doherty	Ud 21411 WL

Kind Regards

Carol

Mr. Fergal Doherty, Senior Engineer, Roads & Transportation has responded as follows:-

Eileen,

Please be advised that over the past 5 years, Roads have procured blocks from each of the listed suppliers below:

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"The audit found that, in general, there was a level of formal non-compliance with the requirements of the Construction Products Regulation among economic operators in Donegal. These issues primarily related to errors in and omissions of the paperwork, and the report states that this generally did not reflect a concern with the tested performance of the products themselves."

Council claims quarry 'four times size it should be'

Posted: 7:00 pm November 12, 2022

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claims

A Falcarragh quarry could be closed down over allegations it is operating at four times the size it should be.

Sean McGee of Niamar Property Ltd will find out on Wednesday if he has to shut the business he has run for almost 30 years.

size

Donegal County Council served an enforcement notice on Mr McGee last year in relation to the quarry at Moyra, Glenties.

be' -

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[https://donegalnews.com/council-](https://donegalnews.com/council-claims-quarry-four-times-size-it-should-be/)

According to the local authority the business is in breach of planning regulations in that it has quadrupled in size from what was initially applied for.

quarry-

four-

As well as the scale of the operation, the council says it has concerns over the potential harm being caused to the local environment, adjoining water courses and to special areas of conservation included in the Natura 2000 network.

~~It~~
~~should~~
~~be~~ denied by the defendant and his agent, architect Michael Friel, who say that all documentation is in place and open to inspection.

During a contest at Letterkenny District Court this week Donegal County Council's executive planner Martin McDermott gave evidence that as far back as 2012 the planning authority approached the quarry operator to advise that the permission he had could no longer be relied upon. Mr McGee was told at that point that he should seek substitute consent.

But no further action was taken until last year when a review of all quarries in the county was commenced. The review was launched shortly after Mr McDermott was appointed to the role of quarry compliance officer.

The court heard that when planning permission was granted for the Falcarragh development in 1996, it was for 0.979 hectares within the overall land holding.

One of the allegations is that it has since grown far beyond that.

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"The quarry that currently exists would be in excess of four times that area," Mr McDermott said.

Solicitor Patsy Gallagher, representing Sean McGee and Niamar Property Ltd, asked why there was a sudden urgency in terms of enforcement when the quarry had been operating unhindered for decades.

"This quarry has been quarrying since 1996 within that planning permission until the enforcement notice was served in April last year. Why is there an urgency now when there was none in 2000, 2010, 2012, even 2015 and 2016," Mr Gallagher asked.

"The reason for the urgency is that we have an unauthorised quarry operating without the benefit of planning permission," Mr McDermott replied.

"The planning authority advised ten or eleven years earlier that the permission was not safe and it required substitute consent, ie retention from An Bord Pleanála."

Patsy Gallagher pressed though the fact that enforcement action only began last year.

"The council did nothing after the inspection in 2012. There was no action, there was no urgency. So the parties kept on quarrying believing everything was okay."

"The party appears to have continued quarrying, that is correct," said the council's compliance officer.



Judge Éiteáin Cunningham will deliver her verdict on Wednesday morning.

Architect Michael Friel represents over a dozen quarry operators in Donegal. From the witness box he said in his opinion the planning permission in place was valid and legal.

"They just seem intent on achieving this enforcement notice that this quarry just stop," he said.

"My client has been operating this quarry for over 27 years, he had a brother killed in the quarry in 1999. It is his livelihood, it means a lot to him and I just don't think the council can come after working in the business for 27 years and say there is an enforcement notice, you must cease immediately. There has to be more to it than that."

Mr Friel argued that the quarry continues to operate within the original boundaries laid out in 1996.

"We have it pinned, pegged on site, anyone is welcome to look at it."

But this was refuted by solicitor for Donegal County Council, Kevin McElhinney.

"If I bring you to the application form lodged by James McGee, who was the beneficiary of this planning permission, he has in his application the area of the site being quarried is 0.979 hectares. You have heard the evidence that it is now four hectares."

"I don't agree with that," said Michael Friel.

The architect added that Sean McGee was willing to work with Donegal County Council on finding a resolution to the dispute.

"Give him a chance. A hard working guy in the quarry for 27 years making a living. Give him a chance to work with Donegal County Council on this matter."

Following further lengthy legal argument Judge Éiteáin Cunningham said she would need time to consider all submissions made to the court.

She adjourned the matter until November 16 when she will deliver her verdict.

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Table 3 Appendix 3: Vision Lines at accesses to Non-National Rural Roads, outside 60kph speed limit zone

Vision Lines at accesses to Non-National Roads				
DMRB - Ref	Access Type	Speed (kph)	Y Distance (Metres)	X Distance (Metres)
TD 41- 42/09	Multiple Access	42	50	3m*-9m**
Table 7.1/DN- GEO-03043	Multiple Access	50	70	3m*-9m**
	Multiple Access	60	90	3m*-9m**
	Multiple Access	70	120	3m*-9m**
	Multiple Access	85	160	3m*-9m**
	Multiple Access	100	215	3m*-9m**
	Single Access		Dependant on speed limit above	2.4m

* When stop sign is erected at junction

** When yield sign is erected at junction



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27 MAY 2024

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Planning Map & Land Register details shown coloured Green

Planning Map & Land Register details shown coloured Green

MAGHERABOY
ED RAPHOE

LAND OWNERSHIP LAYOUT PLAN

Scale 1:2500

10