

STATEMENT OF EXCEPTIONAL CIRCUMSTANCES  
IN RELATION TO A  
SECTION 177E APPLICATION FOR SUBSTITUTE CONSENT  
BY SCOTSHOUSE QUARRIES LTD.  
MARCH 2023

William J. Smyth FIEI .

114 WESBURY, STILLORGAN, CO. DUBLIN A94 NN99

## **1. Introduction**

Scotshouse Quarries Ltd. (hereafter Scotshouse) operates a quarry at Aghnaskew, Scotshouse, Co. Monaghan, that, while having pre-63 origins, has relied on permission 83/09 as authorisation for its quarrying activities. These quarrying activities include the extraction of rock by blasting and the subsequent crushing, screening and washing of aggregates.

Around 2019, on foot of a complaint to Monaghan County Council, a question arose as to the authorised status of the full extent of the quarry, even though the quarry was operating well within its Section 261 registered area. In 2021, Scotshouse, following planning and legal advice, accepted that there was a likely EIA offence on the lands beyond those covered by 83/09, and made application to An Bord Pleanala under Section 177C for Leave to Apply for Substitute Consent, ABP-311755-21 refers.

Following a grant of Leave to Apply for Substitute Consent, with such application to be accompanied by a remedial Environmental Impact Assessment Report and to be submitted by 31<sup>st</sup> March 2023, Scotshouse is now submitting the required application to An Bord Pleanala under Section 177E within the period provided.

While the matter of Exceptional Circumstances was a necessary key matter decided upon by An Bord Pleanala in allowing the 'Leave' application, caselaw of July 2019 and the subsequent amending legislation of December 2019 requires that this matter is re-visited under Section 177E in order for public consultation, there having been an EIA offence identified. To that end, this Statement of Exceptional Circumstances is being submitted in order to facilitate the required public consultation aspect of this Section 177E application.

The site planning history, the exceptional circumstances grounds for the Section 177C 'Leave' application, and decision of An Bord Pleanala in relation to that application are set out hereunder to inform the public of the background to this Section 177E Substitute Consent application, and the role of various parties in that journey.

## **2. Planning History to Section 261A**

Quarrying at this site dates back to pre-63. For whatever reason, a regularising permission was applied for and granted for extraction on c.3.3 hectares within a landholding of approximately 11.5 hectares, permission 83/09 refers, see Appendix I.

The site was registered as required under Section 261 (reference QY1), see Appendix II, and included submission of details of proposed eventual extraction on c.10 hectares of the 11.5 hectare landholding. In 2006, Monaghan County Council re-stated, modified or added to the original permission under the provisions of Section 261(6)(a)(ii). It should be noted that the area granted permission under 83/09 had been exceeded by the time of Section 261 registration.

The Section 261 conditions added to the original conditions and, per the legislation and final decision of Monaghan County Council, are deemed to be as if under Section 34, i.e. as a permission. In particular, QY1 Condition 5 requires compliance with the conditions and details of the original permission and the details submitted under Section 261. Thus, the original permission as modified by Section 261 then comprised the 'permission' governing quarry activities at the site. This approach is confirmed by the written acceptance by the Planning Authority of a Restoration Plan in 2006 submitted in compliance with the Condition 3 of the Section 261(6)(a)(ii) conditions which showed the entire site being restored.

In 2008, permission was granted for floodlights, with the site map indicating the extent of the quarry as being the registered area, 08/787 refers. Similarly, a portal frame workshop building was also granted permission, 09/618 refers, and subsequently, 10/127 was granted for the erection of an office building, weighbridge, and 2.4m roadside boundary palisade fencing, each of these showing the quarry extent.

Each of these permissions provided Monaghan County Council with occasion to review the planning status of the underlying quarrying activity within the assessment of each new application.

### **3. Section 261A**

In 2012, Monaghan County Council assessed the site in accordance with the provisions of Section 261A, and found that neither EIA or NIA offences existed on the site, see Monaghan County Council Section 261A Report at Appendix III. Given that extraction had continued to expand to what was now a significant area beyond the original 83/09 area, to approximately 5.7 hectares total extraction area, the presence of such unauthorised extractive development should have triggered a Section 261A(2)(i) determination with regard to a mandatory EIA requirement and consequent Section 261A(3) decision that Substitute Consent was required to be applied for, accompanied by an remedial Environmental Impact Statement.

However, the outcome arrived at by Monaghan County Council was that of No Further Action. This outcome is proof of the Planning Authority's enduring view that the modified permission governing the site provided for extraction on the registered area. Additionally, in the Section 261A assessment, the Planning Authority screened out the need for Appropriate Assessment on the site.

Page 1 of the Section 261A Report for the site clearly shows the outline of the area approved by 83/09 and thereunder the area approved under Q/2004/3002 which is the entire registered area. Page 5 of the Section 261A states:

*This site is authorised by planning permission P/83/09. Whilst it is noted that development has taken place post 1990, post 1997 and post 2008, it is also noted that no quarrying activity has been undertaken outside of the originally granted site.*

Given the area under development in 2012 was approximately 5.7 hectares, see map of the extent of development in 2011-2013 attached at Appendix IV, the above statement may only be taken as referring to the Section 261 amended area or else it would be an irrational and even absurd conclusion. However, it is completely correct if viewed in terms of the modified Section 261 area.

### **4. Further Authorisations Post Section 261A**

Following the Section 261A outcome in August 2012, further planning applications were made on the site and were granted, proof of both the applicant's and Planning Authority's positions that the site was fully authorised. These granted permissions included a static aggregates processing/crushing assembly, 14/124 refers, and a macadam plant, 15/113 refers. These permissions would not have been granted if the Planning Authority deemed the ongoing quarrying as unauthorised, as the implementation of these permissions is clearly dependent on site-won aggregates, which must have been seen as authorised.

A full list of non-extraction site authorisations is set out at Appendix V, all of which allowed Monaghan County Council the opportunity to consider the EIA and NIA status of the underlying quarry site.

A discharge licence was issued to the operator in 2015, WP26/15, which would have required that a Screening for Appropriate Assessment was carried out by Monaghan County Council at that time and is further proof that no impact is likely on Natura sites in the locality.

Following a complaint to the Planning Authority by a competitor in 2019, the Planning Authority reviewed its actions in Sections 261/261A and decided that the existing permission as modified by Section 261(6)(a)(ii) was defective. This led to a Warning Letter being issued to Scotshouse on 2<sup>nd</sup> June 2020 and subsequent correspondence and meetings followed.

In time, following legal and planning advice confirming the presence of an EIA issue, Scotshouse Quarries ceased extraction from the unauthorised area, and agreed a restoration plan with Monaghan County Council for the area of the site developed beyond 83/09.

## **5. Section 177 Route to Planning Compliance**

It is submitted that Monaghan County Council did at all times treat this site as fully authorised for quarrying throughout the Section 261 and Section 261A processes and did not raise any issue with regard to the ongoing development until 2019. The operator reasonably understood that the modified permission was sound and had purchased the site during the Section 261 process on this basis.

On foot of Enforcement Proceedings, Scotshouse sought to address the issue. While the modified Section 261(6)(a)(ii) conditions could potentially have been regarded as a defective permission, given the wording of the Section 261 legislation, and might have led to being able to avail of the Section 177B provisions via a High Court order to apply for Substitute Consent, agreement for this process could not be reached with the Planning Authority. Therefore, the Section 177C Leave to Apply for Substitute Consent provisions was the only available first step towards regularisation and prospective permission.

Clearly a closure of the business would be a disproportionate outcome for a site which the Planning Authority treated as authorised, and in a situation where the Planning Authority had ample opportunity to identify and address matters over many years and two distinct quarry related review processes, most particularly during the Section 261A process, where this site would have had automatic passage directly to the Section 177E Substitute Consent process as a site with a previous permission and which had fulfilled its Section 261 requirements.

In applying for Section 177C 'Leave', Scotshouse was essentially applying to regain the planning position it would have been entitled to as of August 2012 given the site was well in excess of 5 hectares of extraction area at that time and would have been deficient for EIA regardless of the authority of the modified permission based on established caselaw.

## **6. Section 177C Leave to Apply for Substitute Consent**

Section 177C has two parts: the first decision is for An Bord Pleanála to identify that there are offences present against either the EIA and/or Habitats Directives, and thereby determine that the Section 177C provisions are appropriate to the application; and if Section 177C is found appropriate, then whether exceptional circumstances are present which would allow for a decision to allow the applicant to proceed to Section 177E Application for Substitute Consent.

In October 2021, a Section 177C application was made to An Bord Pleanála, ABP-311755-21. The full planning history was submitted, and details of the accepted EIA offence outlined. Additionally, a

Stage 1 Screening for AA was submitted as part of the application. The assessment of the An Bord Pleanála Inspector is attached, see Appendix VI, and identified the presence of the EIA offence only.

Thus, the first aspect, the appropriateness of the application under Section 177C, was satisfied, and the applicant's progression towards regularisation then rested on the presence or not of exceptional circumstances that would allow the submission of a Section 177E Application for Substitute Consent.

## **7. Exceptional Circumstances Considerations**

The submission in this regard to An Bord Pleanála in respect of exceptional circumstances is substantially re-produced hereunder.

### ***(i) Procedural Error***

Section 177D helpfully sets out the considerations which An Bord Pleanála is required to take into account when deciding whether or not to grant Leave to Apply for Substitute Consent. At Section 177D(1)(a)(ii), it provides for making such a grant where any error of fact or law or procedural error has occurred resulting in any offence such as is present on this site.

It is clear that errors by the Planning Authority during Section 261 and again at Section 261A have led to this situation, and which have prejudiced the applicant enormously. In particular, having relied on the outcome of Section 261, namely the Section 261(6)(a)(ii) conditions, the applicant proceeded to expand the quarry without seeking a further permission (including retention) under Section 34 with EIS as would have been the correct approach at that time and available until ECJ C-215/06 of 3<sup>rd</sup> July 2008.

Thereafter, in 2012 and the Section 261A process, the Planning Authority, in arriving at the outturn of No Further Action at this site, the applicant was unknowingly deprived of the opportunity to regularise by way of Section 261A(2) determination regarding the absence of EIA, and the accompanying automatic Section 261A(3) decision which would have had to follow allowing access to the Substitute Consent process, given the site was registered under Section 261 and had an originating authorisation (83/09the original permission for quarrying).

### ***(ii) Exceptional Circumstances***

Clearly, the compounded procedural errors outlined above are exceptional circumstances in their own right, and worthy of a grant of Leave to Apply for Substitute Consent in this instance.

In applying conditions under Section 261(6)(a)(ii) on the entire site and in its review under Section 261A, the Planning Authority was clearly satisfied that standard conditions had been sufficient for the regulation of the site, for the protection of properties external to the site, including and all protected areas in the vicinity.

In subsequent applications and in the issuance of the discharge licence, the Local Authority had to have had regard to the cumulative impact of the site on land surrounding the site and wherever connectivity may have been present, and the numerous grants of permission and licence are testament to findings of a lack of impact. As stated before, the issue of the site's planning status arose from a complaint from a competitor in 2019; otherwise, the Planning Authority was clearly satisfied with the ongoing development being regulated by Section 261.

It is submitted that the potential impacts set out in Section 177D(1)(b) to assist An Bord Pleanala in assessing whether or not an Environmental Impact Assessment offence is present on any given site would not have resulted in identification of significant risk of environmental impact at this site. This site requires Environmental Impact Assessment because of its size alone.

Section 177D(2) sets out a list of considerations to assist An Bord Pleanala as to whether or not exceptional circumstances are present. Given the planning history of the site, and the numerous times during its development when the Planning Authority had cause to assess the impact of the site for further development, and the applicant's commitment to achieving permission for such further developments (all of which provided for public participation), it is submitted that:

- (a) regularisation of this development would not materially circumvent the purpose or objectives of the Environmental Impact Assessment Directive or the Habitats Directive;
- (b) the applicant clearly did not know that the development was not authorised;
- (c) the ability to carry out the necessary assess of the environmental impacts of the development has not been materially impaired;
- (d) the ability of the public to participate in such assessment has not been materially impaired, noting the lack of submissions regarding this site in Section 261 and Section 261A and other applications;
- (e) the actual or likely significant effects on the environmental (none to minimal) or adverse effects on the integrity of a Natura site (none) resulting from the carrying on or continuation of the development can be discounted;
- (f) that there are no remediation measures required to any Natura site;
- (g) that there is a history of application for and compliance with planning permissions, and the avoidance of known unauthorised development;
- (h) there is no reason to suggest the applicant would not have complied with any direction arising from Section 261A had the Planning Authority applied the provisions correctly.

On these bases, it is respectfully submitted that exceptional circumstances are present in abundance in this instance. In support of this view, a detailed legal opinion from Dr. Mary Moran-Long BL is attached, see Appendix VII.

### ***(iii) Decision of An Bord Pleanala***

The above procedural error and other exceptional circumstances were considered by An Bord Pleanala which made an order under Section 177D granting Leave to Apply for Substitute Consent on 14<sup>th</sup> March 2021, see Appendix VIII.

In that Order, which has the effect of granting a gateway to the substantive Substitute Consent process subject to public consultation and re-consideration of exceptional circumstances at that stage, the Board outlined its reasons for acceptance of the presence of exceptional circumstances relevant to this particular application as follows such as to allow that progression:

- (a) Regularisation of the development concerned would not circumvent the purposes of the Environmental Impact Assessment Directive;
- (b) The applicant had, or could reasonably have had, a belief that the development was authorised;
- (c) The ability to carry out an assessment of the environmental impacts of the development for the purpose of an Environmental Impact Assessment, and provide public participation in such assessments, has not been substantially impaired;

- (d) The actual or likely significant effects on the environment resulting from the carrying out or continuation of the development would be capable of assessment; and
- (e) The satisfactory extent to which the significant effects on the environment can be remediated.

## **8. Summary of Facts and Reasonable Conclusions**

Extractive development at the site exceeded the area authorised under permission 83/09 well before Section 261. The Planning Authority applied binding Section 261 (6)(a)(ii) conditions in 2006 and treated the site as authorised within the registered area per the modified permission. The modified permission was clearly defective in that Environmental Impact Assessment has been absent from the development authorisations, leaving the area outside the originally permitted area in planning jeopardy.

Extraction stopped in this area upon acceptance of the EIA issue and a commitment was given to apply for Leave to Apply for Substitute Consent; such application for 'Leave' was made as quickly as possible and the Board subsequently made an Order granting said 'Leave', having confirmed the offence as that of absence of EIA only and that exceptional circumstances exist in this case.

The prejudice suffered by the applicant's business by the cumulative Planning Authority errors is enormous and has and will be ongoing for several years, given the past requirement to achieve Leave to Apply for Substitute Consent, the time required to commission the Section 177E Substitute Consent application, the likely duration of processing of the Section 177E application, and the further time required to achieve prospective permission to re-commence quarrying within the wider landholding.

The applicant humbly requests that the public and An Bord Pleanála consider this and allow this application to be expedited at the earliest opportunity, given Scotshouse is effectively in this position due to the errors in Sections 261/261A.

**William Smyth FIEI**

**21<sup>st</sup> March 2023**

### **Attachments;**

- Appendix I**      **Permission 83/09;**
- Appendix II**    **QY1 Section 261;**
- Appendix III**   **Section 261A Report 2012;**
- Appendix IV**    **State of Development 2011 – 2013;**
- Appendix V**     **List of Non-Extraction Site Authorisations;**
- Appendix VI**    **ABP-311755-21 Inspector's Report;**
- Appendix VII**   **Legal Opinion by Dr. Mary Moran-Long BL;**
- Appendix VIII**  **ABP-311755-21 Order**

**Appendix I      Permission 83/09**

**William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI**

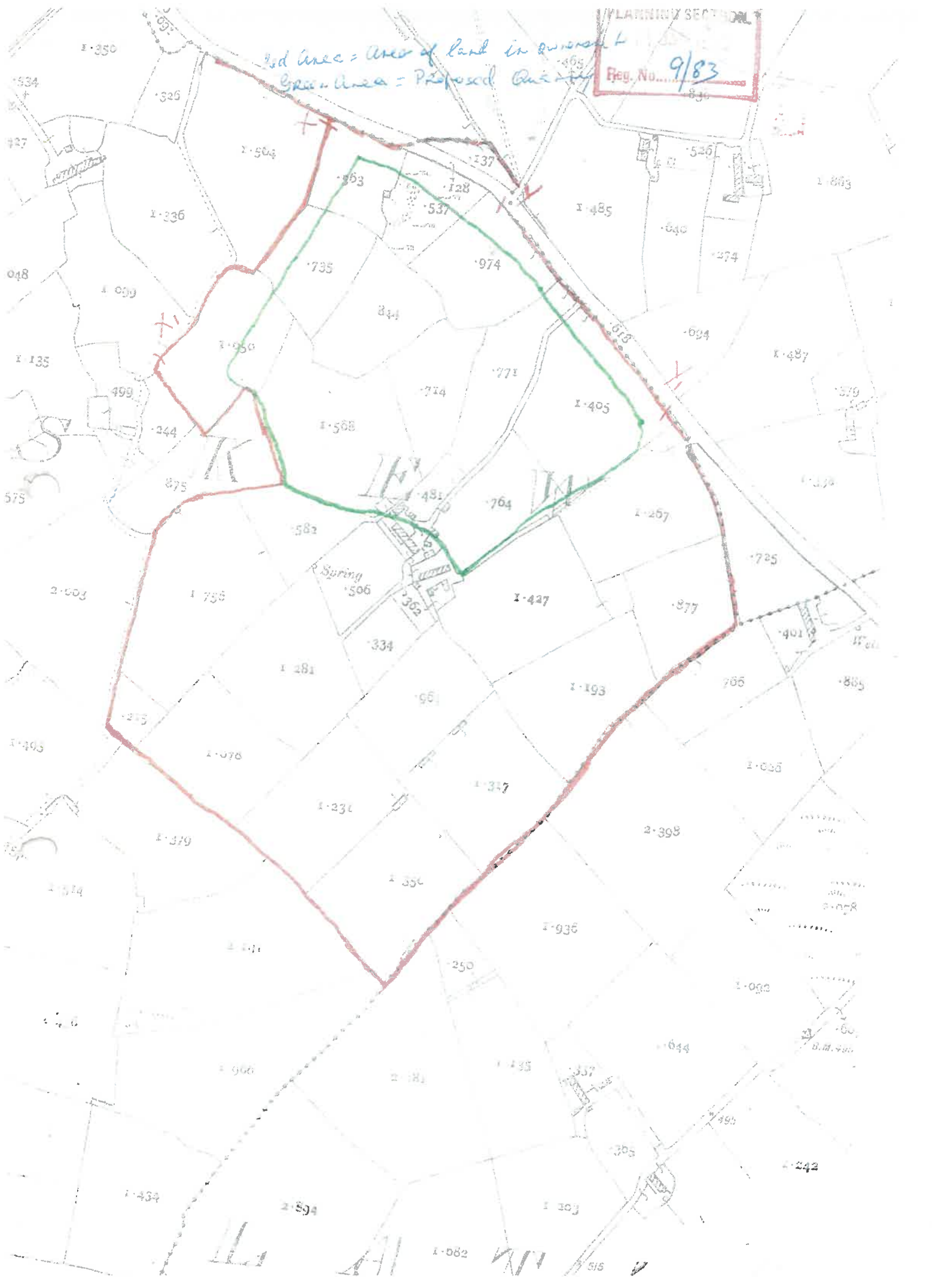
[strategicplanning@mail.com](mailto:strategicplanning@mail.com)

+353-89-4598915



PLANNING SECTION  
Reg. No. 9/83

Red Area = Area of land in question  
Green Area = Proposed Outline



Planning Application by Mr. Patrick Cunningham, Lally Clonak, for development of quarry at Achnaskeay, Scotsburn.

Conditions 1 - 16

1. Applicant to enter an agreement with Monaghan County Council indemnifying the Council against any damage caused to County Roads in the vicinity of the quarry and accepting responsibility for any repair works required over and above normal maintenance.
2. Entrance to site to have a minimum sight distance of 100 metres in both directions.
3. Under no circumstances will surface water from the quarry be allowed to flow onto public roadway.
4. a. Adequate measures to be taken for the suppression of dust at any point of emission.  
b. The dust outfall measured at any point at the site boundaries not to exceed  $150 \mu\text{g}/\text{m}^3$ .  
c. Blasting mechanical or electrical work operations to be confined to the day hours of 8 am to 5 pm and the noise emission (other than from blasting) during these hours not to exceed 43 d B (A) rated sound level at any point along the boundaries of the development.
5. The entrance area of the site to be restored and surfaced.
6. a. Top soil from working areas to be stored and land to be reinstated following termination of activities ~~and~~ works out areas of site become available. Reinstated areas to be planted with trees and shrubs native to the area.  
7. a. A screen belt of trees 6 m. in depth to be planted along the north western and the north eastern boundaries of the quarry site marked X X and Y Y on site map.  
b. This belt of trees to consist of a mixture of Lombardy poplar, Japanese larch, whitethorn, hawthorn, lime, ash and red oak.  
c. Trees should be planted at 2 - 3m centres.  
d. These belts of trees to be underplanted with shrubs to provide additional screening and noise protection.  
e. The remaining boundaries of the site to be planted with trees and shrubs native to the area or where hedges already exist these should be retained.  
f. A solid stained wooden screenfence to be erected at the entrance area to the quarry where it may prove difficult to plant. Solid wooden gates to fence off the quarry to be erected. Gates to open inwards only.
8. All requirements of the Fire Authority to be complied with in full in the proposed development (see attached list).
9. No sign or advertisement to be erected within the curtilage of the development without a prior grant of permission from the planning authority.
10. Subject to the above conditions the development to be carried out in strict conformity with the lodged plans and specifications.

It is recommended that as a matter of courtesy that local residents be notified in advance of any blasting operations.

Contd/;

**Appendix II QY1 Section 261**

MONAGHAN COUNTY COUNCIL

261

File No. QYA

**QUARRY REGISTER**

O.S. No. :

Rec. Date. : 11/11/2004

**App Type :**

**Applicant :** Thomas Leddy  
**Address :** Derryvackney  
Milltown  
Belturbet  
Co Cavan

**Company Reg. No. :**

**Description :** Operating a Limestone Rock Quarry

**Dev. Location :** Aughnaskew  
Scotshouse  
Clones  
Co Monaghan

**Decision :** MANAGERS ORDER

.....

..... **Date :**

.....

**Further Information Requested** ..... **F.I. Received** .

**Contributions Required** ..... **Yes**\_\_ **No**\_\_ .

**Security Required** ..... **Yes**\_\_ **No**\_\_ .

**DETAILS OF APPEAL If Any** .....

.....

.....

**DECISION OF AN BORD PLEANALA :** .....

.....

..... **Date :** .....

1 1

MONAGHAN COUNTY COUNCIL

File No. : QY/1

QUARRY REGISTER

O.S. No. :

Rec. Date. : 05/04/2005 12:00:00 AM

App Type :

Applicant : Thomas Leddy  
Address : Derryvackney  
Milltown  
Belturbet  
Co Cavan

Company Reg. No. :

Description : Operating a Limestone Rock Quarry

Dev. Location : Aughnaskew  
Scotshouse  
Clones  
Co Monaghan

Decision : MANAGERS ORDER NO.

.....

..... Date :

.....

Further Information Requested ..... F.I. Received .....

Contributions Required ..... Yes\_\_ No\_\_ .....

Security Required ..... Yes\_\_ No\_\_ .....

DETAILS OF APPEAL If Any .....

.....

.....

DECISION OF AN BORD PLEANALA : .....

.....

..... Date : ..... 20.....

(a) The area and folio number of the quarry, including the extracted area delineated on a map:

Total site area..... **11.5 ha.**  
Extraction Area..... **10 ha.**  
Folio Number..... **13636 & 14067**

(b) The material being extracted and processed (if at all) ..... **Limestone Rock**

(c) The date when quarrying operations commenced on the land (where known) .....  
**25/07/1983 12:00:00 AM**

(d) The hours of the day during which the quarry is in operation.... **8am-6pm**  
Loading/Offsite Haulage Hours.....

(e) The traffic generated by the operation of the quarry including the type and frequency of vehicles entering and leaving the quarry.....**8 Wheel Tippers & 4 Lorries 5 times a day**

(f) The levels of noise and dust generated by the operations in the quarry ...**Not available**

(g) Any material changes in the particular referred to in paragraph (a) to (f) during the period commencing on the commencement of this section and the date on which the information is provided.....

(h) Whether-

(i) Planning permission under Part IV of the Act of 1963 was granted in respect of the quarry and if so, the conditions, if any, to which the permission is subject.....

Or

The operation of the quarry commenced before 1<sup>st</sup> October 1964.....

Date of commencement of quarry: **25/07/1983 12:00:00 AM**

And

(ii) Such other matter in relation to the operations of the quarry as may be prescribed.

MONAGHAN COUNTY COUNCIL

File No. : 04/3002

241

PLANNING REGISTER

O.S. No. :

Grid Ref. :

Rec. Date. : 11/11/2004

Completed : 05/04/2005

Registration of Quarries

Applicant : Thomas Leddy  
Address : Derryvackney  
Milltown  
Belturbet  
Co. Cavan

Description : Quarry

Dev. Location : Aghnaskew  
Scotshouse  
Clones

Planning Reference P83/9.....

Decision of Planning Authority On Application: to grant permission  
Development of quarry at  
Aghnaskew, Scotshouse.

Applicant: Patrick Cunningham, Largy, Clones

Date of notification of Grant: 25<sup>th</sup> July 1983

Further Information Requested ..... F.I. Received .....

DETAILS OF APPEAL if any .....

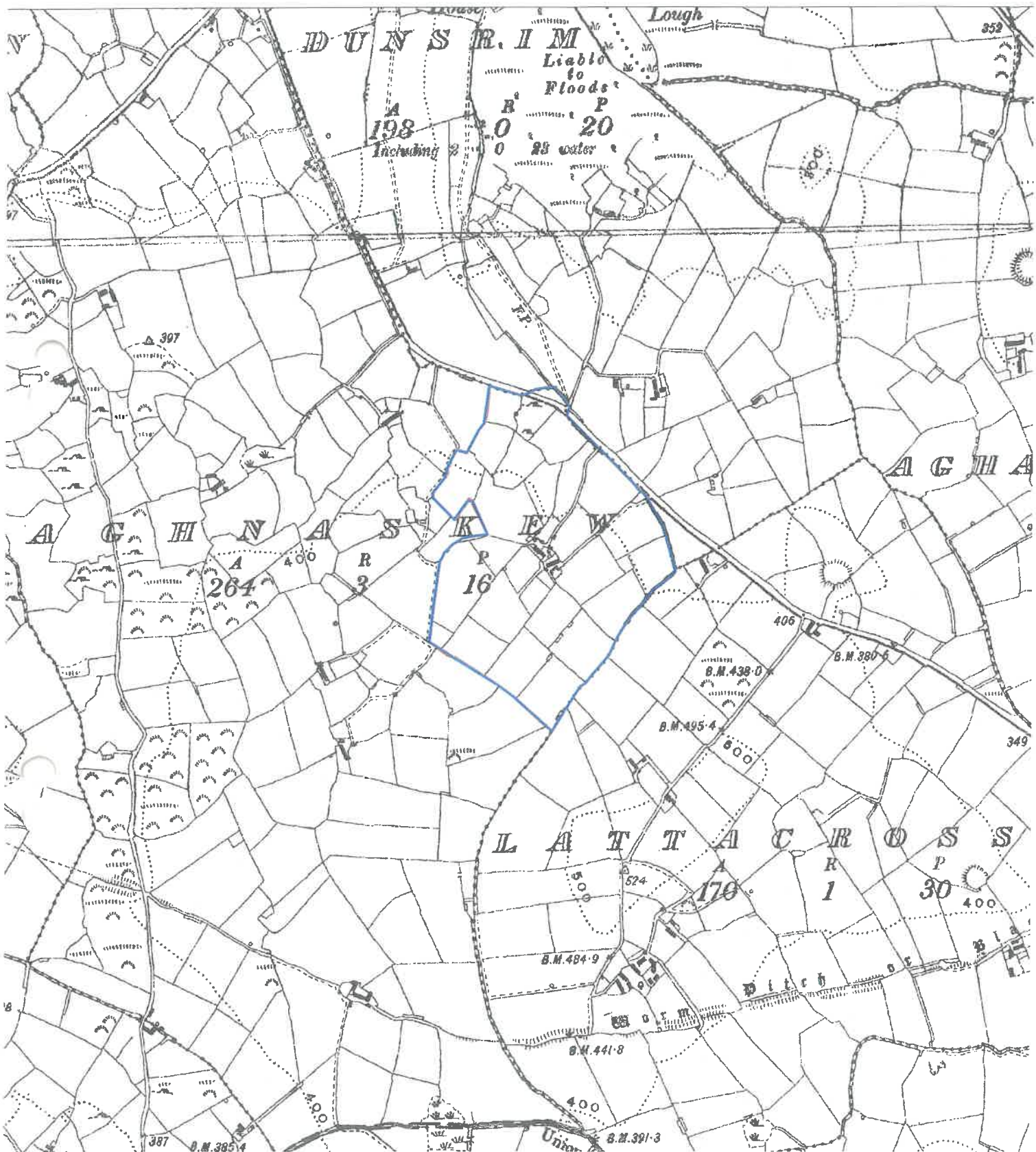
DECISION OF AN BORD PLEANALA : .....

..... Date : .....

004/3002 - Continued.

- (a) The area of the quarry, including the extracted area delineated on a map.....**Folio No. 13636 – 4.25ha. Folio No.14067 – 6.42ha.**
- (b) The material being extracted and processed (if at all) .....**Limestone Rock.**
- (c) The date when quarrying operations commenced on the land (where known).....**1983.**
- (d) The hours of the day during which the quarry is in operation.....**Occasional use at present Week days ...9am – 5pm.**
- (e) The traffic generated by the operation of the quarry including the type and frequency of vehicles entering and leaving the quarry.....**Occasional**
- (f) The levels of noise and dust generated by the operations in the quarry...**minimal...due to infrequent use.**
- (g) Any material changes in the particulars referred to in paragraph (a) to (f) during the period commencing on the commencement of this section and the date on which the information is provided.....
- (h) Whether-
- planning permission under Part IV of the Act of 1963 was granted in respect of the quarry and if so, the conditions, if any, to which the permission is subject, - **P83/9.**
- or
- the operation of the quarry commenced before 1<sup>st</sup> October 1964, **No**
- and
- such other matters in relation to the operations of the quarry as may be prescribed.





DUNSRIM  
Liablo to Floods  
A 198  
R 0  
P 20  
Including 2  
0 28 water

AGHINASSKEY  
A 264  
R 3  
P 16

LATTA CROSSES  
P 170  
P 30

387 B.M. 385-4

Union B.M. 391-3

Ditch

B.M. 438-0  
B.M. 495-4  
B.M. 380-6

B.M. 484-9

B.M. 441-8

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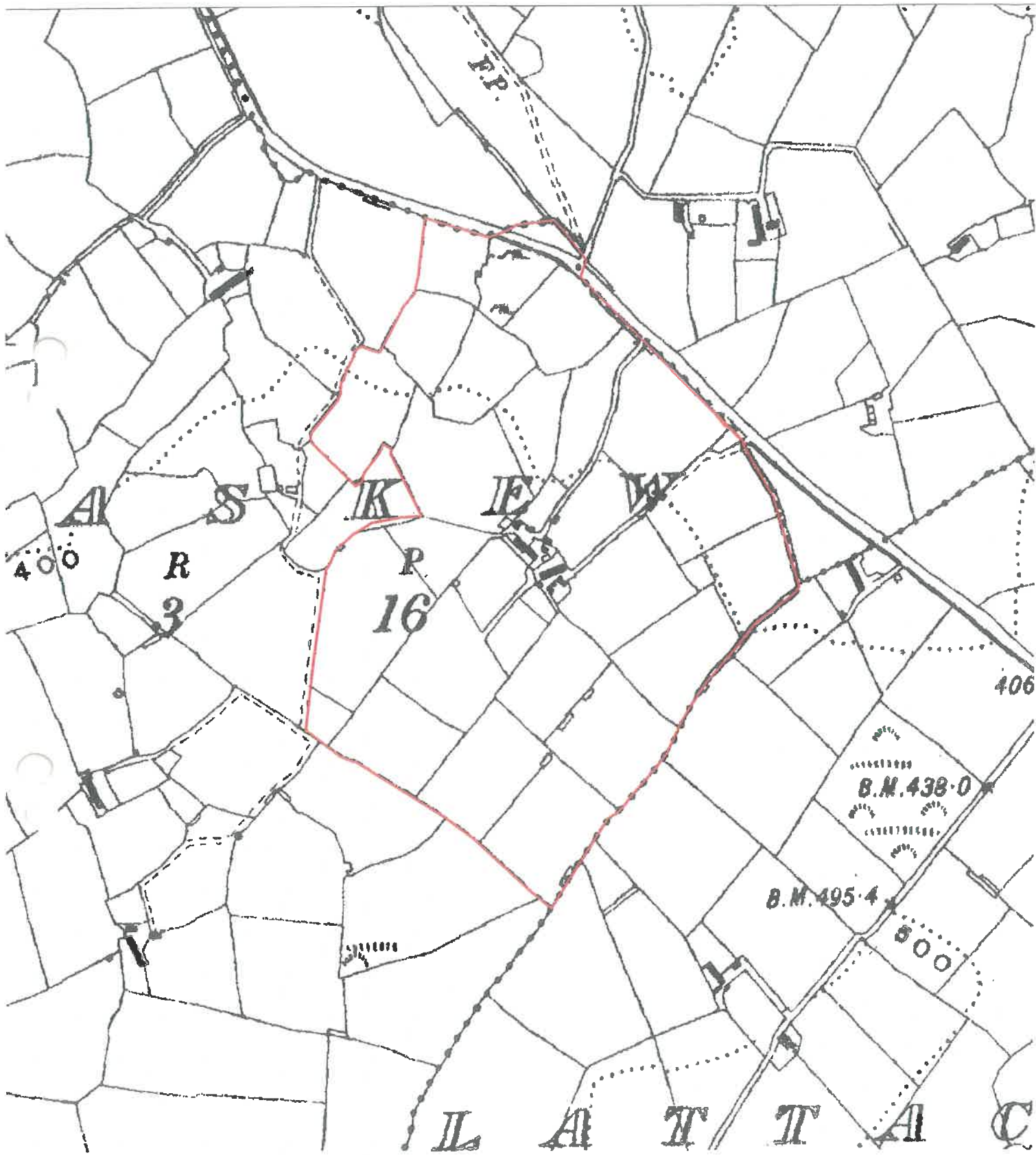
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**Recommended conditions to be attached to operation of quarry in accordance with section 261 (6) (a) (ii) of Planning and Development Act, 2000:**

- 1 a. Sight distances of 80 metres in each direction shall be provided from a point in the entrance 3.0 metres from the road edge and 1.0 metre above ground level. Sight distances shall be measured to the nearside road edge in both directions. Where it is necessary to remove hedges/trim embankments in order to achieve this sight distance, the new boundary shall be located clear of sightlines. Any pole or column materially affecting visibility must also be removed.
- b. Cattle grid/ACO Drain/Gullies shall be installed at the entrance constructed in such a manner as to prevent water from the entrance flowing onto the public road. Similarly measures shall be taken to prevent road surface water from flowing onto the entrance. The discharge from the above to be piped to drainage pipeline.
- c. The discharge of surface water from the public road on to the site through road surface drainage and road subsoil drainage shall remain unimpeded.
- d. Provision shall be made within the site for surface water drainage and no surface water shall be allowed flow on to the public roadway.

Reason. In the interest of traffic safety.

- 2 a. Adequate measures shall be taken for the suppression of dust at any point of emission.
- b. The dust outfall measured at any point at the site boundaries shall not exceed 150 mg/m<sup>2</sup>.
- c. Blasting, mechanical or electrical work operations shall be confined to the day hours of 8 am to 6 pm and the noise emission (other than from blasting) during these hours shall not exceed 45 db(A) rated sound level at any point along the boundaries of the development.

Reason. In the interest of residential amenity and environmental protection.

- 3 a. Within two months of the issue of this Notice, a site restoration plan shall be submitted to, and agreed in writing with the Planning Authority. This plan shall include the following:
  - (i). The identification of all items of plant, machinery, scrap metals, stockpiles and waste material to be removed.
  - (ii). The identification of all areas to be levelled and graded.
  - (iii). The position of all quarry faces, together with details of measures to be used to ensure that all final faces are left in a safe and stable condition.
  - (iv). Details of all additional landscaping measures to be implemented; and
  - (v). A timescale for the implementation of the restoration scheme.

b. The restoration scheme shall be implemented in accordance with the approved plans and within the approved timescale.

Reason. To facilitate the restoration of the site.

4. No sign or advertisement shall be erected within the curtilage of the development without a prior grant of permission from the planning authority.  
Reason. In the interest of visual amenity and orderly development.

5. Subject to the above the quarry shall be operated in accordance with planning permission, granted under file ref. P9/83 and the information submitted accompanying the application for registration.  
Reason. To prevent unauthorised development.

**Please note that this permission, with attached restated, modified or added conditions shall be deemed, for the purposes of the Planning and Development Act 2000, to have been granted under section 34, and any condition so restated, modified or added shall have effect as if imposed under section 34.**

**Appendix III Section 261A Report 2012**

**William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI**

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261A.

## Quarry Assessment – Internal Report

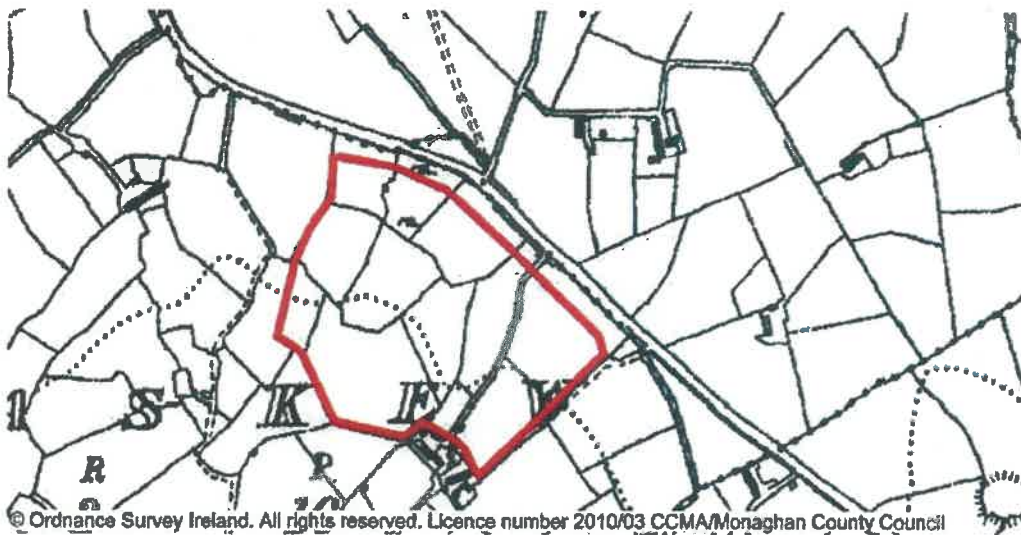
### General Information

Name of Quarry owner: **Paddy Connolly**

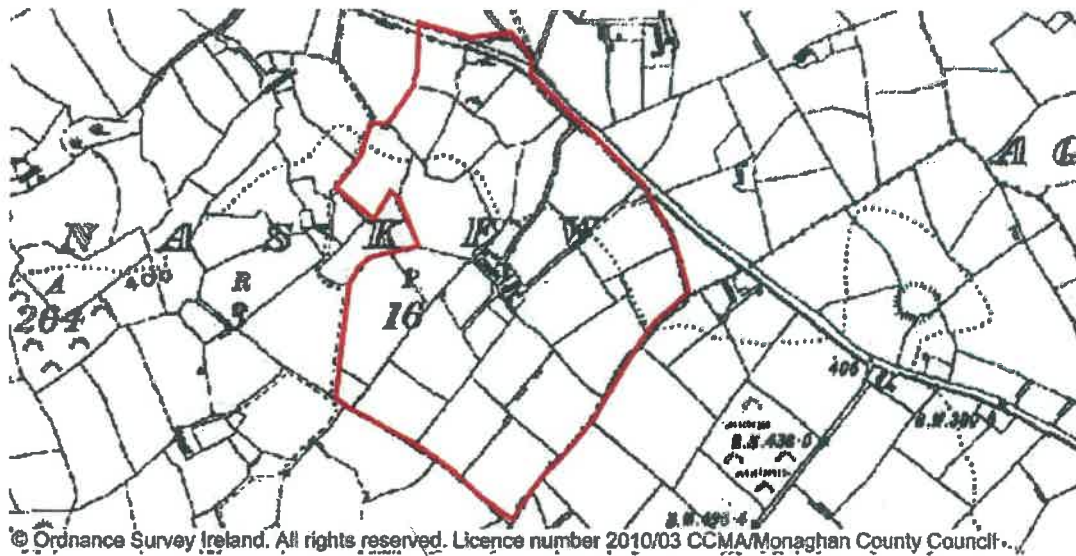
Address of quarry owner: **C/o Aughnaskew, Scotshouse, Clones**

Address of quarry/Townland: **Aughnaskew, Scotshouse, Clones**

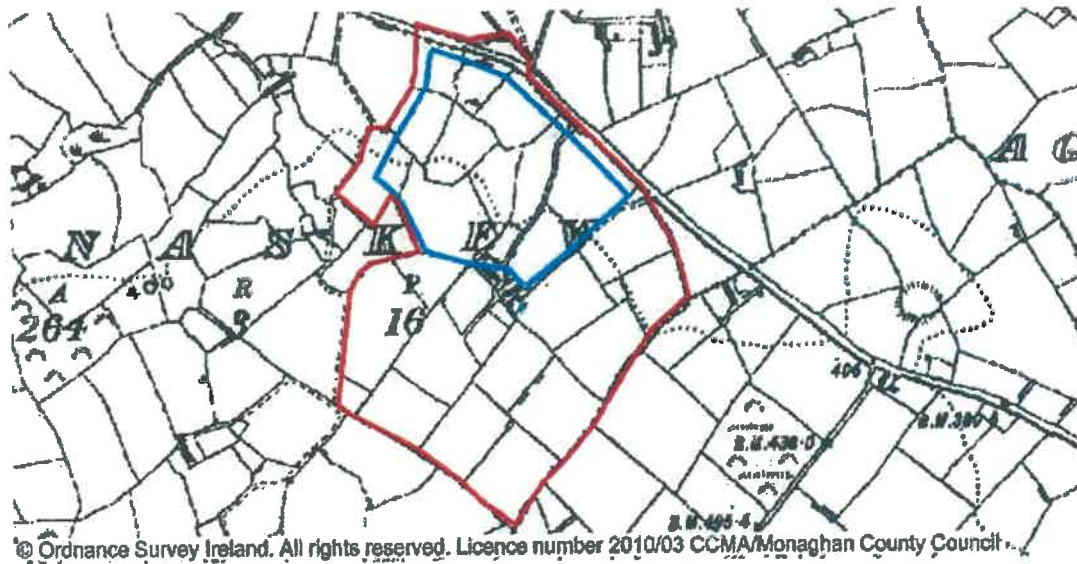
X/Y co-ordinates: **249367, 318357**



**Site as approved under P/83/9**



**Site as approved under Q/2004/3002**



— Site as per Section 261 registration

— Site as per permission P/1983/09



*Aerial photograph illustrating quarry for the period 2004-2006*

### Quarry History

Quarry Development undertaken pre 1964: Yes  No  (1983)

Quarry development undertaken after 1<sup>st</sup> February 1990: Yes  No



## Planning History

Planning Reference Number:

**9/83: Permission to develop a quarry – approved with conditions. Conditions attached at end of report**

**08/787: Existing floodlights**

**09/618: Consist of Portal Frame Workshop building and all associated site works**

**10/127: Retention permission for a Prefabricated single storey office building, weighbridge, and 2.4m high roadside boundary palisade fence**

Environmental Impact Assessment undertaken: Yes  No

Determination as to whether EIA required undertaken: Yes  No

Appropriate Assessment undertaken: Yes  No

Section 261 Registration: Yes  No

Section 261 reference: **Q/2004/3002 – conditions attached.**

Enforcement Reference Number, if applicable: **Not applicable.**

Enforcement Details: Active Case  closed case  conviction  other

## Specific Information

Area of Quarry – Total site area:

**Site area as per P/1983/09: approximately 3.3 hectares**

**Site area as per Q/2004/3002: approximately 11 hectares**

Description of Quarry including type of extraction material: **Greywacke Stone**

Status of Quarry: Currently in operation  Quarry excavation visible but not in operation   
No evidence of quarry  other

Is the quarry within the boundary of or within 15km of a Special Area of Conservation (SAC): Yes   
No

**Site lies within 15km (approx 9kms) from Kilroosky Lough SAC.**

**Site lies within 15km of Lough Oughter SAC (Co. Cavan)**

Is the quarry within the boundary of or within 15km of a Special Protection Area (SPA): Yes  No

Is the quarry within the boundary of or within 15km of a Natural Heritage Area or Proposed Natural Heritage Area. Yes  No

**Quarry lies within 15km of the following Proposed Natural Heritage Areas**

**Drumcor Lough pNHA**

**Annagheane Lough pNHA**

**Lisabuck Lough pNHA**

**Drumgole Lough pNHA**

**Dromore Lakes pNHA**

**Lisarilly Bog pNHA**

**Rafinny Lough pNHA**

**Drumcor Lough pNHA**

**Annagheane Lough pNHA**

Is the quarry located within a flood risk zone: Yes  No

Provide details of watercourses which adjoin the site: **No watercourses within the vicinity of the site.**

Provide details (including distances) of quarry to adjoining dwellings/buildings/settlements: **Number of single dwellings located within the vicinity of the site. Nearest dwelling is located approximately 70 metres from the quarry boundary.**

Additional quarry developments in the area (cumulative impacts): **Not applicable**

## Submissions

Number of submission received:**1**

Summary of main issues raised: **Submission received from Ian Lumley, Heritage Officer with An Taisce.**

*Submission in full is attached to report and is summarised as follows:*

1. **Legal obligation on council with regard to addressing the status of all quarries within its functional area with regard to compliance with the EIA and Habitats Directives and relevant European and Irish Court judgements.**
  - **Substitute consent – is retention by a different name and does not resolve Case C215-06.**
  - **Former retention applications – planning authority will be required to close down any operation where previous retention applications or unjustified Section 261 Registrations**

were lodged to “regularise” unauthorised developments which would have required an Environmental Impact Statement to be lodged.

- **Pre 1963 claims** – note the High Court Judgement of Mr Justice Charleton overturning a decision by An Bord Pleanala granting continuation of quarrying at Lemgare. The initial operation of Section 261 Planning and Development Act 2000 resulted in large scale fraudulent pre 1963 claims without any proper evidence being submitted of
    - Existence of an operating quarry on the site seeking registration in Oct 1964
    - Where a pre 1963 Act claim was made documentation on the extent of quarry unit and extraction rate at that time.
  - **Screening for sub threshold EIA and/or cumulative impact generating EIA requirement** – A determination must be made where EIA is required:
    - Where sub threshold quarry areas might have a significant effect on the environment by reason of sensitivity to a European site, Priority Habitat, watercourse or archaeological feature.
    - Where there is a cumulative impact with an adjacent quarry or associated development, including sites managed by another operator or where activity has ceased.
- 2. Consideration of applications on quarries with previous planning consents**
- **Compliance with financial conditions** – an audit should be carried out to ascertain if there are outstanding financial conditions.
  - **Compliance with reinstatement conditions** – planning authority should examine the issue of reinstatement bonds and the issue of progressive reinstatement.
  - **Non compliance with reinstatement plans** – any operation found not to be reinstating as per their planning conditions, should be subject to and enforcement proceedings issued.
  - **Breach of permitted extraction area** – there are concerns that many quarry operators have exceed their permitted extraction area, this should be investigated.
  - **Illegal blasting** – planning authorities should examine sand and gravel quarries for presence of solid rock and to clarify how this is being extracted. Evidence of any unauthorised blasting should result in immediate closure and enforcement action.
  - **Illegal dewatering** – some sand and gravel quarries engage in dewatering in order to continue extraction in defiance of planning conditions which indicates that all extraction be conducted above the water table. Any evidence of illegal dewatering should result in immediate closure followed by enforcement action.
  - **Unauthorised extraction** – regularly permitted extraction volumes are grossly exceeded. Extractive areas can be determined by comparison of maps and an up to date GPS survey.
  - **Unauthorised disposal of water** – all water courses surrounding quarries should be examined with a view to locating any water being diverted from the quarries. Unauthorised disposal of water should result in the quarry being closed down followed by enforcement.

### **Appropriate Assessment**

Site lies within 15km of the Kilroosky Lough Cluster SAC. The conservation objectives of this SAC are as follows:

- To maintain the Annex I habitat for which this cSAC has been selected at favourable conservation status:
  - 3140 hard oligo-mesotrophic waters with benthic vegetation of Chara species
  - 7210 - Calcareous fens with cladium mariscus and Carcicion davalliance
  - 7230 Alkaline fens.
- To maintain the Annex II species for which the cSAC has been selected at favourable conservation status: White-clawed crayfish.

Given the distance of the quarry from the SAC (approx 9kms) and the fact that there are no watercourses located within the vicinity of the site, there are not considered to be any pathway connectors linked with this development and any Natura 200 sites. Consequently the planning authority is of the opinion that an Appropriate Assessment is not required for this quarry development.

<b>Environmental Impact Assessment/Determinations in relation to Environmental Impact Assessment</b>
--

- Mandatory for new quarries in excess of 5 hectares (1990)

Applicable

Not Applicable

- Mandatory for the extension of a quarry which brought the total quarry to in excess of 5 hectares and represented an increase of over 25% of the existing quarry, provided that the extension in itself exceeded 2.5 hectares (1/5/1999)

Applicable

Not Applicable

**The planning history is crucial when assessing this quarry with regard to determining whether this quarry is subject to an environmental impact assessment or a determination for an environmental impact assessment.**

**This site is authorised by planning permission P/83/09. Whilst it is noted that development has taken place post 1990, post 1997 and post 2008 it is also noted that no quarrying activity has been undertaken outside of the originally, granted site.**

**The Guidelines for Planning Authorities on Section 261A state "if development carried out after 1/2/1990 was authorised by a planning permission granted prior to 1/2/90, EIA is not required in respect of such development under the Directive because the Directive does not apply in respect of projects authorised before the Directive became operative. Any development which obtained planning permission before the EIA Directive came into effect and is operating in accordance with the terms of its planning permission is not affected by the Directive and does not require EIA under the terms of this Directive.**

Similarly, appropriate assessment is not required in respect of developments authorised by a planning permission granted prior to 26/02/1997.

### Sub thresholds

There is a requirement to carry out EIA where the competent authority considers that a development would be likely to have significant effects on the environment.

The planning authority is of the opinion that an environmental impact assessment is not required for the quarry development in question. In accordance with Article 103 of the Planning and Development Regulations 2001, it is noted that the site does not lie within any of the following:

- a) A European site
- b) An area the subject of a notice under section 16(2)(b) of the Wildlife (Amendment) Act 2000
- c) Land established or recognised as a nature reserve within the meaning of section 15 or 16 of the Wildlife Act 1976 as amended by sections 26 and 27 of the Wildlife (Amendment) Act 2000 or
- d) Land designated as a refuge for flora or as a refuge for fauna under section 17 of the Wildlife Act, 1976 as amended by section 28 of the Wildlife (Amendment) Act 2000.

The planning authority does note that the site lies within 15km of Kilroosky Lough SAC. However, given the distance of the quarry from the SAC (approx 9kms) and the fact that there are no watercourses located within the vicinity of the site, there are not considered to be any pathway connectors linked with this development and it is therefore considered that the development will have no impact upon the Natura 2000 network.

In accordance with Schedule 7, the following points are noted:

- There are no additional quarries within the vicinity of the site.
- The surrounding area is not considered to be densely populated.
- The surrounding area is not considered to be environmentally sensitive.
- It is considered that the conditions imposed under P/83/9 and Q/04/3002 has ensured that the development has been assessed with regard to traffic safety, residential amenity, environmental protection and visual amenity.

## Assessment under Section 261A of the Planning and Development Act 2000 and related provisions

I. Following Stage 1 Screening, it is the conclusion of the Planning Authority that Appropriate Assessment

Was required

Was not required

II. Following EIA Screening, it is the conclusion of the Planning Authority that an Environmental Impact Assessment

Was required

Was not required

III. Following EIA Screening, it is the conclusion of the Planning Authority that a Determination as to whether an Environmental Impact Assessment was required

Was required

Was not required



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- Aerial photographs attached to report indicate that quarrying activity has been contained within the boundary of the original planning permission.
- Section 261A(2)(a) states that the planning authority must demonstrate whether:
  - (i) Development carried out after 1<sup>st</sup> February 1990 was not authorised by a permission granted under Part IV of the Act of 1963, prior to 1 February 1990, which development would have required either an environmental impact assessment or a determination as to whether an environment impact assessment was required, but that such an assessment or determination was not carried out.
  - (ii) Development was carried out after 26 February 1997, which was not authorised by a permission granted under Part IV of the Act of 1963 prior to 26 February 1997,

which development would have required having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.

- The planning authority is of the opinion that no development has occurred on this site post 1990 or post 1997 that was not covered by the original 1983 planning permission.
- In addition, the quarry was fully registered under Q/2004/3002.
- Quarry remains operational.

### **Recommendation**

**It is the recommendation of the Planning Authority that no further action is required under Section 261A of the Planning and Development Act 2000 and related provisions.**

## Conditions attached to quarry registration under Section 261



**Recommended conditions to be attached to operation of quarry in accordance with section 261 (6) (a) (ii) of Planning and Development Act, 2000:**

- 1 a. Sight distances of 80 metres in each direction shall be provided from a point in the entrance 3.0 metres from the road edge and 1.0 metre above ground level. Sight distances shall be measured to the nearside road edge in both directions. Where it is necessary to remove hedges/trim embankments in order to achieve this sight distance, the new boundary shall be located clear of sightlines. Any pole or column materially affecting visibility must also be removed.
  - b. Cattle grid/ACO Drain/Gullies shall be installed at the entrance constructed in such a manner as to prevent water from the entrance flowing onto the public road. Similarly measures shall be taken to prevent road surface water from flowing onto the entrance. The discharge from the above to be piped to drainage pipeline.
  - c. The discharge of surface water from the public road on to the site through road surface drainage and road subsoil drainage shall remain unimpeded.
  - d. Provision shall be made within the site for surface water drainage and no surface water shall be allowed flow on to the public roadway.
- Reason. In the interest of traffic safety.

- 2 a. Adequate measures shall be taken for the suppression of dust at any point of emission.
  - b. The dust outfall measured at any point at the site boundaries shall not exceed 150 mg/m<sup>2</sup>.
  - c. Blasting, mechanical or electrical work operations shall be confined to the day hours of 8 am to 6 pm and the noise emission (other than from blasting) during these hours shall not exceed 45 db(A) rated sound level at any point along the boundaries of the development.
- Reason. In the interest of residential amenity and environmental protection.

- 3 a. Within two months of the issue of this Notice, a site restoration plan shall be submitted to, and agreed in writing with the Planning Authority. This plan shall include the following:
    - (i). The identification of all items of plant, machinery, scrap metals, stockpiles and waste material to be removed.
    - (ii). The identification of all areas to be levelled and graded.
    - (iii). The position of all quarry faces, together with details of measures to be used to ensure that all final faces are left in a safe and stable condition.
    - (iv). Details of all additional landscaping measures to be implemented; and
    - (v). A timescale for the implementation of the restoration scheme.
  - b. The restoration scheme shall be implemented in accordance with the approved plans and within the approved timescale.
- Reason. To facilitate the restoration of the site.



4. No sign or advertisement shall be erected within the curtilage of the development without a prior grant of permission from the planning authority.  
Reason. In the interest of visual amenity and orderly development.

5. Subject to the above the quarry shall be operated in accordance with planning permission, granted under file ref. P9/83 and the information submitted accompanying the application for registration.  
Reason. To prevent unauthorised development.

X Please note that this permission, with attached restated, modified or added conditions shall be deemed, for the purposes of the Planning and Development Act 2000, to have been granted under section 34, and any condition so restated, modified or added shall have effect as if imposed under section 34. X

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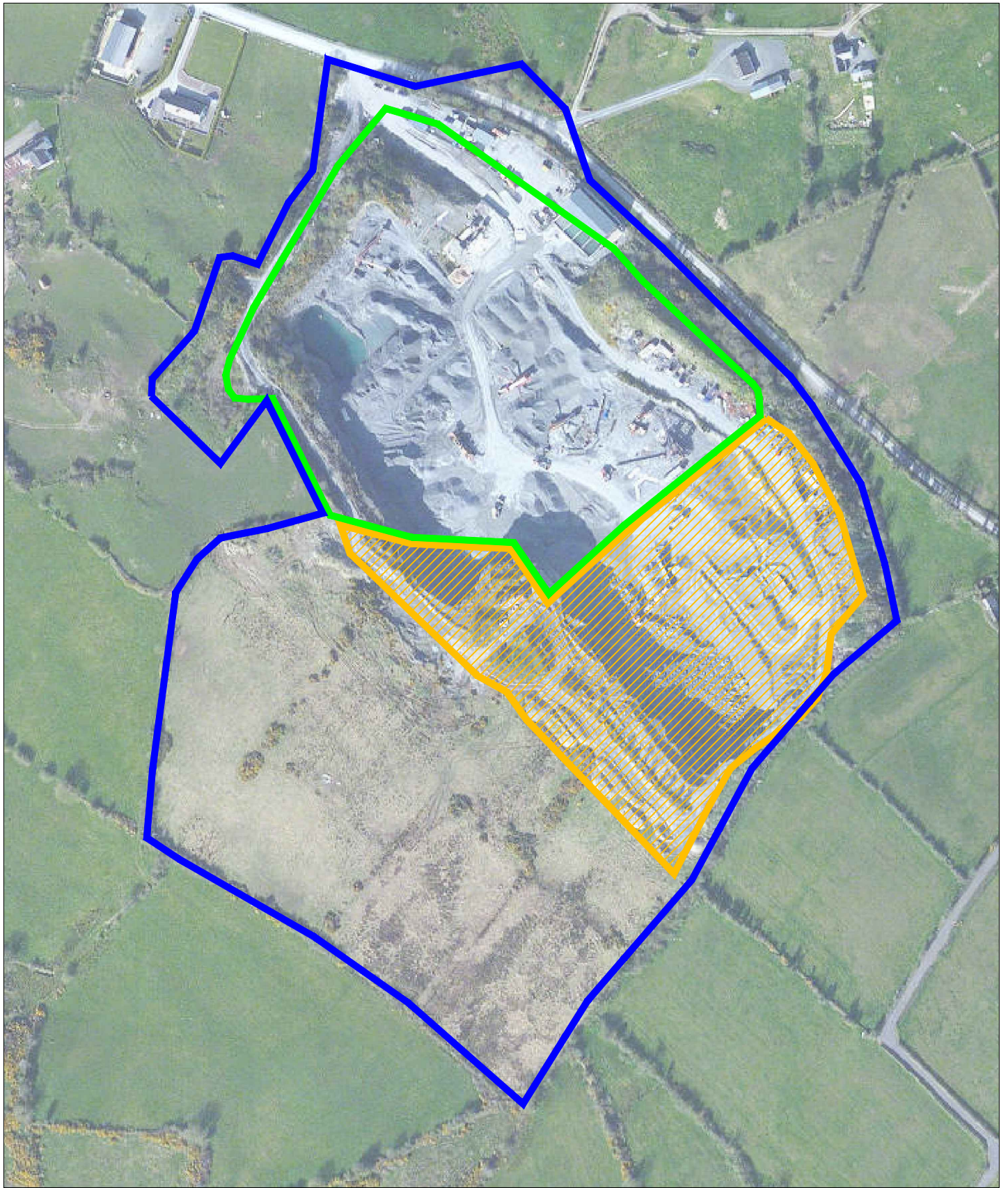
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## **Appendix IV State of Development 2011 – 2013**

**William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI**

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**Legend**

Area Registered Under Section 261

Planning Area Under 9/83  
Area = 3.3 Ha (8.2 acres)

Disturbed Ground Outside Planning 9/83 Area

Area = 2.4 Ha (5.9 acres)



ITM Coords: 649554 E, 818161 N

**EARTH SCIENCE PARTNERSHIP**

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 e-mail: earthsciencepartnership@gmail.com  
 Ordnance Survey Ireland Copyright Licence No.: EN 0021421

Client: Paddy Connolly  
 Project: Aerial Mapping of Existing Quarry Located at Aughnaskew, Scotshouse, Clones, Co. Monaghan

Title: 2011-2013 Google Map  
 Drawn By: Sean O' Donnell  
 Checked By: Patrick O' Donnell  
 Scale: 1:2,500 @ A4 Date: Mar. 2021  
 Job No: EI LS Clients Rev: 0

## **Appendix V List of Non-Extraction Site Authorisations**

**William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI**

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## List of Planning Permissions for Scotshouse Quarry

Reference No	Year	Description	Comment
09/83	1983	Planning Permission to extract 3.3 hectares within a land holding of 11.5 hectares	This permission was on a pre-1963 site
Section 261	2006	Conditions imposed on the entire quarry registered under section 261, consisting of 11.5 hectares	Quarry reference QY 1
08/787	2008	Planning permission for flood lighting	
08/1087	2008	Removal of Condition No.2 associated with the grant of Planning Permission 08/787	
08/787	2008	Retention of existing floodlights approved	
09/618	2009	Consist of Portal Frame Workshop building and all associated site works approved	
10/127	2010	Consist of prefabricated single storey office building, weigh bridge, and 2.m high roadside boundary palisade fence approved	
Section 261A	2012	Planners Report	
14/124	2014	Retention of a crushing plant facility comprising 2 no. crushing plants, a screening plant, concrete storage facility, conveyors, a concrete feeding chute, a concrete supporting structure, electrical services control container, all utilities and associated site works, approved	
14/157	2014	Construction of a site office, wastewater treatment unit and associated raised filter percolation area, car park comprising of 7 no. spaces, storm drainage, foul drainage and all other associated site works, approved	
15/113	2015	Macadem Plant	
WP26/15	2015	Licence to Discharge Trade Effluent at Aghnaskew, Scotshouse, Co. Monaghan	

## List of Planning Permissions for Scotshouse Quarry

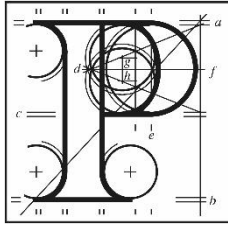
18/485	2018	ESP Substation	
19/9011	2019	Construct site office, wastewater treatment, carpark etc., approved	

## Appendix VI ABP-311755-21 Inspector's Report

William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI

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An  
Bord  
Pleanála

## Inspector's Report ABP-311755-21

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<b>Development</b>	Extraction/quarrying development
<b>Location</b>	Lands at Aghaskew (Dartee by), Scotshouse, Co. Monaghan
<b>Planning Authority</b>	Monaghan County Council
<b>Planning Authority Reg. Ref.</b>	n/a
<b>Applicant(s)</b>	Scotshouse Quarries Ltd
<b>Type of Application</b>	Leave to apply for substitute consent
<b>Planning Authority Decision</b>	n/a
<b>Date of Site Inspection</b>	17 <sup>th</sup> February 2022
<b>Inspector</b>	Hugh D. Morrison



# Contents

1.0 Introduction.....	3
2.0 Site Location and Description .....	3
3.0 Planning History.....	3
4.0 The applicant’s Case for Leave for Substitute Consent .....	5
5.0 Planning Authority Submission .....	9
6.0 Legislative Provisions .....	10
7.0 National Planning Guidelines.....	12
8.0 Assessment.....	13
9.0 Recommendation.....	18
10.0 Reasons and Considerations .....	19

## 1.0 Introduction

- 1.1. This is an application for leave to apply for substitute consent under Section 177(C)(1) & 2(b) of the Planning and Development Act, 2000 – 2021. The applicant is of the opinion that “substantial exceptional circumstances” apply to its lands at Aghaskew (Dartree by), Scotshouse, Co. Monaghan, such that it should be given leave to apply for substitute consent for extraction/quarrying activities.

## 2.0 Site Location and Description

- 2.1. The site is located 0.9km to the south of the village of Scotshouse within a drumlin landscape. It is accessed off the south-western side of the L6280, 0.75km to the south of its junction with the R212, which runs between Cavan Town and Clones.
- 2.2. The site itself is roughly kite shaped and it extends over an area of 11.5 hectares. Some 8.9 hectares has been the subject of extraction for stone known as greywacke. The site entrance is at the northernmost corner of the site, and it is accompanied by a site office and staff welfare facilities, a weighbridge, a wheel wash, and surface water settlement tanks. Further into the site, but still within its northern portion, lies a considerable amount of plant and machinery used to process and crush stone and to produce coated road stone. The central and southern portions of the site have been the subject of the most recent extraction activities. Stockpiles of material are laid out on the quarry floor within these areas. A road runs around the perimeter of the site, elevated above the exposed rock faces.

## 3.0 Planning History

- 3.1. The key quarrying elements of the planning history of the site are summarised below.
  - 83/09: Develop quarry c. 3.3 hectares: Permitted on 25<sup>th</sup> July 1983.
  - QY1: Section 261 registration of a 11.5-hectare quarry with an extraction area of 10 hectares: Registration confirmed by the Planning Authority on 12<sup>th</sup> April 2005.

- Q04/3002: Section 261(6)(a)(ii) conditions attached to operation of quarry on 24th March 2006. Pursuant to Condition 3 a restoration plan for the 11.5-hectare quarry was submitted to and agreed in writing by the Planning Authority on 6<sup>th</sup> November 2006.
- Section 261A(2)(a): In 2012, the Planning Authority prepared a “Quarry Assessment – Internal Report”, which addressed the need for EIA and NIA and which recommended that “no further action is required”.
- Enforcement report dated 21<sup>st</sup> March 2014 following site visit on 14<sup>th</sup> March 2014: No unauthorised quarrying recorded and no non-compliance with conditions recorded.
- Enforcement enquiry E1760: Enforcement report dated 24<sup>th</sup> October 2017 concluded that “the quarry is operating within the boundaries/site area registered under ref. 4/3002 and compliant with subsequent permissions.”
- Enforcement enquiry E82.2019: Warning letters issued on 2<sup>nd</sup> October 2019 and 20<sup>th</sup> February 2020 concerning extension to quarry and quarrying on lands without planning permission and a subsequent enforcement notice was issued on 2<sup>nd</sup> June 2020.

3.2. Other planning applications are summarised below, all of which were made by the current applicant:

- 08/787: Existing floodlights: Retention permission granted.
- 09/618: Portal frame workshop: Permitted.
- 10/127: Prefabricated single storey office building, weighbridge, and 2.4m high roadside boundary palisade fence: Retention permission granted.
- 14/124: Crushing plant facility: Retention permission granted.
- 14/157: Site office, wastewater treatment unit and associated raised filter percolation area, 7-space car park, storm drainage, foul drainage and all other associated site works: Permitted and subsequent application 19/9011 for extension of duration of permission granted until 27<sup>th</sup> August 2024.
- 15/113: Coated road stone plant: Permitted.
- 18/485: ESB sub-station and customer switch room: Permitted.

## 4.0 The applicant's Case for Leave for Substitute Consent

4.1. I will summarise the applicant's case using the headings that he cites for ease of reference.

### **Planning History to Section 261A**

- 4.2. The quarry has operated over many decades, including from before 1963.
- 4.3. Permitted application 83/09 regularised planning for extraction from within an area of c. 3.3 hectares of an overall landholding of 11.5 hectares.
- 4.4. Entire landholding of 11.5 hectares registered under Section 261, as the quarry QY1, with 10 hectares for extraction. Conditions attached to this registration under Section 261(6)(a)(ii) were added to those attached under permitted application 83/09 and deemed to be equivalent to a Section 34 permission.
- 4.5. At the time of registration, the extraction area permitted under 83/09 had been exceeded.
- 4.6. Additional Condition 3 required the submission of a restoration plan. One was prepared for the entire landholding and accepted in writing by the Planning Authority.
- 4.7. Subsequent applications for ancillary buildings and structures (08/787, 09/618, and 10/127) indicated that the quarry extended over the entire landholding.

### **Section 261A**

- 4.8. In 2012, under Section 261A, the Planning Authority assessed the quarry and concluded that, as neither an EIA nor a NIA offence existed on the site, "no further action" was needed. The need for Appropriate Assessment was screened out.
- 4.9. By 2012, the area under extraction had exceeded 3.3 hectares to extend over an additional 2.4 hectares. Consequently, a total of 5.7 hectares was under extraction, i.e. in excess of the 5-hectare threshold for EIA.
- 4.10. In these circumstances, the Planning Authority's above cited conclusion indicates that it viewed the "modified permission", i.e. 83/09 + Section 261 conditions, as providing for extraction within the registered site.
- 4.11. The Planning Authority's internal quarry assessment report contains plans showing the extent of the 83/09 site and the Section 261 registered site. Under the heading

“EIA/ Determinations in relation to EIA” of this report, the following commentary is given:

*This site is authorised by planning permission P/83/09. Whilst it is noted that development has taken place post 1990, post 1997 and post 2008. It is also noted that no quarrying activity has been undertaken outside of the originally, granted site.*

The reference here to “originally, granted site” can only “make sense” if it refers to the area of the modified permission.

### **Further Authorisations Post Section 261A**

- 4.12. Both application 14/124, for a static aggregates processing/crushing assembly, and 15/113, for a tarmacadam plant, were permitted in the knowledge that they would be dependent upon site won aggregates, i.e. these aggregates must have been regarded as authorised.
- 4.13. In 2015 a discharge licence WP26/15 was issued to the operator following a further Screening for Appropriate Assessment
- 4.14. Only in 2019, following an enforcement enquiry, did the Planning Authority take the view that the existing modified permission was defective. A warning letter was received by the applicant on 2<sup>nd</sup> October 2019, and it has ceased extracting from the “unauthorised area” and agreed a site restoration plan for this area.

### **Route to Planning Compliance**

- 4.15. Prior to 2019, the Planning Authority treated the site as fully authorised for quarrying. The applicant reasonably understood that the modified permission was sound and so it purchased the site on this basis.
- 4.16. On foot of the warning notice and an enforcement notice, the applicant, through no fault of its own, must seek to address any shortfall in the authorisation of its site.
- 4.17. In the above cited circumstances, the closure of the quarry would be a disproportionate response.
- 4.18. If the Planning Authority had identified the need for EIA under the Section 261A process in 2012, then the applicant would have been able automatically to avail of the substitute consent process.

4.19. In March 2021, the applicant approached the Planning Authority with a view to applying to the High Court for an order under Section 177B. Its case would have been that the modified permission was valid if defective. The High Court could then have issued an order under Section 177E directing the applicant to apply for substitute consent with a remedial EIAR for the area quarried beyond that which was authorised under 83/09, i.e. as of October 2021 an additional 5.6 hectares. However, as the Planning Authority has not responded to the applicant's approach, it has resorted to the current Section 177C application for leave to apply for substitute consent from the Board.

#### **Applicability of Section 177C Leave to Apply for Substitute Consent**

- 4.20. The Board must decide if an EIA and/or a NIA offence exists. If so, then it must decide if exceptional circumstances exist that would justify granting leave to apply for substitute consent under Section 177C.
- 4.21. The applicant accepts that quarrying in its site since 1990 has exceeded the threshold of 5 hectares for EIA and so, in the absence of an EIA, an EIA offence has arisen.
- 4.22. The Planning Authority has Screened for Appropriate Assessment on several occasions, i.e. under the Section 261A process, under subsequent planning applications, and under the discharge licence process. No need for NIA was thereby identified.
- 4.23. The applicant has submitted a Stage 1 Screening for Appropriate Assessment for the site of 8.9 hectares where quarrying has occurred to date. This Screening undertaken to current standards concludes that a Stage 2 Appropriate Assessment is not needed.
- 4.24. Given the planning history of the site, quarrying beyond the original 3.3-hectare site needs to be the subject of EIA, i.e. the 5.6 hectares.
- 4.25. The Board must now decide on whether exceptional circumstances exist, which would allow leave to apply for a substitute consent to be granted, thereby making it possible for a subsequent application to be made for substitute consent with a remedial EIAR.

## **Considerations including Exceptional Circumstances**

### **(i) Procedural Error**

- 4.26. Section 177D(1)(a)(ii) enables the Board to grant leave to apply for substitute consent where “any error of fact or law or procedural error” has occurred.
- 4.27. The applicant relied upon the outcome of the Section 261 process, namely the conditions attached to its site, in proceeding to expand the area of quarrying without seeking any further permission with an EIS under Section 34.
- 4.28. The applicant relied upon the outcome of the Section 261A process, namely that the Planning Authority concluded that “No further action” was needed, thereby unwittingly denying itself access to the process under Sections 261A(2) & (3), which would have allowed the need for EIA to be established and the substitute consent process to be accessed.

### **(ii) Exceptional Circumstances**

- 4.29. The above cited procedural errors are exceptional circumstances in their own right and they are sufficient to justify leave to apply for substitute consent.
- 4.30. Prior to the enforcement enquiry in 2019, the Planning Authority was satisfied with the on-going development of the site as regulated by Section 261 and subsequent permissions/licences granted to it, which would necessarily have entailed assessment of cumulative impact and impacts arising from connectivity.
- 4.31. Under Section 177D(1A)(b), the view is expressed that any EIA of the site would not identify significant risks of environmental impact and so EIA is needed on the basis of the site’s size alone.
- 4.32. Under Section 177D(2), the Board must consider whether various matters (a) – (g) (inclusive) are applicable. Given the planning history of the site, the opportunities that multiple applications afforded for the Planning Authority to assess impacts upon the site, and the applicant’s commitment to obtaining permissions, the view is expressed that matters (a) – (g) are applicable and so exceptional circumstances do exist.
- 4.33. A legal opinion has also been submitted in support of the view that exceptional circumstances do exist.

## **Conclusion**

- 4.34. Extraction was authorised under 83/09 and aerial photographs for 1995 – 2005 illustrate that the area thus authorised was exceeded in advance of the Section 261 process, which resulted in conditions and a modified permission. As no EIA has been undertaken, this modified permission is defective and so the site outside the originally authorised area has been left in planning jeopardy.
- 4.35. As of 18<sup>th</sup> June 2021, extraction has ceased outside the originally authorised area following works undertaken to ensure that benches are left in a safe condition.
- 4.36. As the Planning Authority has not responded to the applicant's approach to regularise matters under Section 177B, the current application, under Section 177C, was made for leave to apply for substitute consent from the Board. Relevant conditions in this respect, under Section 177D, have been complied with.
- 4.37. The effect of the Planning Authority's errors and the inevitable lapses in time involved in seeking to regularise the planning of the site mean that the applicant's business has been severely impacted: The remaining reserves within the originally authorised area are extremely limited.

## **5.0 Planning Authority Submission**

- 5.1. The Planning Authority's view is that exceptional circumstances arise in this case.
- 5.2. By way of background to this view it states the following:

*The 2006 decision on the 261 quarry registration arguably should have identified the site being quarried. The 2014 assessment and decision on the 261A quarry registration application failed to identify that the quarrying extraction area was extending beyond the site area of the P9/83 application.*

*Furthermore the assessment of planning enforcement complaints in 2014 and 2017 erroneously deemed an enlarged quarrying site to be authorised by virtue of having regard to documents submitted with the 261 registration application and which showed a quarrying area beyond the red line site area of the P9/83 application.*



## 6.0 Legislative Provisions

- 6.1. Section 34 of the Planning and Development Act, 2000 – 2021, (hereafter referred to as the Act) addresses “Permission for development”. Sub-section 12 states the following:

*A planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required that one or more than one of the following was carried out —*

*(a) an environmental impact assessment,*

*(b) a determination as to whether an environmental impact assessment is required, or*

*(c) an appropriate assessment.*

- 6.2. Section 177C of the Act addresses the subject of “Application for leave to apply for substitute consent where notice not served by planning authority.” Relevant extracts from this Section are set out below.

*(1) A person who has carried out a development referred to in subsection (2), or the owner or occupier of the land as appropriate, to whom no notice has been given under section 177B, may apply to the Board for leave to apply for substitute consent in respect of the development.*

*(2) A development in relation to which an applicant may make an application referred to in subsection (1) is a development which has been carried out where an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required, and in respect of which —*

*(a) the applicant considers that a permission granted for the development by a planning authority or the Board may be in breach of law, invalid or otherwise defective in a material respect, whether pursuant to a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union, or otherwise, by reason of —*

*(i) any matter contained in or omitted from the application for permission including omission of an environmental impact assessment report or a Natura impact statement or both that report and that statement, as the case may be, or*

*inadequacy of an environmental impact assessment report or a Natura impact statement or both that report and that statement, as the case may be, or*

*(ii) any error of fact or law or a procedural error,*

*or*

*(b) the applicant is of the opinion that exceptional circumstances exist such that it may be appropriate to permit the regularisation of the development by permitting an application for substitute consent.*

6.3. Section 177D of the Act addresses the subject of “Decision of Board on whether to grant leave to apply for substitute consent.” Relevant extracts from this Section are set out below.

*(1) The Board shall only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required in respect of the development concerned and where it is further satisfied —*

*(a) that a permission granted for development by a planning authority or the Board is in breach of law, invalid or otherwise defective in a material respect whether by reason of a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union, or otherwise, by reason of —*

*(i) any matter contained in or omitted from the application for the permission including omission of an environmental impact assessment report or a Natura impact statement or both that report and that statement, as the case may be, or inadequacy of an environmental impact assessment report or a Natura impact statement or both that report and that statement, as the case may be, or*

*(ii) any error of fact or law or procedural error,*

*or*

*(b) 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.*

*(2) In considering whether exceptional circumstances exist the Board shall have regard to the following matters:*

*(a) whether regularisation of the development concerned 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;*

*(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;*

*(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;*

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

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

*(g) such other matters as the Board considers relevant.*

## **7.0 National Planning Guidelines**

7.1. The Quarries and Ancillary Activities Guidelines (April 2004) advise on the Section 261 registration process as follows:

*Section 261 of the Planning and Development Act, 2000 introduces a new system of once-off registration for all quarries. Only those for which planning permission was granted in the 5 years before section 261 became operative are excluded. The registration system has two purposes:*

- to give a 'snapshot' of the current use of land for quarrying. This will ensure that local authorities have basic information about a quarry's operations. Planning permission may then be required for any proposed expansion or intensification of its operations;*
- where necessary, to permit the introduction of new or modified controls on the operation of certain quarries. These controls may be imposed in two ways. Quarries may have to comply with certain new or modified conditions on their operation...*

## 8.0 Assessment

- 8.1. The applicant accepts that, as the area of rock extraction within its site has extended over an area of 8.9 hectares, the threshold for mandatory EIA of 5 hectares cited under Item 2(b) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2021, has been exceeded and so its quarry needs to be the subject of EIA.
- 8.2. The applicant has addressed the question as to whether its quarry needs to be the subject of NIA, too. Previously, Stage 1 screening exercises were conducted as part of applications for planning permission and for a discharge licence. In each case, it was concluded that such need did not arise. The applicant has submitted with its current application a further Stage 1 screening exercise, which applies contemporaneous standards to this matter. Again, the conclusion reached is that NIA is not required.
- 8.3. I have reviewed the applicant's submission and I concur that the need for EIA, as distinct from NIA, exists and so I will proceed on this basis.
- 8.4. The applicant requests leave to apply for substitute consent under Section 177C of the Planning and Development Act, 2000 – 20021. By way of background, it explains in its submission why the route to planning compliance on its site necessarily entails the use of this Section. Section 177C(2) applies to situations within which development has been carried out where an EIA was or is required. It then goes on, to outline two alternative scenarios denoted as (a) and (b), under which an application for leave for substitute consent can be made:
- (a) envisages a scenario wherein a permission granted for the development “may be in breach of law, invalid or otherwise defective in a material respect” by reason of (i), for example, the omission of an EIAR, or (ii) “any error of fact or law or a procedural error”, or
  - (b) envisages a scenario wherein “the applicant is of the opinion that exceptional circumstances exist such that it may be appropriate to permit the regularisation of the development by permitting an application for substitute consent.”
- 8.5. On Page 10 of the submitted legal opinion, the applicant's barrister states that the planning permission granted to application 83/09 is the only planning permission that

exists for quarrying on the site, and it is not considered to be defective. She goes on to state that the Section 261 registration “is not a permission *per se* as it does not have the status of a permission granted under a *de novo* Section 34 application.” She adds that this registration was not defective, and the additional conditions attached under it have been complied with.

8.6. Section 177(D) addresses the decision of the Board on whether to grant leave to apply for substitute consent. Under Section 177D(1) the above cited scenarios are repeated from Section 177C(2). In the light of the foregoing paragraph, I consider that the first of these scenarios, (a), is not applicable to the applicant’s situation. I will, therefore, consider whether the second scenario, (b), is applicable. Section 177D(2) sets out matters, denoted as (a) – (g), which the Board is to have regard to in considering whether exceptional circumstances exist. I will consider each of these matters in turn below.

**(a) Whether regularisation of the development concerned would circumvent the purpose and objectives of the EIA Directive or the Habitats Directive.**

8.7. Article 1 of the EIA Directive states that it “shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.”

8.8. The applicant expresses the view that its project does not have significant effects on the environment and that the need for EIA arises only from the fact that the extraction area of its quarry has exceeded 5 hectares, i.e. the threshold for mandatory EIA.

8.9. I consider that the submission of an application for substitute consent with a remedial Environmental Impact Assessment Report (rEIAR) would provide the opportunity for the environmental effects of the applicant’s project to be assessed and for any mitigation measures to be identified and implemented. In such circumstances, the purpose and objectives of the EIA Directive would be capable of being upheld and so I conclude that such regularisation would not circumvent them.

8.10. The applicant draws attention to several Stage 1 screening exercises for Appropriate Assessment that have been undertaken by the Planning Authority. It also draws attention to its own screening exercise, which was undertaken for the working quarry, i.e. the extraction area of 8.9 hectares, and which is submitted as part of its

current application. In each case the conclusion was reached that Stage 2 Appropriate Assessment is not required. *Prima facie* the Habitats Directive is not therefore relevant to the current application.

**(b) Whether the applicant had or could reasonably have had a belief that the development was authorised.**

8.11. The applicant sets out the planning history of the site. It purchased the site of the quarry following its Section 261 registration and the attachment of conditions. One of these conditions required the preparation of a site restoration plan. Such a plan was subsequently prepared for the entire site and submitted to and agreed in writing by the Planning Authority.

8.12. The applicant as owner of the site subsequently made a considerable number of planning applications and its site was the subject of several enforcement enquiries. Prior to the warning notices served upon it in 2019, the applicant had been given no reason to believe by the Planning Authority that its extraction activities within the site of the quarry were unauthorised for planning purposes. Instead, the Planning Authority gave the applicant every reason to believe that it considered these activities to be authorised, as is illustrated by the following items:

- Under Section 261A, the Planning Authority assessed the site of the quarry in 2012. Extraction activities were occurring over an area of 2.4 hectares beyond the boundaries of the 3.3-hectare site permitted for quarrying under 83/09. Nevertheless, the Planning Authority concluded that no EIA offence was occurring and so “no further action” was needed.
- An enforcement report following a site visit in March 2014 recorded no unauthorised quarrying and no non-compliance with conditions.
- Under 14/124, the applicant applied to retain a crushing plant facility on the site of the quarry. The case planner’s report concludes that “The elements of the development to be retained are used in conjunction with the daily operations of this established quarry and are therefore considered acceptable in principle from a planning perspective.”
- Under 15/113, the applicant applied for a coated road stone plant. An accompanying “Written Statement” comments that “Approximately 90 – 95%

of materials to be employed at the plant site will be sourced from the existing quarry.”

- An enforcement report following a site visit in October 2017 recorded the quarry is operating within the boundaries/site area registered under ref. 4/3002 and in compliance with subsequent permissions.

8.13. The applicant draws particular attention to applications 14/124 and 15/113, which entailed the introduction of plant and machinery to the site of the quarry on the basis that they would use the aggregates extracted on-site from within areas that exceeded the boundaries of the 83/09 permission. For these applications to be permitted, the accompanying extraction of aggregates must have been regarded as authorised. The conclusions of the two enforcement reports, cited above, corroborate that this was indeed the understanding.

8.14. In the Planning Authority’s submission to the current application, it accepts that it failed, at both the Section 261 and 261A stages, to identify that extraction was occurring beyond the boundaries of the 83/09 permission. It also accepts that the enforcement reports referred to above erred insofar as they understood the site registered under Section 261 to be authorised for extraction beyond the boundaries of the 83/09 permission.

8.15. In the light of the foregoing, I conclude that the applicant had or could reasonably have 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 EIA or an AA and to provide public participation in such a scenario has been substantially impaired.**

8.16. The applicant acknowledges that substitute consent is needed for the extraction that has occurred beyond the boundaries of the 83/09 permission and that this extraction needs to be the subject of a rEiAR. During my site visit, I observed that recent extraction appears to have occurred wholly within the area beyond the 83/09 permission.

8.17. A rEiAR would provide the opportunity for the environmental impacts of the above cited extraction to be assessed and reported upon. As part of an application for substitute consent, it would be the subject of public participation and it would inform

the EIA conducted by the Board. I do not anticipate that the ability to prepare a rEIAR has been substantially impaired by the chronology of development upon the site or any other factors.

8.18. I conclude that the ability to carry out an assessment of the environmental impacts of the development for the purpose of an EIA and to provide public participation in such a scenario has not been substantially impaired.

**(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.**

8.19. As noted above, the applicant does not consider that actual significant effects on the environment have occurred as a result of extraction activities within the site of its quarry. Clearly, a rEIAR would provide the opportunity to assess and report upon all such effects and to establish whether they are significant or not. The Board's own EIA would further consider this question.

8.20. I conclude that whether actual significant effects on the environment resulting from the carrying out of the development that has occurred would be addressed by a rEIAR and a subsequent EIA.

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

8.21. The extraction activities authorised under the permission granted to application 83/09 were conditioned and they were further conditioned under Section 261(6)(a)(ii). The Planning Authority's enforcement officer and the applicant's barrister in her legal opinion advise that these conditions have been/are being complied with. Precedence thereby exists for the regulation of extraction activities on the site of the quarry.

8.22. The more recent extraction activities on the site have occurred beyond the boundaries of the 83/09 permission in an extension to the original quarry. Insofar as the above precedence exists, I consider that it is reasonable to expect that satisfactory remediation of the extended quarry would be attainable too.

8.23. I conclude that it is reasonable to expect that any significant effects on the environment can be remediated to a satisfactory extent.



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

- 8.24. The planning history of the site of the quarry is summarised under Section 3.0 of my report. This summary includes instances wherein retention permissions were applied for and granted. It also includes evidence from enforcement reports of compliance with planning conditions.
- 8.25. Prior to 2019, there is no evidence before me that either the Planning Authority or the applicant were aware that extraction activities beyond the boundaries of the 83/09 permission were unauthorised. In 2019, these activities were the subject of enforcement action, by means of warning notices and an enforcement notice, which has cumulated in the current application for leave to apply for substitute consent as the hoped-for precursor to a substitute consent and eventual authorisation.
- 8.26. I conclude that the planning history of the site indicates that only the extraction activities that lie behind the current application are unauthorised.

**(g) Such other matters as the Board considers relevant.**

- 8.27. I am not aware of any other matters that are relevant for the Board to consider in this case.

**Overall conclusion**

- 8.28. In the light of my above discussion, I conclude that exceptional circumstances do exist under Section 177D(2) and so the applicant's request for leave to apply for substitute consent should be granted.

**9.0 Recommendation**

That leave to apply for substitute consent be granted.

## 10.0 Reasons and Considerations

Having regard to Section 177D(1) of the Planning and Development Act, 2000 – 2021, the Board considers that an EIA is required in respect of the development concerned and 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.

Having regard to Section 177D(2) of the Act, the Board considers these exceptional circumstances to be as follows:

- (a) Regularisation of the development concerned would not circumvent the purpose and objectives of the EIA Directive,
- (b) The applicant had or could reasonable have had a belief that the development was authorised,
- (c) The ability to carry out an assessment of the environmental impacts of the development for the purpose of an EIA and to provide public participation in such a scenario has not been substantially impaired,
- (d) The actual or likely significant effects on the environment resulting from the carrying out or continuation of the development would be capable of assessment, and
- (e) The satisfactory extent to which significant effects on the environment can be remediated.

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Hugh D. Morrison  
Planning Inspector

21<sup>st</sup> February 2022

**Appendix VII Legal Opinion by Dr. Mary Moran-Long BL**

## Opinion

- Re:** Regularisation of alleged unauthorised development at Scotshouse Quarries Ltd. and associated enforcement proceedings pursuant to section 154 Planning and Development Act, 2000 as amended
- Querist:** Paddy Connolly, Scotshouse Quarries Ltd.
- Agent:** O'Sullivan Murtagh Solicitors
- Counsel:** Mary Moran-Long BL

### 1. Background and Introduction

I have been requested to prepare an opinion and advices on the above issues namely the most appropriate, timely and cost effective steps/process required to regularise the quarry at Aghnaskew, Scotshouse, Co. Monaghan for past and future development; and the steps required to defend an alleged failure to comply with the provisions of an enforcement notice under section 154 PDA 2000 as amended served on 3<sup>rd</sup> June 2020.

A preliminary matter arises in that the submission prepared by Earth Science Partnership Ireland limited reference is made to '*This quarry site has been in operations for many decades, including pre-63 origins.*'. The application documents (Refs: QY1;04/3002), in respect of the registration of the quarry under section 261 of the Planning and Development Act 2000 as amended (herein referred to as the 2000 Act) state the quarry commenced operation on 25 July 1983, (1983), registration Ref: Q/2004/3002, that being the date of grant of permission, Ref: 83/09. Furthermore, the Quarry Assessment Report for the quarry carried out under section 261A of the 2000 Act prepared by Monaghan County Council planning authority in 2012 states, that no development was undertaken pre October 1964 and indicates 1983 as the date of commencement of quarrying.

This opinion is prepared on the basis of permission Ref.: 83/09 granted on 25<sup>th</sup> July 198 and not a pre-1964 established use.

The background may be summarised as follows:

- Permission 83/09 granted on 25<sup>th</sup> July 1983 for an area of 3.3 Ha. within landholding of 11.5 ha., having 10. no conditions attached. (Application by Patrick Cunningham - previous owner)

#### 1.1. Section 261 Registration

- Application for registration of quarry under section 261 submitted 11<sup>th</sup> November 2004. Application form dated 28<sup>th</sup> October 2004 completed by Thomas Leddy, applicant set out the matters as required under s. 261(2) which indicated that the quarry was in occasional/infrequent use only. Map submitted delineated the quarry area as 11.5 Ha and extraction area: 10 Ha. (p133 s.261 FOI)
- Letter 12<sup>th</sup> April 2005 from planning authority stated the application which included *inter alia* 'the extracted area delineated' was considered a valid application for registration under s. 261, A further letter of same date indicated the application was

entered into the planning register. (Application was submitted while in ownership of Thomas Leddy prior to purchase of lands by Querist in January 2006). The following are noted:

- letter from Senior Executive Engineer dated 11<sup>th</sup> May 2005 including suggested conditions indicated that the quarry was not in use at the time of the registration.
- additional Application form dated 3<sup>rd</sup> January 2005 submitted by Thomas Leddy set out the matters as required under s. 261(2) which indicated that the quarry was operational,
- Environmental Health Officer Report dated 5<sup>th</sup> August 2005 which considered the conditions attached to the 1983 permission acceptable;
- Notice published in Northern Standard on 22<sup>nd</sup> September 2005 *inter alia* of intension of planning authority to restate, modify or add conditions to operation of the quarry under section 261(6)(a)(ii) Ref: Q05/3002.

Section 261(6)(a)(ii) provides that where a quarry had an existing permission (Scotshouse having the 1983 permission) that within 2 years of the registration the planning authority in the interests of proper planning and sustainable development, having regard to the development plan and any submissions had the power to restate, modify or add conditions. Pursuant to the subsection, the planning authority imposed 10 additional conditions. Where a quarry did not the permission but had a pre-1964 established use under section 261(6)(a)(i) it could impose conditions on the operation of the quarry.

- Planning authority internal document re s.261 registration (p62 FOI file) notes the application for registration indicated: '*Quarrying operation began in 1983; Planning permission was granted in 1983 under 83/09 to develop quarry; the extraction area of the quarry is 11 hectares*' and includes 'Notice for issue' dated 24<sup>th</sup> November 2005 of proposal by planning authority to restate, modify or add conditions to operation of the quarry pursuant to s.261(6)(a)(ii) PDA 2000.
- Notice dated 7<sup>th</sup> December 2005 issued to applicant.
- Letter/submission from applicant's solicitor to planning authority dated 16 December 2005 requesting confirmation that the quarry was registered and response dated 8<sup>th</sup> December confirming a valid application to register had been submitted.
- Letter from applicant's solicitor to planning authority dated 16 January 2006 requesting that further conditions not be imposed and noted that the draft proposed conditions had not been seen.
- Letter from planning authority dated 16<sup>th</sup> February 2006 acknowledged receipt of aforementioned submission which was referred to executive planner
- Planning authority decision (Q04/3002) issued 13<sup>th</sup> March 2006 attached 5 no. conditions pursuant to section 261(6)(a)(ii).
- Order of 24<sup>th</sup> March 2006 quarry was registered under section 261 PDA 2000 as amended, quarry area 11.5 ha. and 10 ha. extraction area, as delineated on map submitted with application Plan Reg. Ref: Q2004/3002. The 10 ha. extraction area of the quarry registered under s.261 was substantially greater (6.7 ha.) than the 3.3ha extraction area permitted under Ref; 83/09. Permission and conditions were deemed to be granted under section 34 PDA 2000 as amended.
- The 5 no conditions were in addition to the 10 conditions attached to permission 83/09, therefore 15 conditions in total attached. Condition no 5 requires that the quarry be operated in accordance with permission Reg. Ref: 83/09 and the information submitted

for registration under s.261. Registration Q2004/3002 comprised the original 1983 permission as modified by the section 261 conditions for quarrying activities on the site.

- Condition no 3 required that within two months of the issue of the section 261 notice that a site restoration plan be submitted and agreed in writing with the planning authority and stated the requirements for inclusion in the plan. The stated reason is: To facilitate the restoration of the site.
- In compliance with conditions no 3 Querist engaged Quarryplan Limited to prepare a site restoration plan. Under cover letter dated 3<sup>rd</sup> August 2006, (received 8<sup>th</sup> August 2006) a comprehensive sequence of plans for the site restoration was submitted to the planning authority by Quarryplan.
- Letter dated 6<sup>th</sup> November 2006 from the planning authority to Thomas Leddy and Querist (letter 10<sup>th</sup> November 2006 to Quarryplan) stated the landscaping restoration details submitted on 8<sup>th</sup> August 2006 were in compliance with condition no 3 attached to the s.261 permission.

Registration Q/2004/3002 of Scotshouse quarry, although having been deemed as a permission granted under section 34 does not enjoy the status enjoyed by a permission granted under a *de novo* application for permission submitted under s.34 and is enforceable.

In this regard the High Court in *M & F Quirke & Ors v. An Bord Pleanála & Ors* [2009] IEHC 426 which related to a quarry claiming pre-1964 established use, was of the view that notwithstanding that conditions are imposed at a point in time under s.261(6), the developer might in the future be required to seek planning permission irrespective of the provisions of s261(7) in the interest of proper planning and sustainable development. The

The case of *Pierson & Ors. v. Keegan Quarries* [2009] IEHC 550 involved a pre-1964 quarry. The allegation was that when the quarry underwent the s.261 registration process it constituted unauthorised development and therefore the applicant was entitled to take injunctive proceedings under s. 160 PDA 2000 as amended. Irvin J stated where she stated:

*“40. I do not accept that a decision made by a planning authority to register a quarry subject to the imposition of conditions under s. 261 of the 2000 Act has the legal effect contended for by the respondent. If the quarry constituted unauthorised development at the start of the s. 261 process, its registration subject to conditions does not, in my view, alter its status. Neither does that decision have any legal effect on the right of a party with the appropriate locus standi, such as the applicants in the present case, to challenge that development as being unauthorised under s. 160 of the 2000 Act.”*

Subsequently, in *McGrath Limestone Quarries v An Bord Pleanala* [2014] 382 at paragraph 4.2 Charlton J in respect of the effect of s.261 agreed stating that registration (of a quarry) means no more than putting details in a register and ‘*It is settled as a matter of law that the registration of a quarry under s.261 does not alter its status.*’

The status of Scotshouse quarry after registration Q04/3002 was not altered and the permitted area of the quarry for extraction remained the 3.3 ha. granted under permission 83/09.

It is noted, however, that Querist is not responsible for the increase in the extraction area of the quarry which clearly occurred between 1983 and 2004/5 at the time of the application for registration under s.261, prior to his purchasing the lands in 2006 and which he understood to

be fully compliant with planning. It is important to note that the quarry registered under section 261 had an extraction area of 10 ha. when Querist purchased the quarry.

## **1.2. Further Planning History and Licencing of the site**

The following summarises planning permissions and licensing since the site was purchased by Querist:

- 08/787: Retention permission for floodlights granted 2008
- 08/1087: Removal of Condition no 2 associated with permission 08/787; granted 2008
- 09/618: Permission for Portal Frame Workshop building and all associated site works; granted 2009
- 20/217: Permission for prefabricated single story office building weigh bridge and 2.m high roadside boundary palisade fence: granted 2010
- 14/124: Retention permission for crushing plant facility comprising 2 no. crushing plans, a screening plant, concrete storage facility, conveyors, concrete feeding chute, concrete supporting structure, electrical services control container, all utilities and associated site works ; Granted 2014.

It is noted that a site inspection was carried out on 14<sup>th</sup> March 2014 and enforcement report prepared by Rory Woods, assistant planner dated 21<sup>st</sup> March 2014. The report addressed the planning history and background and refers to Registration 2004/3002, in which the *'entirety of the site area was detailed on submitted documentation as being the area for extraction'*. The report is based on the follow up inspection of 14<sup>th</sup> March 2014 which found *'the quarry operations ongoing and the extraction area remains within the area as detailed under registration 04/3002.'* The planner was of the view that no unauthorised quarrying was taking place; and in respect of compliance with the conditions attached to 04/3002, he did not find any outstanding matters which renders the development to be non-compliant with 04/3002.

The aggregate screening machines /breaking equipment and associated bays erected on the quarry floor were found, however, to be without permission. On that basis Querist was invited to apply for retention permission for the said development within 4 weeks of the date of the correspondence, 24<sup>th</sup> March 2014. The relevant application was submitted, (ref. letter from Finnegan & Jackson to planning authority dated 17<sup>th</sup> April 2014) and retention permission granted. (Reg. Ref: 14/124) Note documents found in s.261A FOI file

- 14/157: Permission for construction of a site office, wastewater treatment unit and associated raised filter percolation area, car park comprising 7 no spaces, storm drainage, foul drainage and all associated site works. Granted 2014
- 15/113: Permission for Construction of Macadem Plant – Granted 2015
- 18/485: Permission for installation of ESB substation Granted 2018
- 19/2011: Permission for site office, wastewater treatment, car park etc. Granted 2-19
- WP26/15: Licence to discharge Trade Effluent at Aghnaskew, Scotshouse, Co. Monaghan granted 2015.

## **1.3. Section 261A Assessment**

The planning authority assessed the quarry in accordance with the provisions of section 261A PDA 2000 as amended.

The section 261A file obtained in response to the FOI request includes a spreadsheet entitled *'Quarry Reference Number Q 002'* which refers to the quarry at Aghnaskew, Scotshouse;

Planning permission for quarry ref: 83/09; Registration status under s.261, Q2004/3002 and additional 5 no. conditions; Registration status under 261A, ‘No action required’, ‘Quarry approved under reference P/83/09’, ‘No development has occurred outside of the original site boundary’, ‘Given the original permission an EIA/determination for an EIA were not deemed necessary’, which clearly were errors on the part of Monaghan County Council planning authority. The spreadsheet continues; ‘the site lies 9km form Kilroosky SAC however, there are no watercourses within the vicinity of the site and it is considered that the quarry is not considered to be a risk to the Natura 2000 network’, ‘Quarry registered under s.261.’

A letter (undated) in respect of ‘Quarry at Aghnaskew, Co. Monaghan by Mr P Connolly Section 261A of the Planning and Development Acts 2000-2010’ from Adrian Hughes, Senior Planner ref. ‘Scotshouse Quarry’ refers to the requirement by the planning authority under section 261A(2)(a) to examine every quarry within its administrative area and to determine whether, having regard to the EIA and Habitats Directives, an EIA (for development works commenced after 1<sup>st</sup> February 1990), a determination as whether an EIA is required (for development works commenced after 1<sup>st</sup> February 1990), and appropriate assessment (for development works commenced after 26<sup>th</sup> February 1997).

The letter refers to the s. 261A assessment undertaken in respect of the quarry and determined ‘the provisions of s.261A(2)(a) are not applicable’ and ‘no further action shall be taken under s.261A of the PDA 2000-2010’. The letter is confirmation of the errors on the part of Monaghan County Council planning authority in its assessment of the quarry under s.261A.

The letter goes on to state that the planning authority intended to investigate every quarry within its administrative area to determine where quarry developments are being carried out in strict compliance with existing planning permission and ‘where issues of non-compliance are raised, you are advised that enforcement proceedings will be commenced.’

The letter reflects the purpose of an assessment of quarries under s.261A(2)(a) for compliance with the EIA and Habitats Directives. Compliance with permissions or otherwise (i.e. a claim of pre 1964 use) under national law was not assessed under the s.261A procedure. To some extent the matter was addressed in **J.J. Flood (Manufacturing) Ltd. & Anor .v. An Bord Pleanala [2020] IEHC 195 para. 97**, a case involving a quarry having a pre-1964 established use, where the court found in effect that a s.261A direction to apply for substitute consent amounts to a decision that the quarry was not in compliance with EU law as set out in the Directives, and stated:

*“I do not think it could accurately be said that it amounts to “unauthorised development” because that phrase is used to denote illegality under domestic planning law. As noted under the previous heading, a quarry might, in principle, be compliant with domestic law (as interpreted by the Supreme Court in Waterford County Council v. John A. Woods [1999] 1 IR 556) yet still require development consent as a matter of EU law.”*

The inspection carried out on 14 March 2014 by Rory Woods, assistant planner for the planning authority referred to above, assessed the quarry in respect of compliance with national law and confirmed ‘the quarry operations ongoing and the extraction area remains within the area as detailed under registration 04/3002’, that no unauthorised quarrying was taking place; and that there was compliance with the conditions attached to 04/3002 and concluded there were no outstanding matters which rendered the development to be non-compliant with 04/3002. The



planner recommended that retention permission be sought for the aggregate screening machines/breaking equipment and associated bays erected on the quarry floor within 4 weeks of his report.

It follows that if the quarry was found to be operating outside of its permission and unauthorised development was being carried out at the site, a recommendation to seek retention permission for the aggregate screening and crushing activities would not have been recommended by the planning and/or the planning authority would have refused retention permission for the activities on the site. The report by Rory Woods, therefore, further copper fastened Querist's belief that quarrying on the site was fully authorised and compliance with planning law.

The Quarry Assessment - Internal Report in respect of s.261A sets out the reflects the contents of the letter of Adrian Hughes. A summary of the content of the Quarry Assessment Report is as follows:

- Maps showing the approved site under permission 83/09 and Q/2004/3002, a combined map showing the quarry areas of permission 83/09 and s.261 registration. An aerial photograph illustrating quarry area for period 2004 -2006 is included.
- Under Quarry History, pre-1964 quarry development was indicated as not having occurred, however, quarry development had been undertaken after 1st February 1990.
- Under Planning History references made to relevant permissions particularly 09/83 and others. It was indicated that no environmental impact assessment was undertaken; a determination as to whether an EIA is required was not carried out; an Appropriate Assessment was not carried out. It referred to s.261 registration with conditions attached and no record of enforcement.
- Under Specific Information, the site extraction area under permissions 83/09 was 3.3 ha and under registration Q/2004/3002 the extraction area was stated as approximately 11 ha. (10 ha extraction area in total quarry area of 11.5 ha.) The quarry was currently in operation. The quarry boundary is within 15 km of SAC Kilroosky Lough SAC (9 km and of Lough Oughter SAC in Co Cavan. Stated the quarry site boundary was not within 15km of an SPA.
- It was determined that the quarry was within the boundary of or within 15 km of proposed natural heritage areas which were set out. The quarry was found not to be in a flood risk zone and no water courses are within the vicinity of the site.
- A single dwelling was located within the vicinity of the site, the nearest approx. 70 m from the quarry boundary. It was stated that there were no additional quarry developments in the area hence no cumulative impacts.
- Submissions were obtained from An Taisce which appeared to be general relating to quarries.
- In respect of an appropriate assessment it was concluded that given the 9km distance of the quarry from the SAC and the fact that there are no watercourses located within the vicinity of the site there are no pathway connectors linking the quarry with any Natura 2000 site, the planning authority was up the opinion that an AA was not required for the quarry as of 2012.

At the time of the 261A assessment the estimated area of extraction area of the quarry was circa 5.7-5.8 ha.

- The Assessment Report makes reference to mandatory EIA for new quarries in excess of 5 ha as not being applicable; and mandatory EIA for an extension of a quarry which brought the total area in excess of 5 ha. and represented an increase of over 25% of the existing quarry, provided that the extension itself exceeded 2.5 ha., which was found not to be applicable and determined that an EIA was not required.
- The note stated that the planning history is crucial when assessing this quarry with regards to determining whether this quarry is subject to an EIA or a determination for an EIA and goes on to state:  
*“The site is authorised by planning permission P/83/09. Whilst it is noted that development has taken place post 1990, post-1997 and post 2008, it is also noted that no quarrying activity has been undertaken outside the originally, granted site”*
- In this regard, reference is made to Ministerial Guidelines for planning authorities on Section 261A which states *“If development carried out after 1/2/90, EIA is not required in respect of such development under the Directive because the Directive does not apply in respect of projects authorised before the Directive became operative. Any development which obtained planning permission before the EIA directive came into effect and is operating in accordance with the terms of its planning permission is not affected by the Directive and does not require EIA under the terms of this Directive.”*
- Assessment found that similarly appropriate assessment is not required in respect of developments authorised by a permission granted prior to the 26<sup>th</sup> of February 1997.
- Under the title ‘Sub-threshold’ the planning authority was of the opinion that an environmental impact assessment was not required as the development was not within certain parameters set out article 103 of the planning and development regulations 2001 (as it then provided). It noted that due to the site distance from Kilrooskey Lough SAC there would be no impact.
- In terms of assessment in accordance with Schedule 7 PDR 2001 it noted that there are no additional quarries in the vicinity; local area was not densely populated, the area is not considered to be environmentally sensitive, the conditions imposed under the 1983 permission and the 2005 registration ensured that the development has been assessed with regards to traffic safety, residential amenity and environmental protection and visual amenity.
- The assessment report concluded that an Appropriate Assessment, an EIA and/or a determination whether an EIA was required, were not required.
- The assessment refers to aerial photographs which indicate the quarry activity has been contained within the boundary of the original planning permission.
- It was recommended that “no further action is required under section 261A of the Planning and Development act 2000 and related provisions.”

Section 261A (2)(a) provides:

“Each planning authority shall, not later than 9 months after the coming into operation of this section examine every quarry within its administrative area and make a determination as to whether—

(i) development was carried out after 1 February 1990 [...]which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment or a determination as to whether an environmental impact assessment was required, but that such an assessment or determination was not carried out or made, or

(ii) development was carried out after 26 February 1997,[...] which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.”

The 261A assessment report stated: *“The site is authorised by planning permission P/83/09. Whilst it is noted that development has taken place post 1990, post-1997 and post 2008... This clearly invoked the provisions of s.261A(2)(a)*

The report also stated: *“It is also noted that no quarrying activity has been undertaken outside the originally, granted site”*, which was incorrect, given the extraction area had increased from 3.3 ha. permitted in 1983 to circa 5.7-5.8 ha. at the time.

Subsection (3) of s.261A provides:

“(3)(a) Where a planning authority makes a determination under subsection (2)(a) that subparagraph (i) or (ii) or both, if applicable, of that paragraph apply in relation to a quarry (in this section referred to as a determination under subsection (2)(a), and the authority also decides that—

(i) either the quarry commenced operation before 1 October 1964 or permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, and

(ii) if applicable, the requirements in relation to registration under section 261 were fulfilled, the planning authority shall issue a notice, not later than 9 months after the coming into operation of this section, to the owner or operator of the quarry.  
[...]

(c) A notice referred to in paragraph (a) shall be in writing and shall inform the person to whom it is issued of the following matters:

(i) the determination under subsection (2)(a) and the reasons therefor;

(ii) the decision of the planning authority under paragraph (a) and the reasons therefor;

(iii) that the person is directed to apply to the Board for substitute consent in respect of the quarry, under section 177E, with a remedial environmental impact statement or remedial Natura impact statement or both of those statements, as the case may be, in

accordance with the determination of the planning authority under subsection (2)(a), not later than 12 weeks after the date of the notice, or such further period as the Board may allow;

(iv) the person may apply to the Board, not later than 21 days after the date of the notice, for a review of the determination of the planning authority [...]"

It is clear from the assessment report that:

- the provisions of subsection 261A(2)(a) applied;
- the quarry had permission 83/09 ((3))(a)(i) applied); and
- the requirements under s.261 were fulfilled (subsection (3)(a)(ii) applied).

It follows that Monaghan County Council planning authority was incorrect in its assessment of the quarry under section 261A and its recommendation that no further action was required.

The Assessment Report referred to the 1983 permission (for 3.3 ha.) and noted that development had taken place post 1990, post-1997 and post 2008, but mistakenly went on to note that no quarrying activity has been undertaken outside the originally granted site. Clearly this conclusion is incorrect given that when the quarry was registered under s.261 the extraction area was identified as 10 ha. Furthermore, at the time of the assessment under s.261A the extraction area was c. 5-7-5.8 ha. The extraction area clearly had increased by 2.4-2.5 ha. (from 3.3 ha). The quarry extraction area was in excess of 5 ha. threshold and the increase was in excess of 25% of the existing quarry for which permission was granted (3.3 ha.)

There can be no doubt that Monaghan County Council planning authority made a mistake in its calculations regarding the increased quarry area and incorrectly concluded that a determination as to whether was EIA was required or an EIA was not required.

In the circumstances, the planning authority was in error in its determination under s.261A that no further action was required and in that regard, it failed to issue a notice under section 261A(3)(a) directing Querist to apply for substitute consent following the assessment at the time. In this regard Querist and his business is suffering significant detriment as it now falls upon him to regularise the quarry so that it is compliant with EU law, through no fault of his own. The alleged unauthorized development and enforcement proceedings under s.154 is a separate matter.

## **2. Regularisation of the Quarry**

An application for substitute consent is required to regularise quarrying that has taken place outside of the area permitted under Ref: 83/09. Given that the s.261A process is no longer available in this instance, an application for substitute under section 177E may only be made to the Board where either the planning authority issues a notice under section 177B directing the person to apply for substitute consent; or following a successful application to the Board seeking leave to apply for substitute consent under s177C, the Board grants leave to apply under section 177D. The question is which process should be followed?

Section 177B(1) provides:

“177B.— (1) Where a planning authority becomes aware in relation to a development in its administrative area for which permission was granted by the planning authority or the Board, and for which—

- (a) an environmental impact assessment,
- (b) a determination in relation to whether an environmental impact assessment is required, or
- (c) an appropriate assessment, was or is required,

that a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union has been made that the permission was in breach of law, invalid or otherwise defective in a material respect because of—

- (i) any matter contained in or omitted from the application for permission including omission of an environmental impact assessment report or a Natura impact statement or both that report and that statement, as the case may be, or inadequacy of an environmental impact assessment report or a Natura impact statement or both that report and that statement, as the case may be, or
- (ii) any error of fact or law or procedural error,

it shall give a notice in writing to the person who carried out the development or the owner or occupier of the land as appropriate.”

Section 177B(1)(and s.177D(1)(a)) requires that there be a defective permission, the elements of which were set out by McKechnie J in *An Taisce v An Bord Pleanala, Sweetman .v. An Bord Pleanala* [2020] IESC 39 para 91 set out what the court considered the core constituents of a defective permission as follows:

- “(i) that the completed development, in respect of which an EIA “was or is” required, has been the subject matter of a permission,*
- (ii) that permission may be invalid or otherwise defective in a “material respect”,*
- (iii) as so determined by the Court of Justice or by a domestic court “or otherwise”,*
- (iv) by reason of the “omission” to carry out an EIS or its “inadequacy” or,*
- (v) by reason of “any error of fact or law or a procedural error.”*

The issue of a defective permission does not arise in this context. The only permission which exists is Ref: 83/09 which cannot be considered defective. The fact that the quarry was registered under s.261 Q/04/3002 is not a permission *per se* as it does not have the status of a permission granted following a *de novo* s.34 application. In any event the registration under s.261 is not defective and the additional 5 conditions attached under s.261(6)(a)(ii) were fully complied with.

The assessment under s261A is defective, however, that is not a permission but merely an assessment of the quarry to determine whether it is compliant under EU law.

In the circumstances, therefore, the s.177B route is not an option.

Section 177D (1) provides for the defective permission route or in the alternative:

“(b) 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.”

Subsection 177D(2) provides:

“(2) In considering whether exceptional circumstances exist the Board shall have regard to the following matters:

(a) whether regularisation of the development concerned 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;

(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;

(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;

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

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

(g) such other matters as the Board considers relevant.”

Such application is made for leave to apply for substitute consent which is provided under section 177C:

“177C.— (1) A person who has carried out a development referred to in *subsection (2)*, or the owner or occupier of the land as appropriate, to whom no notice has been given under *section 177B*, may apply to the Board for leave to apply for substitute consent in respect of the development.

(2) A development in relation to which an applicant may make an application referred to in *subsection (1)* is a development which has been carried out where an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required, and in respect of which—

(a) the applicant considers that a permission granted for the development by a planning authority or the Board may be in breach of law, invalid or otherwise defective in a material respect, whether pursuant to a final judgment of a court of competent

jurisdiction in the State or the Court of Justice of the European Union, or otherwise, by reason of—

(i) any matter contained in or omitted from the application for permission including omission of an environmental impact assessment report or a Natura impact statement or both that report and that statement, as the case may be, or inadequacy of an environmental impact assessment report or a Natura impact statement or both that report and that statement], as the case may be, or

(ii) any error of fact or law or a procedural error,

Or

(b) the applicant is of the opinion that exceptional circumstances exist such that it may be appropriate to permit the regularisation of the development by permitting an application for substitute consent.

(3) An applicant for leave to apply for substitute consent under *subsection (1)* shall furnish the following to the Board:

(a) any documents that he or she considers are relevant to support his or her application.

(aa) .....

(b) any additional information or documentation that may be requested by the Board, within the period specified in such a request.

(3A) The information furnished under *subsection (3)(aa)* may be accompanied by a description of the features, if any, of the development and the measures, if any, incorporated or envisaged to avoid, prevent or reduce what might otherwise be or have been significant adverse effects on the environment of the development.

(4) Where an applicant for leave to apply for substitute consent under *subsection (1)* fails to furnish additional information or documentation within the period specified in a request under *subsection (3)(b)*, or such additional period as the Board may allow, the application shall be deemed to have been withdrawn by the applicant.

(5) The Board may seek information and documents as it sees fit from the planning authority for the administrative area in which the development the subject of the application under this section is situated, including information and documents in relation to a permission referred to in *subsection (2)(a)* and in relation to any other development that may have been carried out by the applicant and the planning authority shall furnish the information not later than 6 weeks after the information is sought by the Board.”

177D(3) provides that in deciding whether it is prepared to grant leave to apply for substitute consent under section 177D the Board shall have regard to any information furnished by the applicant under section 177C(3) information, if any, furnished under section 177C(3A) and any information furnished by the planning authority under section 177C(5).

The circumstances which have arisen in this instance clearly provide for exceptional circumstances as envisaged under section 177D(2). It is advised, therefore, that the appropriate (and indeed the only) route for regularisation of the quarry through substitute consent is to make an application under section 177C to the Board seeking leave to apply.

The application must comply with the requirements set out in section 177C and 177D stated above to include the information which demonstrated exceptional circumstances which have caused the situation to arise, through no fault of Querist.

## **2.1. Permission for further development of the quarry**

An application may be made to the Board under s.37L of the 2000 Act, however s. 37L(1) provides:

*“Where an application for substitute consent is or was required to be made by the owner or operator of a quarry pursuant to subsection (7), (10) or (12) of section 261A, the owner or operator may apply for permission to further develop that quarry in accordance with this section.”*

Subsection (7), (10) and (12) all include scenarios where a notice was issued under subsections 261A(3)(a), (4)(a) or (5)(a), none of which apply in this instance, given that in its s.261A assessment, the planning authority decided that no further action was required and therefore no notice was issued.

Section 37L was enacted to close the gap regarding permissions for further development where substitute consent was granted following notices issued under s.261A requiring application for substitute consent to be made to the Board. It appears that an application under s.37L for permission for further development is not available in this instance.

If there was a defective permission, which unfortunately is not the case, the application for substitute consent contemplates future development. In this respect s.177(2A)(a) provides:

“(2A)(a) Where an application for substitute consent is made in respect of a development pursuant to—

- (i) a notice given under section 177B,
- (ii) a decision to grant leave to apply for substitute consent under section 177D in respect of a development to which section 177D(1)(a) applies, or
- (iii) a decision to grant leave to apply for substitute consent under section 261A(20)(a), that application may, subject to paragraph (b), be made in relation to—
  - (I) that part of the development permitted under the permission granted in respect of that development that has been carried out at the time of the application, or
  - (II) that part of the development permitted under the permission granted in respect of that development that has been carried out at the time of the application and all or part of the development permitted under the permission granted in respect of that development that has not been carried out at the time of the application.”

Further development in an application for substitute consent where the permission is defective is envisaged also in s.177I(2)(d)(i) regarding the report from the planning authority is required



to be submitted to the Board where an application for substitute consent is made and which refers to development which is ‘proposed to take place’.

This unfortunately has no application in this instance. The only other route available, therefore, is to apply to Monaghan County Council planning authority under s.34 for permission for further development of the quarry. The application will require an EIAR to be submitted and an AA screening report or NIS to accompany the application.

### **3. Enforcement**

On foot of a letter of complaint to Monaghan County Council planning authority (and letter dated 12 June 2020 from A&L Goodbody representing Lagan Asphalt Ltd. to Querist solicitor) a warning letter pursuant to section 152 of the PDA 2000 as amended dated 2<sup>nd</sup> October 2019 was directed to Querist in respect of an extension to quarrying on the lands without permission/unauthorised quarrying at Scotshouse Quarries was issued to Querist.

Informal discussions took place with representatives of the planning authority after the warning letter was received and a submission dated 12<sup>th</sup> November 2019 was submitted by Quarryplan on Querist’s behalf to the planning authority within 4 weeks of service of the warning letter.

A second warning letter dated 20<sup>th</sup> February 2020 couched in similar terms was directed to Scotshouse Quarries Limited.

Following the second warning letter, a further submission dated 13<sup>th</sup> March 2020 was submitted to the enforcement officer by Quarryplan on behalf of Querist.

It is noted that the letter from A&L Goodbody to Querist’s solicitor post-dates the issuing of the first enforcement notice under section 154 and threatens in effect that if quarrying continues that is not permitted under planning permission it reserves the right to issue proceedings under section 160 PDA as amended.

It is noted that two contracts for local and regional roads were withdrawn from Scotshouse Quarries limited resulting from the complaint. In addition, communications from two national newspaper journalists to Monaghan County Council suggest that the impression had been created that Querist had done something wrong, which is not the case.

An enforcement notice under section 154 PDA issued 19<sup>th</sup> May 2020, which was withdrawn. A second dated 21<sup>st</sup> May 2020, was withdrawn also. The third and final enforcement notice dated 2<sup>nd</sup> June 2020 (no planning register reference shown) served on 3<sup>rd</sup> June 2020 requires the following actions:

“Action A

On or before the day of 2<sup>nd</sup> October 2020 (extended to 2<sup>nd</sup> April 2021)

(A) To permanently cease all quarrying activity on lands which are outside the site area in respect of which planning permission was granted under Ref. No. 83/9 (the unauthorised lands) (see map attachment 2 to this Notice which shows the approved quarry area under Ref. No. 83/9 within a line edged green).

(B) To submit to Monaghan County Council, for its approval a comprehensive site restoration plan in respect of the unauthorised lands prepared by a suitably qualified and competent person and to furnish to Monaghan County Council on request all additional information and documentation required by it to enable it to approve the plan. This plan shall include the following:

- The identification of all items of plant, machinery, scrap metals, stockpiles, and waste material to be removed.
- The position of all quarry faces, together with details of measures to be used to ensure that all final faces are left in a safe and stable condition.
- Details of comprehensive landscape proposals for that re-instatement of the site area to include:
  - o details of species, varieties, number and location of trees/shrubs for purposes of forming dense screen planting along all boundaries.
- A timescale for the implementation and completion of the site restoration plan which shall be completed in full within a period not exceeding 24 months from the date of serving the enforcement notice.

#### Action B

To carry out and complete in or before the day of 2<sup>nd</sup> June 2022 all the works required under the site restoration plan which has been approved by Monaghan County Council.” (emphasis added)

Map 1 attached to the enforcement notice delineates the area of the quarry registered under s261. Map 2 delineated the s.261 quarry area (red line) and the area permitted under permission 83/09 (green line).

The timelines for subsequent correspondence /steps are as follows:

- On or about 4<sup>th</sup> September 2020 a site restoration plan prepared by Finnegan Jackson Surveyors was submitted (in compliance with Action A(B) of the enforcement notice).
- Letter dated 25<sup>th</sup> September 2020 Querist requested an extension of six months to complete action A and B.
- From FOI enforcement file draft letter dated 1<sup>st</sup> October 2020 by Darren McAdam which rejected the site restoration plan was emailed to Adrian Hughes which asked if he would sign/send it. (Note 1<sup>st</sup> October 2020 email from Adrian Hughes to a Gareth McMahan attaching his note of meeting/discussion with Martin Sweeney in which serious allegations were made against Querist, Sweeney was asked to put the accusations in writing, Hughes indicated in his note he would follow up.)
- 16<sup>th</sup> October 2020 FOI request from OSM solicitors submitted seeking s.261 and s.261A file. Andrew Scurfield, Quarryplan had requested the Managers Orders re same by email dated 26<sup>th</sup> February 2020.
- 19<sup>th</sup> October 2020, Darren McAdam carried out a site visit and roughly pointed out the area of the quarry which he considered unauthorised.
- Subsequent to the site visit a meeting was held between Querist, Adrian Hughes senior planner and Darren McAdam at which some notes were taken by Adrian Hughes. Mr Hughes appeared helpful and suggested that if the quarried area was less than 5 ha. (i.e sub-threshold for mandatory EIA) it might be possible to seek retention permission for the exceeded area.

With respect, the suggestion by the senior planner ignored the statutory provisions of section 34(12)(b) PDA 2000 as amended which expressly prohibits a planning authority considering an application for retention permission where a determination as to whether an environmental impact assessment is required, which was required in the instant case. The suggestion by the senior planner, therefore, was misplaced at best as the retention procedure in such circumstances is *ultra vires* the planning authority's statutory powers.

In any event the area of extraction at the time of the s.261A assessment was circa. 5.7-5.8 ha. and the extraction area at the time of the enforcement notice being issued had increased further.

- Email dated 20<sup>th</sup> October 2020 from Angela Gallagher to Darren McAdam noted that there are no managers orders for Scotshouse. The email post-dates the issue date of the enforcement notice (2<sup>nd</sup> June 2020) which suggests there is no Managers/CE Order for issue of the enforcement notice, as required under section 151 of the Local Government Act 2001 as amended. or issued by a delegated employee (if appropriate) under section 154 of the LGA 2001 as amended.
- Letter dated 7<sup>th</sup> December 2020 (response to letter of 25<sup>th</sup> September 2020 from Querist) agreed 3 month extension for Action A only.
- Further letter dated 17<sup>th</sup> December 2020 from Querist repeated request for 6 month extension.
- Letter dated 4<sup>th</sup> January 2021 from Darren McAdam rejected request stating no sufficient justification for the 6 months extension.
- Further letter dated 14<sup>th</sup> January 2021 from Querist stated he had liaised with the site H&S officer who had highlighted various remedial works which were required particularly to the quarry face to make it safe. This required specialist machinery and given the Covid 19 restrictions imposed by Government this would take considerable time.
- Letter dated 25<sup>th</sup> January 2021 from Darren McAdam agreed a further extension of time for Action A to 2<sup>nd</sup> April 2021.
- Letter dated 15<sup>th</sup> March 2021 from Darren McAdam refers to a site visit on 10<sup>th</sup> March 2021 and raised concern that quarrying is taking place over and above that which was need to make the quarry face safe as referred to Querist letter dated 14<sup>th</sup> January 2020 which he states contributed in large part to the agreed extension to 2<sup>nd</sup> April 2021 for compliance wit action A. He advised only works to make the rock face safe should be carried out and that a site inspection would be carried out on 2<sup>nd</sup> April 2021 to check for compliance.
- A new/revised site restoration plan prepared by Brackley Landscape Services was submitted along with the submission dated 30<sup>th</sup> March 2021 to the planning authority and received 1<sup>st</sup> April 2021. It appears that the new plan and submission was forwarded to Wells & O'Carroll, solicitors acting for Monaghan County Council apparently seeking a legal opinion.
- No response was received as to whether the plan is approved or rejected. This issue is to be raised as a defence in the s.154 proceedings, given that Querist is required to submit a site restoration plan which is required to be approved by the planning authority. The restoration of the site (compliance with the enforcement notice) is dependent on the plan being approved. If there is an issue it is incumbent on the planning authority to inform Querist as soon as possible so that he can take any action required. This issue goes to the heart of the time limits imposed for compliance with the terms of the enforcement notice.

- The summons issued following an application made on 16<sup>th</sup> August 2021 by or on behalf of Monaghan County Council which alleges an offence that on 18<sup>th</sup> June 2021 Querist failed to comply with ‘Action A’ of the Enforcement Notice pursuant to section 154 of the 2000 Act served on 3<sup>rd</sup> June 2020 18<sup>th</sup> June 2021, contrary to section 154(8) of the 2000 Act.

Action A of the enforcement notices comprised Action A(A) and A(B) which is set out above. It is not clear from the summons as to which part of Action A it is alleged non-compliance has occurred., i.e. cease all quarrying activities, Action A(A) and/or submit a comprehensive site restoration plan to Monaghan County Council for approval, Action A(B).

A new/revised site restoration plan was received by Monaghan County Council on 1<sup>st</sup> April 2021 for which no response has been received. It is noted that the site restoration plan is to include ‘*The identification of all items of plant, machinery, scrap metals, stockpiles and waste material to be removed*’. Following a site visit on 3<sup>rd</sup> September 2021 and consultation, stockpiles of material were noted on the alleged unauthorised quarry floor. It seems from Action A(B) that the site restoration plan requires the removal of stockpiles, hence such activity cannot amount to a non-compliance with Action (A)(B) stated in the enforcement notice.

It is noted that the site restoration plan includes a requirement to identify stockpiles to be removed, therefore, movement of materials from the ‘unauthorised area’ is required under Action A(B). This may have been an activity which occurred on 18<sup>th</sup> June 2021, however that is not clear from the Summons.

Furthermore, Desmond Black of Safeman Limited who has responsibility for Health and Safety on the site issued a report dated 7<sup>th</sup> June 2021 in respect of an inspection of the quarry on that date. He identified a lot of cracks and a large overhang of quarry face. He proceeded to inspect the quarry face from the top of the quarry and concluded that the only solution to make the face safe was to drill holes and blast the overhang as it was in a dangerous condition and required urgent attention to prevent any rock slide. He contacted Exsol, who carried out drilling and blasting at the quarry and arranged for its representative to visit the site as soon as possible to make the rock face safe. Desmond Black states that he took it upon himself to make the arrangement given the traumatic family circumstances for Querist and his family at the time. He indicated the next available date that Exsol to carry out the blasts was 18<sup>th</sup> June 2021.

A further letter dated 18<sup>th</sup> June 2021 from Desmond Black confirmed that the blasts had taken place in the places that he had marked out and that he was satisfied that the area was now in a safe condition and posed no further risk to operatives working on site. Querist and/or any member of his family was on site on the date which coincided with the funeral of a close family member.

A letter dated 22<sup>nd</sup> June 2021 from Exsol Ltd. reflects and supports the situation described above.

### **3.1.Enforcement under section 154 of the Planning and Development Act 2000 as amended**

Before addressing the provisions of section 154 of the 2000 Act it is necessary to review relevant aspects of the procedure under sections 152 and 153, in particular, leading to the decision on the part of the planning authority to issue an enforcement notice .

Section 152(1) requires the planning authority to issue a warning letter *inter alia* to the owner/occupier of lands following a representation in writing (or otherwise) that unauthorised development may have been, is being or may be carried out, and it appears to the planning authority that the representation is not vexatious, frivolous or without substance or foundation.

Subsection 152(2) provides that where the development in question is of a trivial nature the planning authority may decide not to issue a warning letter. Subsection 152(4)(b) provides that a person served with a warning letter may make written submissions/observations regarding the purported offence within 4 weeks of service of the warning letters

Section 153(1) requires the planning authority to make such investigation as it considers necessary to enable it to make a decision on whether to issue an enforcement notice or initiate injunction proceedings under section 160.

Subsection 153(3) requires the planning authority to consider any representations made i.e. letter(s) of complaint or submissions, under s.152(4)(b). The decision whether to issue the enforcement notice including the reasons for the decision must be entered in the planning register (s.153(4)). The extent of the duty to give reasons depends on the context and in certain cases more substantial reasons are necessary, *O'Neill & Ors .v. Kerry County Council* [2015] IEHD 827. In that case Humphreys J refused leave to apply for judicial review of the decision of Kerry County Council to issue an enforcement notice as the reasons for its decision were set out in the recitals of the notice.

Following an investigation, where the planning authority establishes that unauthorised development (other than that is of a trivial or minor nature) has been or is being carried out and the position has not been remedied (by the owner/occupier) the planning authority must issue an enforcement notice under s.154 (and or proceedings under s.160) unless there are compelling reasons for not doing so, (s.153(7)).

The question of what amount to ‘compelling reasons’ for not issuing an enforcement notice has not yet troubled the courts. It is arguable that the matters which constitute exceptional circumstances in respect of an application for leave to apply for substitute consent/substitute consent to the Board, may also be considered compelling reason for the planning authority to have decided not to issue the enforcement notice.

The *O'Neill v Kerry County Council* ‘context’ of the instant case includes the s.261 registration of the quarry, whereby five additional conditions were attached (increasing the condition to 15) with which Querist complied and was informed by the planner from Monaghan County Council following a site visit in March 2014 that “*the quarry operations ongoing and the extraction area remains within the area as detailed under registration 04/3002*”; the close communications between the planning authority and Querist during the various applications for permissions throughout the intervening years which indicated to Querist that quarrying was fully compliant with law; and the significant errors which Monaghan County Council made in its s.261A assessment of the quarry, requires more substantial justification and reasoning on the part of the planning authority in making its decision to issue the enforcement notice, other than the recitals on the notice. The reasons are required to be entered into the planning register.

The circumstances suggest that Monaghan County Council planning authority should have refrained from issuing the section 154 Enforcement Notice and allowed Querist time and supported him in regularising the quarry.

Instead, the planning authority have issued a summons alleging non-compliance with the enforcement notice. The matter of non-compliance referred to in the summons is far from clear. The summons was issued in circumstances where Monaghan County Council, planning authority delayed in its response to the first site restoration plan prepared by Finnegan Jackson Surveys submitted on 4<sup>th</sup> September 2020 which it rejected eventually by letter dated 12 January 2021 (although the letter had been drafted on 20<sup>th</sup> October 2020). Following the rejection, the second site restoration plan prepared by Brackley Landscape Services was submitted to the planning authority along with the submission prepared by Earth Science Partnership (Irl.) Ltd. dated 30<sup>th</sup> March 2021 and was received 1<sup>st</sup> April 2021. Monaghan County Council planning authority has not responded at all in respect of the second site restoration plan, although the enforcement notice contains strict time limits for compliance which the planning authority itself has imposed.

Querist, therefore, has no idea whether the site restoration plan is acceptable and/or whether actions which were taken in compliance with the enforcement notice, in particular the site restoration plan submitted in compliance with Action A(B), comprise the alleged non-compliance with the enforcement Notice stated in the summons.

The conduct of Monaghan County Council planning authority flies in the face of due process and fair procedure and offends the principles of natural and constitutional justice.

### **3.2. Jurisdiction of District Court in section 154 proceedings**

Proceedings on foot of a summons issued under s.154 are summary in nature. The District Court has limited jurisdiction in such proceedings.

An alleged offence is committed where a person served with an enforcement notice allegedly fails to comply with the notice within the specified time.

The prosecution must show that an enforcement was served on the defendant and that the steps specified have not been carried out. It is not necessary for the prosecution to prove that unauthorised development was carried out.

Section 156(7) provides:

(7) Where an enforcement notice has been served under section 154, it shall be a defence to a prosecution under section 151 or 154 if the defendant proves that he or she took all reasonable steps to secure compliance with the enforcement notice.

In terms of defence the precision of the contents of the enforcement notice are relevant. In *Dundalk Town Council .v. Lawler [2005] ILRM 106* which was referred to the High Court by way of case stated from the District Court, O'Neill J held that the enforcement notice in question had not properly specified the steps required to be taken.

It is advised that this issue arises in the instant case given that the summons refers to a failure to comply with Action A which comprises Actions A(A) and A(B). Given that a new/revised restoration plan was submitted and received by the planning authority on 1<sup>st</sup> April 2021 but has not been responded to either way, Querist does not know if it has rejected the plan and issued the enforcement notice on that basis. The summons refers to the failure having occurred on 18<sup>th</sup> June 2021, however, the activity carried out on that date was for health and safety reasons to

make the quarry face safe for quarry operatives in remediating the site. Equally it is possible that stockpiles were removed from the site on the date, however that forms part of site remediation.

Section 156(7) may be relied upon by Querist in his defence given that he has taken all reasonable steps to comply with the enforcement notice in ceasing works within the time period and submitted two (the first rejected) site restoration plans, the second of which has not been acknowledged or responded to by the planning authority. He also took steps to ensure the quarry was made safe which required some blasting of the quarry face to render it safe and has reports from Safemen Limited Training and Consultancy in that regard.

Section 154 proceedings do not give the District Court jurisdiction to direct an order of the High Court in respect of s.177B (if such route was available) or at all. The District Court may in appropriate circumstances refer a question(s) to the High Court as a consultative case stated or a party may appeal a decision of the District Court by way of case stated. Both procedures are complicated, cumbersome, potentially expensive and best avoided if possible.

Where a defective permission is alleged (which is not the case) an Order of the High Court to declare a planning permission defective would arise either from judicial review or section 160 proceedings, neither of which are an option.

#### **4. Prejudice suffered by Querist**

Monaghan County Council planning authority was incorrect in its assessment of the quarry under section 261A and its recommendation that no further action was required in 2012. The assessment was entirely flawed. At the time Monaghan County Council planning authority was required and should have issued a notice under subsection 261A(3)(a) directing Querist to apply to the Board for substitute consent under s.177E. In deciding that no further action was required, Monaghan County Council planning authority placed Querist in the compromised position in which he now finds himself, through no fault of his own.

The warning letters and enforcement notice were issued by Monaghan County Council planning authority on foot of a letter of complaint from a competitor, Lagan Asphalt limited. The motive for the complaint is clearly premised on the fact that Scotshouse Quarries Limited now produces similar products to Lagan Asphalt.

Querist has lost the benefits of having a notice issued under section 261A which would have given him the time to regularise the quarry by applying to the Board for substitute consent under section 177E at the time, which is not available to him now. Moreover, Querist could have operated the quarry while the s.261A application was processed by the Board, which also is not available, given the s.154 proceedings issued by the planning authority. The summons to the District Court for alleged non-compliance with the enforcement notice is far from clear.

Querist has submitted a revised restoration plan in compliance with Action A(B) of the Enforcement Notice which was received by Monaghan County Council planning authority on 1<sup>st</sup> April 202, and for which no response had been forthcoming, yet it imposed strict time limits for compliance. In these circumstances Querist is now having to defend enforcement proceedings under section 154 of the 2000 Act which places Querist in a situation of significant prejudice.

Querist must now apply to the Board under section 177C of the 2000 Act for leave to apply for substitute consent and if leave is granted, he must then apply to the Board for substitute consent under section 177E. In the time it takes for the Board to make its decision in respect of the applications, which could take 4-5 years, to include an application for further development under s.34, Querist cannot operate his quarry to its full extent to extract raw materials, including for the asphalt business which in effect is likely to result in the closure of the quarry and an end his business. Clearly that was the intention of Lagan Asphalt in making its complaint.

Querist may lose his business entirely due to mistakes made by Monaghan County Council planning authority in the s.261A assessment of the quarry. Querist relied upon the correspondence, reports from the planning authority and communications following site visits by its representatives that the quarrying was fully authorised and in compliance with law. He was totally unaware of the mistakes on the part of the planning authority and first became aware that there was an issue when he received the first warning letter dated 2<sup>nd</sup> October 2019 which he believed must have been sent by mistake.

Querist is further deprived of utilising the 37L procedure to seek permission for further development of the quarry, given that no notice issued under the relevant provisions of section 261A.

In 2019 Monaghan County Council awarded two roads contracts to Scotshouse Quarries for a local road improvement scheme and a national roads (primary and secondary) schemes. Scotshouse successfully competed the projects which were economically advantageous to Monaghan County Council. In 2020 Scotshouse Quarries applied for similar roads contracts and received a letter of intent from Monaghan County council.

Shortly after the letter of complaint from Lagan Asphalt Ltd., citing alleged planning irregularities, Monaghan County Council was forced to withdraw its letter of intent. In that respect, journalists from national newspapers who clearly were alerted to the matter by the complainant, contacted the Council seeking further information regarding contracts with Scotshouse Quarries where there was alleged unauthorised quarrying. Therefore, not only has Querist business suffered the consequences of the mistake by Monaghan County Council, and has to defend enforcement proceedings, the perception has been created that he is responsible.

Querist has been placed in a position of extreme prejudice and detriment through no fault of his own. Monaghan County Council planning authority should rectify the situation and mitigate its mistakes by providing full support to Querist for the application for leave to apply for substitute consent to the Board under s.177C and the subsequent application for substitute consent under section 177E. Furthermore, it is incumbent on Monaghan County Council to alert the Board to its mistakes and to request that the Board give priority to the Querist's application so that it is dealt with as expeditiously as possible.

Furthermore, Monaghan County Council in mitigating the effects of its mistake should agree to a stay on the s.154 proceedings and allow Querist the opportunity to extract materials to supply his asphalt business. In doing so it is merely placing Querist in the position he would have been in had it issued the notice directing that the application be made for substitute consent in 2012.

## **5. Conclusions for regularisation of quarry**



In conclusion a valid permission exists for 3.3 ha. Ref 83/09 to which 10 conditions are attached; the quarry was registered under s.261 to which 5 further conditions attached RefQ04/3002. The s.261A assessment was defective in that a notice under section 261A(3)(a) should have issued requiring Querist to apply for substitute consent at the time, however instead no further action was recommended which was an error on the part of the planning authority.

A defective permission does not arise that would enable an applying for substitute consent s.177B.

An application for leave to apply for substitute consent should be made to the Board, citing exceptional circumstances. The history set out in the foregoing provides ample support to the exceptional circumstances in this instance.

In respect of further development s.37L requires that a notice was issued under the provisions of s.261A requiring the developer to seek substitute consent and that the s.37L application related to an application for further development at a quarry site. As no such notice was issued and an application for substitute consent was not made, the s.37L procedure is not available in this instance. The only option is an application to Monaghan County Council planning authority under s.34 for further development of the site which must be accompanied by an EIAR subsequent to the applications to the Board under s.177C and s.177E.

Nothing further occurs.

Mary Moran-Long BL

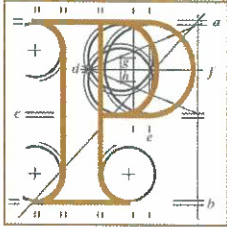
16<sup>th</sup> September 2021

**Appendix VIII ABP-311755-21 Order**

**William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI**

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An  
Bord  
Pleanála

Board Order  
ABP-311755-21

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**Planning and Development Acts 2000 to 2021**

**Planning Authority: Monaghan County Council**

**Application for Leave to Apply for Substitute Consent by Scotshouse Quarries Limited care of Earth Science Partnership (Ireland) Limited care of Tonranny, Westport, County Mayo.**

**Development:** Extraction/quarrying development at Aghnaskew (Dartree by), Scotshouse, County Monaghan.

## **Decision**

**GRANT leave to apply for substitute consent under section 177D of the Planning and Development Act 2000, as amended, based on the reasons and considerations set out below.**

## Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

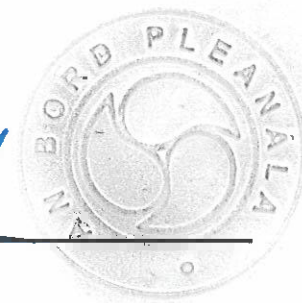
## Reasons and Considerations

Having regard to section 177D of the Planning and Development Act, 2000, as amended, the Board considers that an Environmental Impact Assessment is required in respect of the development concerned. Furthermore, having regard to Section 177D(2) of the Act, the Board considers that the following exceptional circumstances are relevant to this particular application:

- (a) regularisation of the development concerned would not circumvent the purposes and objectives of the Environmental Impact Assessment Directive,
- (b) the applicant had, or could reasonable have had, a belief that the development was authorised,
- (c) the ability to carry out an assessment of the environmental impacts of the development for the purpose of an Environmental Impact Assessment, and provide public participation in such assessments, has not been substantially impaired,
- (d) the actual or likely significant effects on the environment resulting from the carrying out or continuation of the development would be capable of assessment, and

- (e) the satisfactory extent to which significant effects on the environment can be remediated.

Having regard to the foregoing, it is considered that exceptional circumstances do exist such that it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent in relation to the site outlined in this application.



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**Dave Walsh**

**Member of An Bord Pleanála**

**duly authorised to authenticate**

**the seal of the Board.**

Dated this *11<sup>th</sup>* day of *March* 2022