

PETER SWEETMAN & ASSOCIATES

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An Bord Pleanála
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AN BORD PLEANALA	
LDG-	864182 - 23
ABP-	
08 JUN 2023	
Fee: €	220
Type:	CHG
Time:	
By:	POST

07. APPEAL RE 2260819 GALWAY COUNTY COUNCIL

PA REG.NO.	2260819
DESCRIPTION	quarrying operations including the extraction of minerals (sand and gravel) over an area of 6.5ha to a final depth of 34m aod, mineral processing activities, the loading of materials, the transportation of materials from the quarry and all related ancillary works related to the same; the recovery of inert waste arising from construction and demolition (c and d) activity via the importation of inert material and the operation of an inert waste recycling facility; and the recovery of natural materials of clay, silt, sand, gravel or stone and which comes within the meaning of inert waste (resultant from the recycling and mineral processing proposed on-site) for the purposes of achieving a beneficial restoration for the site to agriculture. Planning permission is sought for a period of up to 10 years. The planning application is accompanied by an Environmental Impact Assessment Report (EIAR) and a Natura Impact Statement (NIS). Area of site to which the application relates to 6.500 hectares
ADDRESS	Cloonascragh Co. Galway
APPLICANT	McTigue Quarries Ltd

We wish to appeal this grant of permission.

The quoted from the Planners Report and the Natura Impact Statement are in black.

Our comments are in red

The planning authority considered the nature and scale of the proposed development, within European sites, the conservation objectives and qualifying interests of the Lough Corrib SAC and SPA the distance of the site from same., Following the screening process, the Planning Authority has determined that the potential for significant effects to European sites cannot be excluded. By virtue of the requirement for protection or mitigation measures required during operation of the proposed development, the recommendation of the screening process is, therefore, to proceed to Stage Two: Appropriate Assessment.

This is the wrong test the correct test. The threshold for screening for Appropriate Assessment is set out in Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014) which states at 26. Which was included in our submission.

Item 4. The application has an identified hydrological connection with Lough Corrib SAC And SPA, the application is requested to provide full details of the proposed on-site water management system for the operational phase of development including:

- a) Volume of water required for screening and washing processes, both of extracted and imported materials.*
- b) Full details of where water for such processes is sourced and stored on-site*
- c) Details of on-site water storage capacity of soiled water within the water management system, i.e. settlement ponds and identified attenuation tank.*
- d) Please provide more detailed account of the proposed use of groundwater pond outside the application site boundary and within the applicant's ownership.*

Having read the Natura Impact Statement submitted we find that this request reasonable.

It is our submission that the further information on this point did not satisfy the request

The Appropriate Assessment

Item 2. The NIS has been updated based on detailed information relating to dust, noise, water usage, a surface water management detail and flood risk assessment as well as any proposed mitigation. The Planning Authority carried out an Appropriate Assessment and is satisfied that, where the potential for any adverse effect on any European Site has been identified, the applicant has appropriately identified beyond reasonable doubt that the pathway by which any such effect may occur has been robustly blocked through the use of avoidance, appropriate design and mitigation measures. The Planning Authority concludes that the proposed development either, individually or in combination with other plans or projects, will not adversely affect the integrity of any European Site.

It is our submission that this assessment does not comply with the requirement of the CJEU as set out in paragraph 44 of Case 258/11.

"So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned."

The F.I. Received Doc. Re the Natura Impact Statement.

Table 2: provides a list of Potential Impact type and effect and Potential Cause.

We draw attention the following points in this table as follows.

"in the event that the imported C&DW which is being stored/handled/processed on site contains elements which are hazardous and the run-off/ leachate from the same;"

Considering the record of the applicant concerning waste in their unauthorised quarry at Belcare Tuam. It is our submission that all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned have not been removed.

5.1 Mitigation to prevent pollution by hydrocarbons or other chemicals.

All fuels, lubricants and other chemicals will be stored in labelled containers or tanks within this bunded area. The bunded area will be regularly inspected to ensure proper containment. Any damage or flaws identified during inspections will be repaired without delay.

That is not mitigation.

The CJEU defines this requirement as measures intended to avoid or reduce the harmful effects of the plan or project on that site. This 'undertaking' does not remove the risk.

Spill kits will be available at all times to deal promptly with any spillage that may occur on the site.

That is not mitigation it is a measure to deal with a situation which we say should not be allowed to arise.

A detailed waste acceptance protocol will be put in place and only internal contractors will be used.

This line proves that this basic requirement is not in place.

'Detailed mitigation measures have been put forward in this NIS to protect groundwater in the area from contamination, and to ensure that the Proposed Development does not result in adverse impacts on the integrity of any European Sites or their protected habitats and species. In addition, embedded mitigation is included in the proposal to control and regulate the proposed importation & processing of construction and demolition waste at the site and the use of the natural materials recovered from the same in the restoration of the quarry.'

So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned."

IT IS OUR SUBMISSION THAT THE APPROPRIATE ASSESSMENT OF THE PLANNING AUTHORITY CONTAINS LACUNA AND DOES NOT CONTAIN COMPLETE, PRECISE AND DEFINITIVE FINDINGS AND CONCLUSIONS CAPABLE OF REMOVING ALL REASONABLE SCIENTIFIC DOUBT AS TO THE EFFECTS OF THE WORKS PROPOSED ON THE PROTECTED SITE CONCERNED."

THEREFORE, ANY GRANT OF PERMISSION WOULD BE CONTRARY TO THE HABITATS DIRECTIVE.

There is one further point,

In the Inspector's Report for the substitute consent application, it was determined the "Quarrying at the site has led to the complete removal of the remains of a rectangular enclosure, Recorded Monument GA043-046, prior to 1995 before the area was placed into the Record of Monuments in 1997 and before the Section 261 conditions imposed by the planning authority. No remaining trace of the Monument was visible when field survey carried out in May 2013."

In issuing its decision the Board attached condition 3 to the Substitute Consent:

"Following consultation with the Department of Arts, Heritage and the Gaeltacht, proposals for fencing off and maintaining the security of recorded monument GA043-046 in the northern area of the site, shall be submitted to and agreed in writing with the planning authority, and shall be implemented to the written satisfaction of the planning authority within one month of the date of this order. These proposals shall include the precise identification of its location in accordance with the archaeological report prepared in 2006."

It is clear from the site visit this condition was not complied with, the current application does not provide a sufficient level of information in relation to the presence of the archaeological monument or a detailed assessment of its condition."

It is our submission that as Condition 3 of the Substitute Consent has not been complied with, this site DOES NOT HAVE SUBSTITUTE CONSENT. This GRANT OF PERMISSION IS 'ultra vires'. It also shows that this developer cannot be relied on to implement conditions.



Peter Sweetman PO Box 13611 Bantry Co Cork

and of behalf of Wild Ireland Defence CLG North Allihies Beara Co. Cork

sweetmanplanning@gmail.com

Submission No.: 150000002588

Date of Issue:
02/05/2023 10:00am

THIS IS AN IMPORTANT DOCUMENT

KEEP THIS DOCUMENT SAFELY. YOU WILL BE REQUIRED TO PRODUCE THIS ACKNOWLEDGEMENT TO AN BORD PLEANALA IF YOU WISH TO APPEAL THE DECISION OF THE PLANNING AUTHORITY. IT IS THE ONLY FORM OF EVIDENCE WHICH WILL BE ACCEPTED BY AN BORD PLEANALA THAT A SUBMISSION OR OBSERVATION HAS BEEN MADE TO THE PLANNING AUTHORITY ON THE PLANNING APPLICATION.

Galway County Council

PLANNING APPLICATION REFERENCE No: 2260819

A submission/observation in writing, has been received from PETER SWEETMAN on 01/05/2023 in relation to the above planning application.

The appropriate fee of €20 has been paid. (Fee not applicable to prescribed bodies)

The submission/observation is in accordance with the appropriate provisions of the Planning and Development Regulations 2001 and will be taken into account by the planning authority in its determination of the planning application.

Yours faithfully,
Galway County Council

AN BORD PLEANÁLA	
08 JUN 2023	
LTR DATED _____	FROM <u>Appellant</u>
LDG- _____	
ABP- <u>317330-23</u>	