



An Bord Pleanála
64 Marlborough Street,
Dublin 1,
D01 V902

Our Ref: IE0037007.4788

20 December 2024

Dear Sir/Madam,

APPLICATION TO AN BOARD PLEANÁLA FOR SUBSTITUTE CONSENT FOR HEMPSTOWN QUARRY UNDER SECTION 177E OF THE ACT

This cover letter accompanies a planning application for substitute consent under section 177E of the Planning and Development Act 2000 as amended [PDA] on behalf of Shillelagh Quarries Ltd ('SQL'), Hempstown Commons, Co. Kildare who are the owners and operators of a quarry and aggregate product operation located in the county of Kildare.

This application for substitute consent is accompanied by a remedial Environmental Impact Assessment report (rEIAR) and remedial Stage 1 Appropriate Assessment Screening Report. This Section 177E application for substitute consent will be accompanied by, and concurrent with, an application for further prospective development of the existing quarry under section 37L of the PDA within 6 weeks of this date and which will also be accompanied by an EIAR and Stage 1 Appropriate Assessment Screening Report.

This cover letter is presented by WSP Ireland Consulting Ltd who have been appointed by SQL to prepare this substitute consent application on their behalf.

This application pack includes the following documentation:

- Completed planning submission form
- EIA portal notification documentation (portal ID number: 2024217; available to view at <http://housinggovie.maps.arcgis.com/apps/webappviewer/index.html?id=d7d5a3d48f104ecbb206e7e5f84b71f1>).
- remedial Environmental Impact Assessment Report (rEIAR) and Non-Technical Summary
- remedial Stage 1 Appropriate Assessment Screening Report
- Restoration and Habitat Management Plan (provided as an appendix to Chapter 2 of the rEIAR)
- Copies of public notices (site notice and newspaper notice)

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Registered in Ireland No. 302231 - Statutory Directors: M Naysmith (British), M Barnard (British), J Hughes (Irish) and C Hodgson (British)

- Landowner Consent Letter
- Drawing pack containing the following schedule of drawings:

No.	Drawing Title	Scale	Sheet
01	Site Location Plan - Regional	1:20,000	A3
02	Existing Conditions*	1:1,000	A0
03A	Baseline Site Conditions Sheet (2019) 1 of 4	1:500	A0
03B	Baseline Site Conditions Sheet (2019) 2 of 4	1:500	A0
03C	Baseline Site Conditions Sheet (2019) 3 of 4	1:500	A0
03D	Baseline Site Conditions Sheet (2019) 4 of 4	1:500	A0
04A	Existing Site Conditions Sheet 1 of 4	1:500	A0
04B	Existing Site Conditions Sheet 2 of 4	1:500	A0
04C	Existing Site Conditions Sheet 3 of 4	1:500	A0
04D	Existing Site Conditions Sheet 4 of 4	1:500	A0
05	Cross Section Details	1:500	A0
06	Office Container, Weighbridge, Wheelwash and Wheelwash Recycling Tank Details	As shown	A1
07	Restoration Plan	1:750	A0
Figure 1	Baseline Site Conditions**	1:750	A0
Figure 2	Existing Site Conditions***	1:750	A0
<p>*Shows local Site location</p> <p>**Key map for Drawings 03A-03D (non-statutory scale)</p> <p>***Key map for Drawings 04A-04D (non-statutory scale)</p>			

Planning fees

The planning fees overleaf have been calculated below in line with Schedule 9 of the Planning and Development Regulations, as amended. A cheque for a sum of €5921.14 is enclosed.

Class	Column 1 Class of Development	Column 2 Amount of Fee	(Drawing ref. No.) Item		Area		Fee
4	The provision of buildings other than buildings coming within class 1, 2 or 3.	€240 for each building, or €10.80 for each square metre of gross floor space to be provided, whichever is the greater.	06	Office Container*	27.42	Sqm	€296.14
6	6. The use of land for— (a) the winning and working of minerals, (b) the deposit of refuse or waste.	€500, or €50 for each 0.1 hectare of site area, whichever is the greater	03A, 03B, 03C, 03D, 04A, 04B, 04C, 04D	Application site area	10.05	Ha	€5,025
8	8. The provision on, in over or under land of plant or machinery, or of tanks or other structures (other than buildings) for storage purposes.	€200, or €50 for each 0.1 hectare of site area, whichever is the greater.	06	Recycling Tank	n/a	n/a	€200.00
13	Development not coming within any of the foregoing classes.	€80, or €10 for each 0.1 hectare of site area, whichever is the greater.	06	Wheelwash	n/a	n/a	€80.00
			06	Weighbridge	n/a	n/a	€80.00
			03A, 03B, 03C, 03D, 04A, 04B, 04C, 04D	Abstraction borehole	n/a	n/a	€80.00
			04A, 04B, 04C, 04D	Soakaway (primary)	n/a	n/a	€80.00
			04A, 04B, 04C, 04D	Soakaway (overflow)	n/a	n/a	€80.00
TOTAL FEE CALCULATED							€5921.14
*Note: 'Office Container' (labelled to as 'office cabin' in the drawings provided to support this application) contains the welfare facilities and the weighbridge control room, and site office.							

Exceeding the substitute consent threshold for ‘exceptional circumstances

There is a statutory requirement imposed upon the Board to consider the grant of substitute consent in only exceptional circumstances as per Section 177K(1J) of the PDA as amended. The subject development meets each of those 177K(1J) exceptional criteria as follows:

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive

The subject development clearly does not circumvent the purpose and objectives of the Environmental Impact Assessment Directive. In fact, the proposal is consistent with both directives and the various assessments undertaken are also consistent with both Directives.

(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised

The site has been operated by Shillelagh Quarries Ltd since 2018 and they subsequently purchased the site from Stresslite Precast Ltd in June 2019 and undertook development on the lands pursuant to the planning permission Kildare County Council (KCC) 07/443; ABP Ref. PL09.233338.

The applicant in this case has tried best endeavours over previous applications extend the life of planning permission on KCC Planning Reference Number 07/443; ABP Ref. PL09.233338 on site and has not been successful.

Planning application Reg. Ref: 07/443 expired on 29 December 2019, which is a period of 10 years from the grant of permission in 2009. Prior to the expiry of this permission, Shillelagh Quarries Ltd (SQL) applied for permission for the continuation of use and expansion of the quarry on 23 December 2019 (KCC Reg. Ref.: 19/1438). Further information was requested by KCC in relation to the planning application submitted and this information was submitted to KCC on 24 November 2020.

SQL provided the information KCC requested, however, subsequently KCC adopted the position that the application could not be considered by the planning authority as it included the retention of unauthorised development(s).

Subsequently, Shillelagh Quarries Ltd successfully sought a Judicial Review to challenge the planning authority’s decision under Section 50 of the Planning and Development Act, 2000, on a number of grounds. Notably that the conclusion of the planning authority that the 2019 application included the retention of unauthorised development was irrational and erroneous in circumstances where the planning application that was made to the planning authority was not made pursuant to s.34(12) of the 2000 Act and the application was made for continued operation of the quarry and not for the purpose of retrospectively regularising any unauthorised development.

A settlement was reached between SQP and the planning authority on 17 January 2023 with the following terms:

1. *Applicant agrees to an Order withdrawing the within proceedings.*

2. *Applicant undertakes to the Court to bring an application pursuant to S.177C of the Planning and Development Act, 2000, as amended, for leave to apply for substitute consent in respect of all development carried out on the lands, since the expiration of planning permission register reference 07/443 ABP ref.PL09253338 on the 29th December, 2019, other than the remediation works carried out pursuant to Condition 6A thereof, within 6 months of today's date.*
3. *The Respondent shall be at liberty to bring, if it so deems necessary, s.160 proceedings, pursuant to the PDA 2000, in respect of any unauthorised development carried out on the lands, the subject matter of the within proceedings.*
4. *For the avoidance of doubt, in the event that the Council commences s.160 Injunction proceedings referenced at paragraph 3 herein, the Respondent confirms that it will adopt a neutral position to any application by the Applicant to adjourn such s.160 proceedings commenced against the Applicant pending determination by the Bord of it's application for leave to apply for Substitute consent, conditional upon the Applicant limiting any further extraction to the extraction area outlined in the Applicant's letter dated 16th November, 2020.*
5. *Liberty to apply.*
6. *Legislative references herein shall be deemed to include any successor legislative provisions.*

The court order (dated 31 January 2023, Record No: 2021/228JR) and states:

'The Court notes the undertaking given on behalf of the Applicant¹, that the Applicant will make an application to An Bord Pleanála, for leave to apply for substitute consent pursuant to section 177C of the Planning and Development Act 2000 (as amended), within 6 months of today's date in respect of all development carried out on the lands, the subject matter of the within proceedings, since the expiry of planning permission register reference 07/443 ABP ref. PI09253338 on 29th December 2019, other than remediation works carried out pursuant to Condition 6A of the said planning permission.'

SQL subsequently submitted an application to the board for leave to apply for substitute consent pursuant to section 177C of the Planning and Development Act 2000 (as amended) on 25 July 2023 (Bord Pleanála Case reference: LS09.317649).

A decision on the application had not been made by the board by the 16 December 2023, which was the date that Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No.2) Order 2023 (S.I. 645 of 2023) came into effect. This Act include provisions which provide for a single-stage application process for substitute consent and so removed the requirement for SQL to seek leave to apply for substitute consent from An Bord Pleanála (ABP). ABP returned SQL's application for leave to apply for substitute consent and deemed it withdrawn on 15 January 2024.

¹ Applicant refers to SQL

This application is now made to regularise development deemed unauthorised at the site.

See section 2.6 of Chapter 2 (Project Description) on the rEIAR for further detail on the planning history of the Development.

- (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*

The ability to carry out an EIAR or appropriate assessment in this case has not been compromised. In fact, in this instance, an EIAR was undertaken under KCC Reg. Ref.:19/1438 as recently as 2019 when SQL sought permission to continue quarry operations at the site. Impact on Designated Sites was previously undertaken for application KCC Reg. Ref.: 19/1438 even though the latter application was subsequently invalidated. These previous assessments greatly assist the more recent assessments over the current assessment period.

- (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*

The attached remedial Appropriate Assessment Screening Report indicates no significant adverse effect on any Designated Site.

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

In this case no remediation is required for any adverse effect on any European Site because there is no significant adverse effect on any Natura 2000 site. The accompanying rEIAR indicates no adverse impact on the environment from the subject development either on its own or in combination with other plans or projects.

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

The applicant has substantially complied with previous planning permissions and the settlement terms of the High Court.

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

All the above requirements are met under 177(K)(1J).

The subject development is also consistent with other provisions of S177 namely:

- (a) the provisions of the development plan or any local area plan for the area*

The subject development is consistent with both the 2017 and the 2023 CDPs as set out above.

- (b) the provisions of any special amenity area order relating to the area*

There is no special amenity order in the immediate area. The subject site is not located in an amenity area and there is no impact on any designated amenity area. The impact of the subject development on the landscape and visual amenity of the area is not significant.

(c) the remedial environmental impact assessment report, or remedial Natura impact statement, or both that report and that statement, as the case may be, and, where section 177E(2A)(b) applies, the environmental impact assessment report or Natura impact statement or both that report and that statement, as the case may be, submitted with the application

The submitted rEIAR indicates no significant impact from what has occurred by way of development and operations on site between 29 December 2019 and the current period. The remedial Appropriate Assessment indicates clearly that there is no justification for a rNIS.

(d) the significant effects on the environment, or on a European site, which have occurred or which are occurring or could reasonably be expected to occur because the development concerned was or is proposed to be carried out

There is no such significant effect on the environment or any European Site.

(e) the report and the opinion of the planning authority under section 177I

The applicant welcomes any points raised by the Local Authority.

(f) any submissions or observations made in accordance with regulations made under section 177N

These are awaited with great interest and we have identified and formulated this application and generated the various assessments on the basis of previous consultation for a similar development under KCC Reg. Ref.: 19/1438.

(g) any report or recommendation prepared in relation to the application by or on behalf of the Board, including the report of the person conducting any oral hearing on behalf of the Board

This is also awaited with great interest by the Applicant.

(h) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c)

The subject site is not located within a European Designated site but is located within a Zone of Influence of same and this is carefully considered by WSP in their supporting documents provided elsewhere in this substitute consent application. The subject development is compliant with section 10(2)(c) which seeks the conservation and protection of the environment including, in particular, the archaeological and natural heritage and the conservation and protection of European sites and any other sites which may be prescribed.

(i) conditions that may be imposed in relation to a grant of permission under section 34(4), 282(3) or 293(7)

Our client will accept planning conditions imposed by An Bord Pleanála in any positive determination of this substitute consent application. However, section 282(3) does not apply in this instance as neither the proposal nor the location are maritime and there is no maritime or coastal authority involved. Section 293(7) does not apply for broadly the same reasons.

(j) the matters referred to in section 143

The Board are required under this section of the Act to carry out their function, including determine substitute consent applications in accordance with prevailing government advice policies and objectives, the NPF and the appropriate RSES, consistent with the proper planning and sustainable development of the site and the area, and the national interest. We very much welcome that fact and seek a positive determination in this case on that basis and in the absence of any significant environmental harm having been caused or currently being caused.

(k) the views of a Member State where the Member State is notified in accordance with regulations under this Act

This criterion does not apply in this instance.

(l) any relevant provisions of this Act and regulations made thereunder

We believe that the subject application is in accordance with the principal act and is in accordance with the appropriate regulations.

We trust all is order and await the Board's determination of this application.

Yours faithfully



Ruth Treacy
Technical Director

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