

Daniel O'Connor

From: Bord
Sent: Monday 10 March 2025 15:16
To: Appeals2
Subject: FW: Ref: 321872
Attachments: 20250310-ABP-321872.pdf

From: Sean O'Callaghan <socallaghan@antaisce.org>
Sent: Monday, March 10, 2025 3:06 PM
To: Bord <bord@pleanala.ie>
Subject: Ref: 321872

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A Chara,

Please find enclosed An Taisce's submission on planning application ref: 321872.

Is mise le meas,

Seán O'Callaghan
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An Taisce – The National Trust for Ireland
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20250310-ABP-321872

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Sent by email to: bord@pleanala.ie

10th March 2025

Ref: 321872

App: Shillelagh Quarries Ltd.

For: Application for continued extraction at Hempstown Quarry under Section 37L of the Planning and Development Act 2000 (as amended). Environmental Impact Assessment Report submitted with application.

Site: Hempstown Commons, Co. Kildare.

A Chara,

An Taisce would like to make the following observation on the above S.37L application for continued extraction at Hempstown Quarry.

From the outset, we note previous permissions on the site (Ref: 07/443 & ABP-233338) and would state that compliance with the conditions of existing permissions on the site should be fully assessed and demonstrated as a preliminary matter. We also submit that the permission period be limited to ten years to allow for a full review of compliance.

A full review of compliance with existing permissions is crucial in the context of known transgressions of planning decisions by the applicant, as highlighted by J. Baker in *McCoy v Shillelagh Quarries Ltd* [2015] IEHC 838, for instance:

*"The Court found that in the present case, despite the refusal of the Board, **the respondents continued the quarrying business and demonstrated foul conduct.** The Court held that it would be appropriate to put a restraint on the alleged quarrying activities in consonance with the EIA*

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Directors: Stuart McCaul (Chair), Trish O'Connell (Vice Chair), Laura Segura Gutierrez (Hon Secretary), John Conroy (Treasurer)
Olivia Rogers, Rónán O'Brien, Finbarr Murray, Helen Shaw, Terri Morrissey, Sinead Mercier, Phil Doyle

Directive and Habitat Directive for minimising the damage that had already been caused to the environment."¹ [An Taisce emphasis]

Groundwater Impact

We note that the proposed extraction extension area overlays the Kilcullen ground waterbody which, while currently designated as good quality status by the EPA, is determined to be at risk of not achieving good status by 2027, a key requirement of the Water Framework Directive. Therefore, the proposal should be assessed against **Article 4** of the WFD to determine whether the project may cause a deterioration of the status of a surface or ground water body or if it may jeopardise the attainment of good surface or ground water status or of good ecological potential and good surface or ground water chemical status. We recommend, in particular, that close consideration is given to extraction, abstraction and dewatering arising from the proposed operations.

We would highlight the following points of relevant European case law regarding the WFD. In Case C-461/13 (Weser), the CJEU held that:

"Article 4(1)(a)(i) to (iii) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as meaning that the Member States are required

— unless a derogation is granted

— to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive."

The Weser case also held that the decision maker must ensure that no one quality element reduces as a result of development. This includes physio-chemical quality elements which may be impacted by increased suspended sediment on foot of an increased discharge concentration.

In Case C-529/15, the CJEU held as follows:

"It should be borne in mind that, when a project is liable to have adverse effects on water, consent may be given to it if the conditions set out in Article 4(7)(a) to (d) of that directive are satisfied (see, to that effect, judgment of 4 May 2016, Commission v Austria, C-346/14, EU:C:2016:322, paragraph 65).

In order to determine whether a project has been authorised without infringing Directive 2000/60, a court may review whether the authority which issued the authorisation complied with the conditions laid down in Article 4(7)(a) to (d) of that directive, by determining, first, whether all practicable steps were taken to mitigate the adverse impact of the activities on the status of the body of water concerned; second, whether the reasons behind those activities were specifically set out and explained; third, whether those activities serve an overriding general interest and/or the benefits to the environment and society linked to the achievement of the objectives set out in Article 4(1) are outweighed by the benefits to human health, the maintenance of human safety or the sustainable

¹ <https://ie.vlex.com/vid/mccoy-v-shillelagh-quarries-793767029>

development resulting from those activities; and, fourth, whether the beneficial objectives pursued by that project cannot, for reasons of technical feasibility or disproportionate cost, be achieved by other means which are a significantly better environmental option (see, to that effect, judgment of 11 September 2012, Nomarchiaki Aftodioikisi Aitolokarnanias and Others, C-43/10, EU:C:2012:560, paragraph 67)."

Surface Water

We would further highlight that Article 5 of the Surface Water Regulations 2009 requires a public authority, in the performance of its functions, not to undertake those functions in a manner that knowingly causes or allows deterioration in the chemical or ecological status of a body of surface water. Therefore, clarification regarding the quarry's operational regime and associated infrastructure is required to satisfy this water stewardship function.

Water Monitoring

We would emphasise the importance of water sampling at quarry discharge points to scientifically evaluate the presence or absence of contamination. A survey of the following parameters would be particularly important, which are usually contained in associated trade effluent discharge licences: temperature, pH, Biological Oxygen Demand, Suspended Solids, Molybdate reactive phosphate (P), ammonia (N), hydrocarbon concentrations. We also submit that intensification of mineral extraction and dewatering activity requires rigorous assessment for impacts on water quality and hydromorphology.

Traffic Impact Assessment

We submit that the proposal would be likely to increase the volumes of Heavy Goods Vehicle (HGV) traffic utilising the local road network to service the expanded quarry. Provisions for route planning, restricted hauling times and spill-response protocols would help mitigate local disruptions and require full assessment within a Traffic Impact Assessment and Traffic Management Plan.

Residential Amenity

We note an abundance of residential dwellings in the vicinity of the quarry footprint who may experience adverse impacts to residential amenity due to noise, vibration and dust. Each of these factors requires rigorous assessment and close consideration by the Board to ensure the absence of these adverse impacts. Furthermore, the applicant must robustly demonstrate the absence of adverse impact upon local drinking water sources which may reside in the vicinity of quarrying operations.

Vegetation Removal

We submit that native vegetation removal would constitute a removal of existing biodiversity features likely to provide a range of ecosystem services for local wildlife and the human population. This would entail removal of hedgerow, treelines and scrub habitats to facilitate the proposed development, which act as nesting, foraging and commuting ground for bats, mammals and birds. We submit that these require replacement with native species of local Irish provenance, if they cannot be retained in the first instance, to ensure no net loss of biodiversity value from vegetation removal.

Cumulative Impact

We also note that there is potential for cumulative impacts arising from the combined activity of the subject proposal and adjoining quarries in the region. It should be ensured that in conducting the EIA, the Board consider the existing and proposed activity from the site in combination with activity from other quarry development in the area.

Please acknowledge our submission and advise us of any decision made.

Is mise le meas,

Seán O'Callaghan

Planning and Environmental Policy Officer
An Taisce– The National Trust for Ireland