

Faolán Bashford

From: Kieran Cummins <kieran@kierancummins.com>
Sent: Tuesday 14 May 2024 14:10
To: Appeals2
Cc: Cummins Kieran
Subject: SUBMISSION re Application ref. SU17.319397
Attachments: 2024-05-14-KC to ABP-SU17.319397.pdf

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SUBMISSION re Application ref. SU17.319397

Dear Sir/ Madam

Please find attached submission in respect of the above referenced substitute consent application.

I should be much obliged if you could kindly confirm receipt of this submission.

Kieran Cummins

Kieran Cummins,
Trammon,
Rathmolyon,
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The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1

14th May 2023

SUBMISSION re Application ref. SU17.319397 (Substitute Consent)

Reference: ABP: SU17.319397
URL: <https://www.pleanala.ie/en-ie/case/319397>
Application Lodged: 20th March 2024 (Wednesday)
Dev. Address: Tromman Quarry, Tromman, Rathmolyon, Co. Meath
Applicant: Keegan Quarries Limited
Description: **Substitute Consent** for quarry and ancillary precast concrete manufacturing yard
Submission Fee: N/A

Dear Sir/ Madam

Please find my submission re the above referenced application. There are **10 pages** in this submission.

Yours sincerely,



Kieran Cummins

OBSERVATION (SU17.319397)

CASE LAW & EXCEPTIONAL CIRCUMSTANCES

1. **3rd July 2020**: the Irish Supreme Court in *AN TAISCE, PETER SWEETMAN & Others v. AN BORD PLEANÁLA and Others* [9/19, 42/19 and 43/19], Mr. Justice William M. McKechnie stated that the public should have an input at the earlier s.177 (c) stage and specifically cited the Aarhus Convention. They also stated that where substitute consent is applied for that the exceptionality test must be applied.
2. Moreover given **C-215/06**: Commission v. Ireland: Failure of a Member State to fulfill obligations – No assessment of the environmental effects of projects within the scope of Directive 85/337/EEC – Regularisation after the event is not permissible under EU law where E.I.A. and A.A. (Habitats) should have been prepared prior to any development. Case **C-215/06** related to the construction of a wind-farm development together with associated works at Derrybrien, County Galway. In that case, it was held that by failing to adopt all measures necessary to ensure that the development consents given were preceded by an assessment with regard to their effects in accordance with Articles 5 to 10 of Directive 85/337/EEC, Ireland has failed to comply with the obligations that it has under Articles 2, 4 and 5 to 10 of the said Directive 85/337/EEC. This same case came up a second time under ref. **Case C-261/18** which was an application for an order to pay a penalty payment and a lump sum). In 2022, the Derrybrien, County Galway ceased to operate in order to comply with the ruling of the European Court of Justice.
3. In light of the EU cases of **C-215/06 and 261/18** together with the welcome clarity by the Irish Supreme Court in *AN TAISCE, PETER SWEETMAN & Others v. AN BORD PLEANÁLA and Others* [9/19, 42/19 and 43/19], it is therefore not legally permissible for the Irish Authorities to facilitate any further retention applications to this applicant in light of the planning history.
4. Given the history of recorded unauthorised developments pertaining to the Keegan Quarry at Trammon together with its history across a number of other quarries, it is virtually impossible for it to satisfy the ‘exceptionality test’. The amount of documentary evidence now available demonstrates conclusively that the operators had conducted numerous unauthorised developments in a flagrant abuse of planning and environmental requirements both of domestic law (Irish) and also of European law. It is considered that the Irish Authorities would find it impossible to facilitate any further retention applications to this applicant in light of the planning history and having regard to EU and Irish law as confirmed in **C-215/06 and 261/18** (European Court of Justice) together with *AN TAISCE, PETER SWEETMAN & Others v. AN BORD PLEANÁLA and Others* [9/19, 42/19 and 43/19], Irish Supreme Court.

COMPLIANCE HISTORY DEMONSTRATES NO EXCEPTIONAL CIRCUMSTANCES

5. This quarry has had a long history of exceeding permitted boundaries. This first occurred in 2003 when **Meath County Council** issued an enforcement notice ref. **03/192**. A retention application was subsequently submitted under ref. TA/30334 [PL 17.206702]. This included a large element of retention: *“...the retention of extension at quarrying over an area of 4.88 hectares, storage of overburden material, settlement lagoon and stilling pond, office and workshop area, septic tank and percolation area...”*
6. In 2009 the applicants applied to extend the quarry under ref. TA/900976 [PL 17.235960]. This was granted [subject to conditions] on the **3rd August 2010**. That development was described as follows: - *“PROPOSED DEVELOPMENT: Extension of approximately 2.85 hectares to the existing permitted extraction area, ... and associated accommodation works to include landscaping and boundary treatments, restoration proposals including construction of berms ... on a total site area of 4.274 hectares at Tromman, Rathmolyon, County Meath.”*
7. The Order further stated in a paragraph before the planning conditions were listed: - *“In relation to visual amenity, the Board agreed with the Inspector that, as proposed, the quarry extension would have an unacceptable impact. However, the Board considered that the development would be acceptable, if reduced in extent to allow for a 60 metre wide buffer zone along the frontage with the regional road. Such buffer zone would also enhance public safety and aid dust suppression. Reason: In the interest of visual amenity, public safety and dust suppression”*

8. **Condition 2** of the order specifically stated: -

"The area of the quarry extension shall be reduced so that the edge of the extraction area is not less than 60 metres from the boundary of the site with the R156 regional road. Revised drawings in this regard, including in respect of landscaping and site restoration, shall be submitted to the planning authority for written agreement before development commences.

Reason: In the interest of visual amenity, public safety and dust suppression."

9. By way of warning letter dated 22nd March 2018, Meath County Council advised the site operator: - *"It has come to the attention of the Planning Authority that unauthorised development may have been or is being carried out on lands at Trammon, Rathmolyon, Co Meath namely: - Breach of condition 2 as per Planning Permission TA900976 / PL.17.235960."* [ref. **17/004**] Notwithstanding this notice, a campaign of extraction continued to occur within 60 meters of the road over the following years.
10. The 60-meter limit was clearly provided for in the order form *An Bord Pleanála* after an EIA assessment. This planning application had been subject to a full EIA assessment. It follows that an EIA infringement has occurred with a prolonged campaign of blasting over several years where the operator clearly knew he should not be working. The developer therefore knew that an EIA offence was occurring but continued to dig/ extract. The operator must admit culpability for this offence; there is absolutely no excuse for it. He had been specifically precluded from quarrying there and issued with a warning letter in 2018, but continued to extract from this area in the years that followed.



The Road [R156] to the left of the quarry. Note the proximity of the quarry to the road. They were required not to quarry within 60m of the road. This was ignored.

11. Offences committed after the **3rd July 2008** are significant. That was the date on which **C215/06 [Commission v. Ireland]** was handed down by the European Court of Justice. That decision is significant in that it provided that Regularisation after the event not permissible under EU law where E.I.A. and A.A. should have been prepared prior to development. In that case it was held that with regard to their effects in accordance with Articles 5 to 10 of Directive 85/337/EEC, Ireland has failed to comply with the obligations that it has under Articles 2, 4 and 5 to 10 of the said Directive 85/337/EEC.

12. There were several blasts in this area of the quarry right up to and including 2024. This can't be accidental. A warning letter had even issued in 2018. It is submitted therefore that *An Bord Pleanála* are obliged to find that the operators should not responsibly not have know that what they were doing was not unauthorised. They were specifically precluded from going into a particular area and knowingly did it. This is not a once off event; there was an entire comparing of blasting to remove that amount of stone. This was contrary to the permission following EIA and was therefore contrary to the EIA directive. This conduct specifically offended the outcome of the past EIA by non-compliance with the conditions. There is no basis to permit this quarry / operator to access the substitute consent process. It follows that the section 177E application should be rejected on that basis.

13. **Condition 3** of the order specifically stated: -

"There shall be no excavation below a level of 50 metres OD.

Reason: In the interest of clarity and protection of ground water resources."

The quarry also appears to be well below 50 a.O.D. The board should ascertain the status of the floor levels within the quarry.

14. Planning consent expired in August 2018 for that which had been permitted. Notwithstanding it has continued in operation ever since and continued to expand regardless of a previous Judicial Review and regardless of a pending section 160 on the matter.

15. Having regard to the Large Concrete Products Factory constructed in c.2017, this never had planning consent. This is a massive factory and a very substantial operation. This is in turn being supported from a quarry that does not have planning permission and much of it from an area where they were specifically precluded from working (please see above). This operator is a major regional player operating without planning permission.



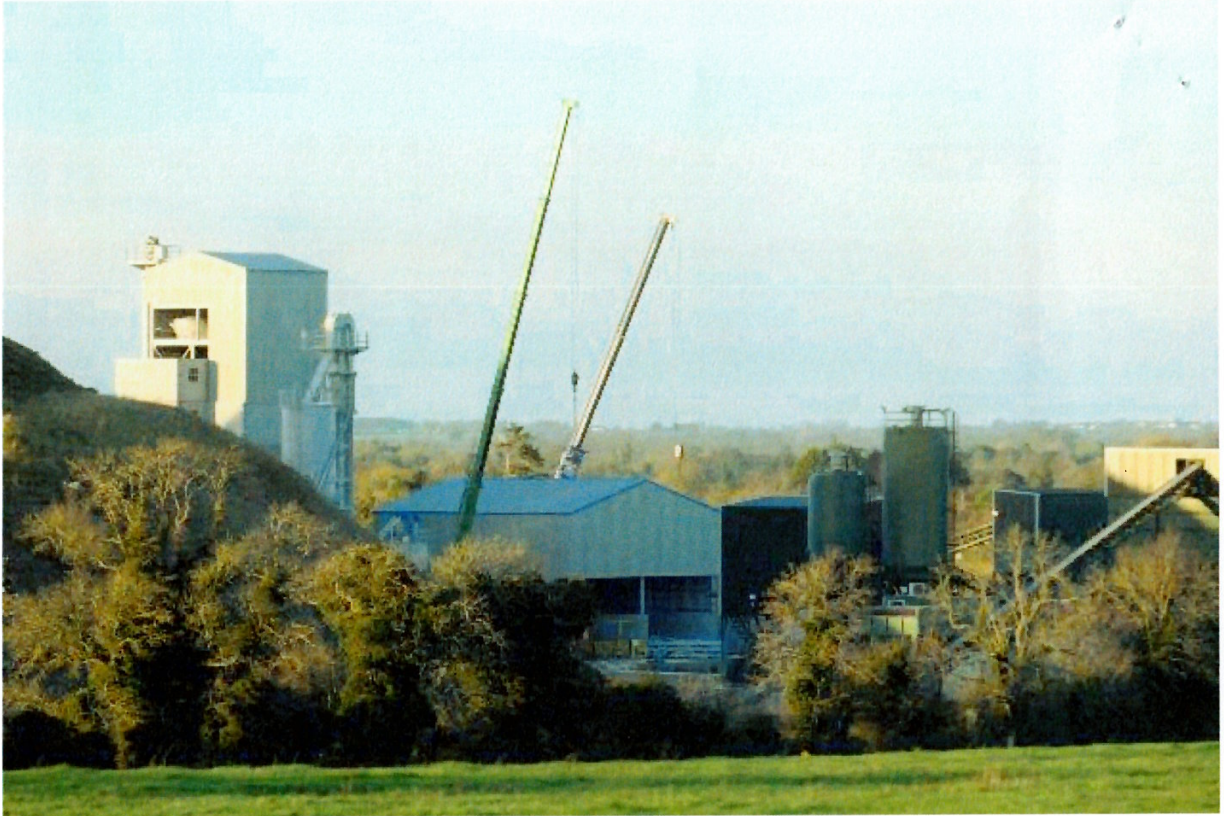
Concrete Products Factory; there is no planning consent for the long building to the fore of the screen



The majority of the structures in this frame were constructed without planning consent.



Construction of plant in 2016 without planning consent



Construction of plant in 2016 without planning consent

16. Planning Regs Schedule 5 sets out classes of development which come under the EIA Directive. Part B deals with Member State Thresholds. Class 10 Infrastructure Projects (a) Industrial estate development projects where the area would exceed **15 hectares**. It follows that all activities which do not fall within the definition of quarrying may well have created a separate EIA offence. It follows that industrial activities in excess of 15 HA require a separate EIA. This should be examined by the board.

2003 APPLICATION & a.O.D.

17. Having regard to the application of 2003, which was largely concerned with retention; ref. TA/30334 [PL 17.206702], this grant is problematic. Condition 4 of the parent grant of planning for this quarry ref. 97/1868 provided that *“Extraction shall not take place below the level of **62.00m O.D.** as defined on the extraction plan drawing (Drawing No.2) J486-D02 submitted on the 31/08/98. Reason: In the interest of development control and protection of local water supplies.”* An engineers report on the planning file by Paul Donlon to David Keyes states that *“The survey has confirmed that the level of 62.00 OD has been **exceeded by approximately 4m.**”* The implication that the level was **58m OD**.
18. Having examined the subsequent application, we were unable to find any element of the application seeking to quarry beneath this level. Yet condition 18 of the grant by Meath County Council specifies *“There shall be no excavation below the level of 7.0 meters A.O.D. Malin head.”* This was repeated in condition 2 of the subsequent grant from *An Bord Pleanála*. On the face of it, this planning permission as deficient in that this was not applied for. Notwithstanding, it follows that no assessment was conducted by the planning authority. It appears therefore that the subsequent planning permission is erroneous. Therefore reliance on this baseline for future planning consents is also highly questionable having specific regard to EIA requirements.

[Emphasis Added]

CONCRETE BATCHING PLANT

19. **May 2013**, a large Concrete Batching Plant was removed from a site situated at *Keegan Quarries Plant, Aghar*. This plant had previously been the subject of *Meath County Council* consent TA/20055, (which was a retention permission) and which was for 5 years from 2000. This in itself had been grossly exceeded as the time permitted 5-year time frame had long since elapsed. It was re-erected at the quarry in Trammon without any planning consent whatever. It cannot reasonably be claimed therefore that it could in any way have been exempted from planning consent. UD ref: **14/134**.



Concrete Batching Plant which was previously subject to a retention planning consent on the former Keegan site at Aghar a few miles away. This was moved to the Trammon site in May 2013. [ref.0395] ©

PREVIOUS SUBSTITUTE CONSENT

Newcastle, Enfield, County Meath Meath County Council, Planning Enforcement

20. The site is bounded on one side by the river Blackwater which flows in a northwest direction into the River Boyne and River Blackwater Special Area of Conservation ('the SAC'). It is common case that otters, a qualifying interest species of the SAC, travel up the river to the subject site. The site had been used for [unauthorised] quarrying of sand and gravel. On or about **23rd October 2014**, *An Bord Pleanála* granted substitute consent (i.e. retrospective planning permission and EIA) for unauthorised quarrying at this site.
21. In its decision to grant substitute consent in 2014, *An Bord Pleanála* its decision conditioned the restoration of the quarry within 24 months of the agreement of a restoration plan with the planning authority. Any remedial Environmental Impact Assessment ('EIA') conducted by the Board could only have considered the unauthorised extraction up to the date of its decision.
22. The restoration condition in the 2014 decision of the Board was not complied with. Neither did the quarry close. Unauthorised extraction continued at the quarry after the grant of substitute consent (retrospective consent for part of the historic extraction) and was the subject of subsequent enforcement action by **Meath County Council** who by way of enforcement notice ref **15/077** and dated 29th April 2015 stated that '*The unauthorised development consists of: The unauthorised extraction of sands and gravels.*' It further ordered that '*Cease all quarrying activity on site on lands outside those lands highlighted in Blue on attached Enforcement Map UD 15/077*' by 1 May 2015 at 17.00 hours.
23. Notwithstanding the enforcement notice, I believe that extraction continued and that the matter came before *Judge Mary O'Malley of Trim Circuit Court* on Tuesday 5th February 2019, wherein the Judge ordered the cessation of unauthorised quarry development and to "*remove all material that isn't waste material*" from the site within a period of 3 months and that the site be restored to 'conservation status' within a period of 6 months. **Trim Circuit Court** ref. **18/00123**. The above demonstrates that substitute consent was previous disregarded and unauthorised quarrying continued. This is demonstrative of an apparent pattern of the way quarries have been operated by this developer.

CESSATION ORDER IS REQUIRED

24. It is noted that when a section 177(c) matter appeared before **MR JUSTICE SIMONS** in a Judicial Review ref. 2019 No. 441 JR of an earlier decision by *An Bord Pleanála* ref. ABP-303334-19 to grant consent, Mr. Simons J questioned why *An Bord Pleanála* had not invoked section 177J of the Planning and Development Act which provides it with the power to order the person/ entity seeking an application for substitute consent to order it to cease operations for a defined period of time while the matter is being considered. This has operated since 2018 without planning consent; it is therefore imperative that it be ordered to cease while this application is being determined.
25. In order to assess the application and the quarry the subject of the application, *An Bord Pleanála* MUST issue a cessation notice. It is not possible to assess an application made in Feb/March, etc based upon reports and surveys prepared in 2023, if that development continues while the application is pending. *An Bord Pleanála* must decide this application and the status quo without the quarry expanding.

177J.— Specifically provides that: -

"(1) Where the Board has received an application for substitute consent made in accordance with section 177E and is considering that application, it may give a draft direction in writing to the person who made the application requiring the person to cease within the period specified in the draft direction, all or part of his or her activity or operations on or at the site of the development the subject of the application, where the Board forms the opinion that the continuation of all or part of the activity or operations is likely to cause significant adverse effects on the environment or adverse effects on the integrity of a European site."

NATURA IMPACT ASSESSMENT [N.I.A.]

26. Having examined the NIA, we comment as follows: -

1.5 Main Sources of Information: The list of guidance's stops at 2009 and does not include the most recent guidance's at national and EU level; this suggests the r.N.I.S. is not to current best practice.

1.5 The very long gap from 2009 to 2023 in which the EMS was not updated is noted given the immense amount of unauthorised development at the site during that time.

1.6 Site Visits: The 2018/19 site visits could not establish a 'baseline' due to the presence of so much unauthorised development the subject of this application at that time. It is entirely disingenuous to use it as such, and therefore, the baseline is flawed and it follows that the r.N.I.S. is accordingly flawed.

1.6 The 2018/19 carried out over 2 consecutive days do not constitute best practice for bat surveys and must be seriously questioned. Several visits over the roosting season would normally be required including dawn and dusk.

1.6 It is submitted that the static bat detectors were not deployed in time in 2023 and do not constitute a proper bat survey as they are effectively out of season.

2.1 Re Location: Applicants state that neighbouring enterprises of Keegan Quarries Ltd., pre-cast concrete manufacturing facility. This is incorrect; they are integrated developments not neighbouring enterprises.

2.2 Description of the Quarry Site: This does not give the accurate history of the unauthorised development, especially the concrete manufacturing which has been in question for a very large period of time including deliberate offences post 3rd July 2008 (C-215/06);

2.3 Subjects of this Remedial Natura Impact Statement: Table 1 – there are not three distinct proposals, there is one large mess of unauthorised development knowingly carried out and for many years continuing despite knowing that there were EIA and NIA offences with no attempt to curb potential impact post C-215/06.

3.1 Screening Assessment of European Sites: This section is deficient as it attempts to start from 2018 instead of the start of unauthorised concrete manufacturing prior to and including the 2013 erection of a readymix plant without permission, noting the knowledge of all operators of **ECJ C-215/06** and the substitute consent process by then, noting the very many Substitute Consent applications requested of Keegan Quarries following the S261A process, very few were submitted that we are aware of.

3.1 Screening Assessment of European Sites: Same comment as before about an out of date EMS (2009); i.e. The very long gap from 2009 to 2023 in which the EMS was not updated is noted given the immense amount of unauthorised development at the site during that time. This didn't/couldn't keep pace with every additional piece of unauthorised development.

4.1 European Sites Identified within the Screening for Appropriate Assessment: Table 4 and elsewhere when taking about the closure phase/restoration phase ignores that when a quarry floods and the drawdown cone is removed, then the pollution gathered on the quarry floor; mainly hydrocarbons. In this case cement waste with high concentrations of chemicals deleterious to water quality including chromium, pass freely into the ground water and on to the wider groundwater body, and then to surface water bodies. This is a real concern; particularly for neighboring properties depending on wells for their potable water supply.

4.3.1 River Boyne and River Blackwater SAC: it is submitted that the airborne transmission of cement and other pollutants to water bodies is not properly set out for assessment.

4.3.1 **River Boyne and River Blackwater SAC:** 'Proposal 1' states the settlement lagoons are of relatively recent construction. There is no real effort to look at the risk prior to their construction. Is it the case that prior to their instillation unsettled cementitious water abounded for years?

4.3.1 **River Boyne and River Blackwater SAC:** 2019 data showed discharges 'largely complied' with discharge license limits – that isn't good enough; why is there only 2019 data to be relied on in 2024? There should be data from 2013 right through to the current date. Is this data not being released or does it exist?

REMEDIAL NATURA IMPACT ASSESSMENT: DESCRIPTION OF EUROPEAN SITES AND QUALIFYING INTERESTS / SPECIAL CONSERVATION INTERESTS POTENTIALLY AFFECTED

Chapter 4: generally appears to rely on mitigations in a voluntary and often outdated EMS and which are not reproduced in the r.N.I.S. as having been complied with. That is not a standard satisfying the Kelly [[2014] IEHC 400] threshold and contains many lacunae. Lacunae must be absent. The details are vague and indeterminate. This r.N.I.S. is deeply flawed and cannot be said to meet the requisite standard.

5 CONSIDERATION OF 'IN-COMBINATION' IMPACTS

Chapter 5: Given the proximity of the Kilsaran quarry, there is no real attempt to address cumulative impacts.

Chapter 5: One cannot rely on a 2004 discharge licence, whose parameters are only judged against 2019 data (and is even only substantially compliant in that regard as stated for 2019), bearing in mind that there was no or no serious attempt at AA in the granting of that licence. This licence is way out of date with thresholds which are not suitable for a modern quarry. It follows that assessment against those parameters is not proof of no risk.

6 MITIGATION

Chapter 6: The mitigations now set out appear to reflect a 2019 wish list and does not deal with development and use prior to then. No evidence is given that the settlement lagoons underwent a design process. The water quality data does not discuss pH; a key issue where cementitious material is present.

Chapter 6: states "*On the basis that the mitigation measures outlined in the EMS were in place*" but doesn't confirm that they were – this reduces this document to a paper exercise with no credible value. Moreover, we have in the past observed water leaving the quarry and entering the stream. This water was clearly not as it should have been as demonstrated in the photo hereunder. Furthermore, the base of the receiving stream is very white in color, which suggests a buildup of a lot of lime.

7 CONCLUSIONS

Chapter 7: the first line and final paragraph suggests each of the 'proposals' individually and does not suggest a cumulative assessment of the site's own proposals – this is ridiculous;

Chapter 7: it is submitted that the conclusion do not meet the *Kelly v An Bord Pleanála* [2014] IEHC 400, 2013 802 JR, threshold of certainty.

There is no basis to invoke the exceptional circumstances exception to the rule. We further reiterate that this quarry has had a long history of unauthorised development. It has operated without any consent whatever since 2018. We reiterate the need to invoke section 177J of the planning and development act while the matter is being determined. It is therefore considered that in the interests of proper planning and sustainable development that the appropriate course of action is for *An Bord Pleanála* to decline permission for this development.

ENDS