

*Dante
o'comor.*

Ronan Megannety

From: Lorraine McNamara
Sent: Wednesday 24 April 2024 16:43
To: Appeals2
Subject: Objection to substitute consent application QD09.319217
Attachments: Appendix 4- High Court Agreement.pdf; Personal Impact Statement Goode, D&S - 2024 (1).pdf; Appendix 3-Planners report for 20532- council precluded from making a decision.pdf; Appendix 2- Warning Letter for Application 07267.pdf; Appendix 5A KCC-Golders letter re clarification of expiry date of 07267.pdf; Appendix 1-Leave for Sub Consent Submission returned.pdf; Appendix 5B-Correction re planning expiry dates after covid 07267.pdf; Community objection to substitute consent application - Final.docx

Caution: This is an External Email and may have malicious content. Please take care when clicking links or opening attachments. When in doubt, contact the ICT Helpdesk.

Dear Sir/Madam,

Please find attached an objection package to QD09.319217 for Hudson Brothers Limited.

We are a group of concerned residents located in the areas of Athgarrett, Philipstown and Eadestown are lodging an objection submission regarding the above section 37L application lodged on behalf of Hudson Brothers Ltd. for quarrying and aggregate extraction on lands located at Redbog and Philipstown, Co. Kildare. An Bord Pleanála reference is: QD09.3139217. As this is an application under section 37L of the Planning and Development Act, being made to An Bord Pleanála, no fee accompanies this submission.

Please can you acknowledge receipt of this submission in writing by COB 24th April 2024.

Yours Sincerely,

Lorraine McNamara

The Secretary,
An Bord Pleanála
64 Marlborough Street
Dublin 1
23/04/2024

Re: Planning and Development Act, 2000 (as amended) and the Statutory Regulations thereunder- Third party submission by local residents in relation to application under Section 37L of the Planning and Development Act 2000, as amended for Substitute Consent for quarrying and aggregate extraction on lands located at Red Bog and Philipstown, Co Kildare.

An Bord Pleanála Ref: QD09.319217- Hudson Brothers Limited

Date of submission: 24th April 2024

Dear Sir/Madam,

We the residents of Eadestown, Athgarrett, Philipstown and Wolfestown named below are making an objection submission to the Substitute Consent Application QD09.319217 for Hudson Brothers Limited.

This group submission is made on behalf of the following residents:

- Lorraine O'Brien, Patrick, Aidan, and Matthew McNamara, Athgarrett, Eadestown, Co Kildare
- Ann McNamara, Athgarrett, Eadestown, Co. Kildare
- Adrian, Michael, Catherine, Andrew, Maria & Isaac Curran, Athgarrett, Eadestown, Co Kildare
- Shaymus & Simeone Kennedy, Wolfestown, Eadestown, Co Kildare
- David, Linda, Ardin, Keela, Misha and Evin Magee, Philipstown, Eadestown, Co Kildare.
- Susan Dunne & family, Athgarrett, Eadestown, Co. Kildare
- Paul Magee, Philipstown, Eadestown, Co. Kildare
- Declan & Sara Goode, Athgarrett, Eadestown, Co. Kildare
- Paul & Philomena Dowling, Athgarrett, Eadestown, Co. Kildare
- Patricia O Connor, Athgarrett, Eadestown, Co. Kildare
- Paul Woods, Wolfestown, Eadestown, Co. Kildare

Executive Summary:

Hudson Brothers Limited has been in operation since the 1950's when the great uncle of the current directors set up the business. The business was handed down to the original owners three nephews and is currently under the ownership of Peter, Devon, Sean Snr, John Jnr and Tom Hudson.

Hudson Brother Limited obtained planning permission with Kildare County Council (ref 07/267) on the 26th April 2010 for a period of 10 years. This planning permission we believe expired on 17th July 2020, therefore Hudson Brothers Limited have been quarrying without the benefit of planning permission for the last four years.

We will present below, our grounds for objection and we would respectfully ask the Bord to consider the following question:

What makes Hudson Brothers Limited above the law?

We doubt that any community likes to have a quarry on their doorstep or in our localities' case, multiple quarries. We, as a community placed our trust in Hudson Brothers Limited to abide by all the conditions that Kildare County Council and An Bord Pleanala placed on their planning permission 07267, which were designed to protect us as a community in terms of our health (Dust, Noise, Water etc), the ecology of the area, the heritage of the area and importantly protect Red Bog SAC, which Roger Goodwillie describes as probably the most important ecological sites in Ireland in his 1972 report.

It was truly devastating and shocking for our community to find out that Hudson Brothers Ltd did not comply with any of the conditions attached to their planning permission and in essence put their own financial gain over the health and wellbeing of the community and area they operate in.

We would also like to point out to the Bord, that this substitute consent application may be the first to be accessed by the Bord since regulations changed and therefore this application will have huge impact on creating precedence in the Irish planning and legal system.

An Bord Pleanala cannot create legal and planning precedence whereby operators who fail so dramatically and knowingly to fulfil their previous planning conditions, are rewarded with not just substitute consent approval for their unauthorised development but also approval to expand their operations significantly further into the protected Kildare Uplands and closer to a protected site such as Red Bog SAC and Poulaphouca Reservoir SAC. This expansion will make Hudson Brothers Limited one of the largest quarries in Ireland. We believe that if approved, Hudson Brothers Limited will continue to

quarry without any adherence to planning conditions set out either by ABP, Kildare County Council or the High Court. They now have a proven track record of a total disregard for the planning regulations and indeed the High Court in Ireland. Below we will go through our grounds for objection to the substitute consent application and we would respectfully ask An Bord Pleanála to **Refuse this Substitute Consent application.**

Grounds of Objection:

We would like to make a submission on ABP Application QD09.319217 on several grounds namely.

- 1) Concern regarding private and public water supply in the local area and adherence to the “Water Framework Directive”.
- 2) A commentary on the validity of the leave for substitute consent application
 - a. Public participation in the leave for Substitute Consent application.
 - b. Lack of Adherence to previous planning conditions.
 - c. Unauthorised Development evident on site.
- 3) Developers alleged lack of knowledge regarding unauthorised activity.
 - a. Hudson Brothers Expert Team.
 - i. Cunnane, Stratton, Reynolds
 - ii. Golder and Associates (now WSP)
 - iii. Clear Solicitors
 - b. High Court agreement between Hudson Brothers & Linda Kane/Franics Cummins.
 - c. Hudson Brothers appeal to 2007 Planning conditions to ABP.
 - d. Winning Quarry operator of the year 2018.
 - e. 2007 Planning Conditions (KCC ref 07267) re expiry date of planning and correspondence sent by Kildare County Council to Hudson Brothers Limited and inspectors report for planning application 20532
 - f. Experience of Hudson Family Directors and staf
- 4) Requirement of remedial Environmental Impact Assessment and remedial NIS as part of Hudson Brothers Limited substitute consent application.
- 5) Hudson Brothers Limited deemed to making “reasonable efforts” to regularize the planning status of the development.

- 6) Potential Invalid Site Notice
- 7) Newspaper Notice
- 8) Red Bog SAC
- 9) Kildare Uplands

1. Validity of the leave for substitute application and leave decision.

We wish to bring the following to the Boards attention with regards to the decision made in the leave for substitute consent application brought by Hudson Brothers Limited under Ref 311622-21.

A. Exclusion of public participation at the leave to apply for substitute consent.

Leave for substitute consent should not have been granted in the first instance as the public is not permitted to participate in the leave for substitute consent application which is in contradiction to EU Law. The community submitted a letter (Appendix 1) which was received by An Bord Pleanala detailing why Hudson Brothers Limited should not receive substitute consent. We evidenced this letter in the hard copy planning file as received but the letter was rejected back to Peter Thompson and the community.

Lack of public participation is against EU law.

B. Lack of Adherence to previous planning conditions

Under the Planning and Development Act, 2000 in order to grant substitute consent, the developer must have complied to their previous planning conditions. As set out in the Warning Letter which Kildare County Council sent on 4th November 2020 (Appendix 2), 21 planning conditions were not met by Hudson Brothers Limited with another 5 conditions possibly not being met. (See Appendix 2). Therefore, to approve this application for substitute consent would be in direction contradiction of Irish Law.

C. Unauthorised Development evident onsite in 2020

In addition, the above Planning and Development Act, also outlines that in order for a developer to obtain substitute consent, they must not have any unauthorised development at the subject site. Again, as per the warning letter issued by Kildare County Council, unauthorised development was evidenced on Hudson Brothers site and Kildare County Council provided photographic evidence of unauthorised development in their planner's report. (See Appendix 3). Therefore, to approve this application for substitute consent would be in contradiction to Irish Law.

2. Developers alleged lack of knowledge re unauthorised activity.

Page 3, Point B of the “reasons and considerations document” of the leave for substitute consent application states: “the applicant had, or could reasonably had, a belief that the development was authorized”.

This we believe to be an incorrect judgement by the inspector for the following reasons:

A. Hudson's Expert Team.

The **expert team** that Hudson Brothers Limited have had since their planning application in 2007. Golders/WSP, Cunnane Stratham Reynolds and Clear Solicitors.

- I. **Cunnane, Stratton, Reynolds** have compiled the application for Hudson Brothers Limited. They are another very experienced company in operation since 1995 and describe themselves as *“CSR also has a long history of undertaking and managing projects to which public participation is central, from large scale strategic studies to smaller scale urban and village renewal, environmental improvement and park projects in inner city and socially disadvantaged areas.”*

Cunnane Stratton, Reynolds have significant experience in managing large scale projects and again is An Bord Pleanála and the local community expected to believe that a company with the good reputation of delivering large scale projects did not advise Hudson Brothers Limited that they were operating without planning permission. We do not know when Cunnane Stratton & Reynolds were engaged by Hudson Brothers Limited but if it was through the original application, then why have Hudson Brothers Limited not launched a legal action against Cunnane, Stratton, Reynolds. They have history of lodging legal action against

those who challenge them (e.g. JR legal action against Kildare County Council).

- II. **Golder and Associates (Now WSP)** who by their own website claim to be “a global consulting firm with over 60 years of experience in providing earth sciences and environmental consulting services.” <https://www.wsp.com/en-us/news/2021/golder-is-now-part-of-wsp>.

Golders have been working with Hudson Brothers Limited for some years now (At least back to 2007) and they claim to have an excellent working relationship with Hudson Brothers Limited. Are An Bord Pleanala and the local community to be lead to believe that a firm of this standing did not advise Hudson Brothers Limited that they were not authorised to operate after the expiration of their planning in 2020? Hudson Brothers Limited now have a history of legal actions... if this was the case, why have Hudson Brothers not launched a legal action against Golders/WSP for not advising them that their quarrying activities were not authorised after the lapse of planning in 2020?

I note the wording from the application is “the applicant” was not aware however they signed all the planning applications, letters etc. Each of these would have had to been approved by Hudson Brothers Limited so there can be little truth to the applicants claim that they did not know that they were working unauthorised.

- III. **Clear Solicitors:** Hudson Brothers Limited have a very experienced legal team in Clear Solicitors who describe themselves as “*We are a second-generation, family run law firm providing legal advice and support to personal clients, commercial clients and international clients. We have a strong client focus and a dedicated team of professionals with an ethos of client care, empathy, efficiency and continuous improvement. We offer a complete range of legal and advisory services to meet the diverse needs and requirements of our clients. We are members of an international lawyers group, established in 1978. This assists us in providing assistance with legal issues abroad to our existing clients and in providing legal assistance in Ireland to international business and personal clients. We deliver value to our clients, we help them and we earn their trust. Our business is built on our client relationships and we are growing steadily as our clients recommend us to others, in fact over 90% of new clients come to us on referral.*”

The local community as part of the planning process since 2020 has engaged with Clear Solicitors and have no doubt that they are very experienced legal professionals. Are An Bord Pleanala to believe that Clear Solicitors and their overall legal team did not advise of their legal position in 2020? This is highly

unlikely and if it had have happened, Hudson Brothers would have reported Clear solicitors to the Law Society for this.

B. High Court Case and Agreement 2022.

In their application, it is inexplicable that Hudson's and their agents make no reference to the fact that the local community was left in the unfortunate and very costly position to apply to the High Court to issue S160 proceedings against Hudson Brothers Limited. The interim result of this high court case was an agreement that Hudson Brothers Limited was to comply with their 2007 planning conditions, in addition to a few new conditions. (See appendix 4).

It must be pointed out to An Bord Pleanala that Hudson Brothers Limited have failed to comply with this High Court Agreement and the vast majority of the conditions set out by the High Court have not been fulfilled. It is the community's unfortunate position that it will be bringing Hudson Brothers Limited back to the High Court for their complete disregard for the terms agreed to in High Court Agreement.

This shows Hudson Brothers Limited lack of respect for both the planning laws in Ireland (evidenced by their lack of compliance to their 07267 planning conditions with KCC) and their lack of respect to the legal system High Court in Ireland and the judges therein. An Bord Pleanala cannot ethically approve Hudson Brothers Limited planning applications knowing their total disregard to both the planning and legal systems in Ireland.

C. Planning Conditions from planning application 07/267.

Hudson Brothers Limited obtained planning permission in 2007 from Kildare County Council under reference 07/267. This approval was subject to 59 planning conditions. Hudson Brothers Limited took a first party appeal to An Bord Pleanala appealing the financial conditions applied by Kildare County Council. Hudson Brothers Limited had the acute planning law knowledge that they could appeal the financial conditions applied without impacting the other planning conditions. This proves that they have in-depth knowledge of the planning system and again proves that they did know what they were quarrying without valid planning permission. It should be noted that Hudson Brothers Limited also used Golders & Associates (now WSP) to produce their 2007 planning application.

D. Winning of the Quarry Operator in 2018.

Hudson Brothers Limited were delighted to announce on their social media channels that they won a prestigious award Best Managed Quarry Operator of the Year" award. <http://hudsonbrothers.ie/news/>. It has to be noted that applicants

for this award must attest that they have all necessary planning approvals and are not subject to legal action <https://machinerymovers.ie/awards-terms-and-conditions/>. Therefore, Hudson Brothers would have had to check that they were had no issues which would preclude them from this prestigious award prior to submitting their application.

From their own website, “Hudson Brothers took the honours in their category at the Machinery Movers Industry and Operator awards in March 2018, Hudson Brothers Limited were the winners in the category ‘Best Managed Quarry’ in the machinery movers Awards night which took place recently at the Mount Wolseley & Golf Resort. Dave Hill also won an award for Artic Dumper Truck operator of the year. These awards were geared towards independently owned quarries that demonstrated good commitment to product quality, safety and the environment, efficient production processes and regular training of employees.”

- E. In **Hudson Brothers planning approval 07267, condition 5** of this planning application states that *“This permission is for a period of 10 years from the date of this permission unless at the end of this period a further permission is granted for its continuance on site”*.

Hudson Brothers were sent a letter as part of KCC’s further information request on 25th July 2020 (appendix 5A & B) which **highlighted the expiry date of the planning permission**. Whilst the date did not include the COVID 19 dates, this was corrected and the correct dates were communicated by KCC to Hudson Brothers Limited and their agents. Therefore, there can be no doubt that Hudson Brothers Limited did know that their planning had expired. Indeed, the local community evidenced stock piles of quarried material being moved to the Wicklow side of the quarry in preparation of their planning expiry. It is the community’s position that quarrying never stopped in Hudson Brothers Limited. This was evidenced by Kildare County Council on the 21st October 2020 when a site visit was conducted and found the following (Appendix 3):

- Trucks full of aggregate material leaving the site via the weighbridge to the N81 in the functional area of County Wicklow.
- Processing of aggregates at the subject site in Co. Kildare, including operation of plant and machinery in the area of the site referred to as the processing area as well as the quarry floor.
 - o Fixed plant was in operation washing and grading aggregates at the processing area.
 - o Mobile crushing and screening plant was in operation on the quarry floor including wheeled loaders feeding material into the plant.
 - o Wastewater from the processing area was noted discharging on an automated basis to a settling pond.

- Kildare County Council considered that unauthorised development had occurred as works and developments were still underway.
- Hudson Brothers Limited advised KCC that no blasting had occurred but failed to advise the council that this was not Hudson Brother Limited adhering to planning laws rather than Hudson Brothers Limited being bound by a High court agreement (Appendix 4) to not blast.

F. Hudson Family as Directors of Hudson Brothers Limited.

A significant amount of the Hudson Family have in the past or are currently working in the quarry in various roles. The Hudson family were born into this industry as such for the past 60 years so there is no doubt that they knew the planning laws and just decided to ignore them for financial gain (as per the above comment regarding blasting by Peter Hudson to Dr. Imelda Shanahan upon her site inspection *"We have to make money"*)

3. Requirement of remedial Environmental Impact Assessment and remedial NIS as part of Hudson Brothers Limited substitute consent application.

- a. In point (D) of the reasons and considerations document that An Bord Pleanala issued as part of the grant application to Hudson Brothers Limited (311622-21), An Bord Pleanala states the following:
"The submission of a remedial Environmental Impact Assessment and remedial Natura Impact Statement would facilitate an assessment of the potential of the remediation of any signification effects on the environment or adverse effects the integrity of European sites"

It has to be noted that Hudson Brothers Limited did not submit an Natura Impact Statement as part of their substitute request application. They decided to go against the requirements as set out by An Bord Pleanala and descope this requirement. This is wholly inappropriate and would lead the local community to believe that they have not included it as the NIS may have raised areas for concern which would damage their application for Substitute consent.

Hudson Brothers Limited were also granted an extension of time as they claimed they needed the time to complete the mandatory requirements. Even after this time they still did not supply the NIS that is required as part of the substitute consent application process. As mentioned above, they have employed the services of probably the best environmental, planning and legal teams in the country. There is no doubt that they would have advised Hudson Brothers Limited to provide all mandatory requirements to An Bord Pleanala as part of the substitute consent application.

It also should be noted that an NIS was provided for their new works application under QD09.319218. It does not make sense that an NIS should not be completed for their substitute consent application as logically if an NIS is required for new works, then those same Natura considerations should apply to past works as well as new works.

Therefore we respectfully ask An Bord Pleanala to refuse their substitute consent application.

4. Hudson Brothers Limited making reasonable efforts to regularize the planning status of the development

In point (e) of the reasons and considerations document, it calls out that the applicant is making reasonable efforts to regularize the planning status of this development.

We would challenge this opinion. As noted above, the community had no option but to take Hudson Brothers Limited to the high court (appendix 4) at significant cost to the local community.

We are firmly of the belief that Hudson Brothers Limited are only completing the Substitute Consent Application as they are bound to complete it as part of a condition in the High Court Agreement (Appendix 4).

We have seen no efforts to engage with the local community to discuss their concerns and work together on solutions. We have however heard of a large number of instances where Hudson Brothers Limited directors aggressively tell local residents to “mind their own business” when safety fears are raised (e.g. Children in the quarry), are verbally abused when a resident advises their neighbours of plans to significantly expand the quarry, every block put in place when residents demand blast monitors for the last 15 years and so on. These are not the actions of a quarry company who has respect for the local community, Irish planning laws or indeed the High Court.

With regards to the planning authority not currently pursuing enforcement proceedings, we would challenge that opinion. On the 4th November 2020, Kildare County Council issued a warning letter to Hudson Brothers Limited (Appendix 4). Kildare County Council detailed the lack of compliance with the conditions set out in 2007. An Bord Pleanala should be advised that Hudson Brothers Limited did not meet the conditions as outlined below since 2007.

Therefore, we would kindly request An Bord Pleanála not to grant substitute consent to Hudson Brothers Limited as this would create precedence to other quarry operators to never meet their planning conditions which are designed to protect the environment, heritage and the local communities to which these quarries operate in.

Kildare County council referenced the following in their warning letter issued to Hudson Brothers Limited.

- Operation of a quarry without the benefit of planning permission. There is not active planning permission under which the extraction and processing is permitted on the lands.
- Non-Compliance with the requirements of conditions as follows:
 - o Condition 1- The development shall be carried out and completed in accordance with drawings submitted to the planning authority on 18-07-2007 **(CONDITION NOT COMPLIED WITH)**
 - o Condition 2- The development shall be carried out, completed and maintained in accordance with the undertakings of measures to mitigate its impacts as given in the Environmental Impact Statement lodged with the planning authority on the 04/06/2008 and any additional measures subsequently, except where altered by the conditions of this permissions. **(CONDITION NOT COMPLIED WITH-** the council mention that there is no indication that the development has been carried out or completed in accordance with the EIS as a result of the absence of submission of information including noise and dust reports along with an EMS.)
 - o Condition 4: The development shall be carried out, completed, and maintained in accordance with the undertakings for measures to mitigate its impacts as given in the EIS lodged with the planning authority on the 04/06/2008 and any additional measures contained in revised documentation, except where altered by the conditions of this permission. **(CONDITION NOT COMPLIED WITH-** the council advises that no evidence of benches on the site, no evidence of any onsite restoration, no evidence of annual air, noise and water quality data submitted, EMS not submitted annually to the planning authority.)
 - o Condition 5: This permission is for a period of 10 years from the date of this permission unless at the end of the period a further permission has been granted for its continuance on site.

(CONDITION NOT COMPLIED WITH- the council advised that the permission expired on the 18/09/2020 and they evidenced unauthorised activity on site as per the planners report for 20532 (Appendix 2)

- Condition 6: A detailed restoration Scheme of the site according to the broad principles indicated in the Environmental Impact Statement and as amended by the details received by the planning authority on the 12th October 2007 shall be carried out immediately following the cessation of excavation as referred to in Condition 5.

(CONDITION NOT COMPLIED WITH- the council comments that “the final details of the restoration, which shall be carried out on a phased basis shall be agreed in writing with the planning authority within 3 months of the date of this permission” was not submitted as required by the details of this submission)

- Condition No 11: Within 6 months from the granting of this permission the developer shall submit to the planning authority for written agreement with the Heritage officer of KCC, a detailed report assessing the impact of the quarry in relation to Red Bog (SAC) in accordance with the Habitats Directive. Prior to the preparation of this report the applicant shall liaise with the Heritage officer to agree a framework for the study)

(CONDITION NOT COMPLIED WITH- KCC Comments that no evidence on file to evidence that the required information was ever submitted to KCC)

- Condition No 15: Within 3 months of this permission, or such other time period as agreed with the Planning Authority, the applicant shall submit details of all existing and proposed signage, located to or to be located at the site entrance. These details shall also provide for a sign indicating the name of the quarry operator, contact telephone number of the quarry, the permitted working hours of the quarry the name of the planning Authority and the planning register number of the development)

(CONDITION NOT COMPLIED WITH – KCC advised that there is no evidence on file that the required information was ever submitted to KCC.

- Condition No 21: Within 3 months of the date of this permission, the operator shall lodge with the planning authority a bond of an insurance company, a cash deposit or other security as agreed to secure the provision and satisfactory completion and restoration of the site)

(CONDITION NOT COMPLIED WITH- No evidence on record of any bond having being lodged)

- Condition No 25: Within 6 months of the date of this decision, or such other time period as agreed with the planning Authority, the quarry operator shall submit for the written approval of the Planning Authority an EMS system for the site. The EMS system shall provide for a review of the EMS plan after 5 years and the proposed review shall be submitted to the Planning Authority for its written approval.

(CONDITION NOT COMPLIED WITH- The council comments that there is no record of an EMS system ever have been submitted to the planning authority as required by this condition)

- Condition No 26: The details of the EMS system shall be in accordance with the conditions contained in this decision.

(CONDITION NOT COMPLIED WITH- the council advises that there is no record of an EMS ever having been submitted to the planning authority as required by this decision.

- Condition No 28: Within 6 months of the date of this decision or such other time period as agreed with the planning authority, full details of the ground monitoring programme shall be submitted for the written agreement of the planning authority and this programme shall ensure that the existing ground water sources servicing local residents and farms in the vicinity of the site are unaffected by the development.

(CONDITION NOT COMPLIED WITH- There is no record on file of the required information having been submitted)

- Condition No 32: Dust assessment shall be carried out by the site by a competent Environmental consultant within 3 months of commencement of on site operations and continuously thereafter. Locations of the dust monitoring to be agreed with the planning authority. Dust monitoring reports shall be submitted to the planning authority on a quarterly basis.

(CONDITION NOT COMPLIED WITH- There is no evidence on file that this condition has been complied with.)

- Condition No 33: (A)The noise level attributable to all on site operations associated with the proposed development shall not exceed 55 dB (A) over a continuous one hour period between 0800 Hours and 1800 Hours Monday to Friday inclusive (Excluding bank holidays) and between 0800 and 1300 hours on Saturdays. B) A noise assessment shall be carried out on the site by a competent noise consultant within 1 month of commencement of onsite operations and at 6 monthly intervals thereafter or at any other time specified by the planning authority.

(CONDITION NOT COMPLIED WITH- The council advises that there is no evidence that noise assessments were submitted to KCC as required in part A and B of Condition No 33)

- Condition No 35: (A) an environmental audit of the site operations shall be carried out annually by the end of January on behalf of the developer by a competent environmental consultant. Details of the monitoring arrangements, including locations and frequency of monitoring shall be submitted to the Planning Authority within 3 months of the commencement of the planning decision...

(CONDITION NOT COMPLIED WITH- No evidence that any environmental audit was ever undertaken and /or the results of same ever submitted to the planning authority as required by this condition.

- Condition No 36: Within 3 months from the granting of this permission, the developer shall submit to the planning authority for written agreement a proposal for an EMS system prepared to the guidelines of Section C of the 2006 EPA Publication "Environmental Management Guidelines in the Extractive Industry"

(CONDITION NOT COMPLIED WITH- The council comments that No evidence that the required EMS report was undertaken and/ or results of same ever submitted to the Planning Authority as required by this condition)

- Condition No 37: Within 6 months of the grant of this permission, detailed design of the entrance shall be submitted to the Planning authority as required by this condition.

(CONDITION NOT COMPLIED WITH – No record of the required information ever having been submitted to the Planning Authority as required by this condition.

- Condition No 48: A wheel wash unit shall be maintained on the site and used by vehicles exiting the site. No mud or other debris shall be deposited on the roads outside of the site.

(CONDITION NOT COMPLIED WITH- No record of the required information having been submitted to the Planning Authority.

- Condition No 56: Having Completed the work, the archaeologist shall submit a written report to the planning authority and to the department of the environment heritage and local government for consideration.

(CONDITION NOT COMPLIED WITH- The required report was not submitted to the Planning Authority for consideration.

5. Potential Invalid Site Notice

We note that the site notice is very unclear in terms of what is being applied for under this substitute consent application. It is our opinion that Hudson Brothers limited are intentionally vague with regards to the extent of the substitute consent application (Similar in the new works application). They are vague in relation to when works on site ceased as per planning application 07267 and associated warning letter. The community is firmly of the belief that works did not cease on site hence the ambiguity on dates on the planning notice.

Therefore, we respectfully request that this application be refused by An Bord Pleanala.

6. Newspaper Notice

The newspaper notice was placed in the Irish daily star rather than a local paper such as the Wicklow people and the Leinster Leader which most local residents would read. In previous planning applications, Hudson Brothers Limited placed their newspaper notices in the following newspapers as follows:

KCC Planning Application 07267- The Irish Times

KCC Planning Application 191230- Leinster Leader

KCC Planning Application 20532- Leinster Leader

The latest An Bord Pleanala Applications are in the Irish Daily star. The readership of the Irish Daily Star is just 20000 per day whereas the Leinster Leader is 195000 per week, The Wicklow People 112000 and the Irish Times is 251000 daily readers. This would suggest that Hudson Brothers Limited deliberately chose a newspaper with significantly declining readership to publish their planning notices. This would impact the general public's knowledge of the significant planning applications that have been lodged.

According to the [Audit Bureau of Circulations](#), Ireland, the average daily circulation of the *Irish Daily Star*.

Year (period)	Average circulation per issue
2003 (January to December) ^[11]	110,000
2005 (January to June) ^[12]	108,221
2006 (January to June) ^[13]	102,884
2007 (January to June) ^[14]	80,349
2012 (January to June) ^[15]	75,293
2012 (November) ^[16]	69,017
2012 (December) ^[17]	66,941
2013 (April) ^[18]	60,715
2017 (July) ^[19]	49,100
2017 (December) ^[20]	48,686
2018 (July to December) ^[21]	44,233
2019 (January to June) ^[22]	41,648
2019 (July to December) ^[23]	38,341
2020 (January) ^[24]	35,947
2020 (May) ^[25]	32,168
2023 (February) ^[26]	22,490
2023 (May) ^[27]	21,940
2023 (June) ^[28]	21,407
2023 (November) ^[29]	20,492
2023 (December) ^[30]	20,101

7. Red Bog SAC:

Chapter 14 of the Kildare county development plans aims to *“To provide for the protection, management and enhancement of the landscape of the county and to ensure that development does not disproportionately impact on the landscape character areas, scenic routes, or protected views through the implementation of appropriate policies and objectives to ensure the proper planning and sustainable development of the area”*.

Hudson Brothers Limited operate in the much protected Kildare Uplands which *“lies at the foothills of the Wicklow and Dublin Mountains”*. Red Bog SAC is within 240 metres of the site and the proposed expansion and 1000m’s from Poulaphuca Reservoir SAC.

As part of Hudson Brothers planning permission 07267 with Kildare County Council, the council imposed a condition (Condition number 11) which stated that *“within 6 months from granting of this permission, the developer shall submit to the planning authority for written agreement with the heritage officer of Kildare county council, a detailed report assessing the impact of the quarry in relation to Red Bog SAC, in accordance with the*

Habitats directive. Prior to the preparation of this report the applicant shall liaise with the Heritage officer to agree a framework for the study” with the reason to “In order to assess the impact of the quarry and the restoration scheme on Red Bog, a Special Area of Conservation.”

This was not completed in the 10 years of the planning period. In addition, in this application for Substitute consent, the applicant has indicated the following: “Page 81 of cover letter attached with this substitute consent application that ***“The effects on the closest European Site (Red Bog SAC) are unclear and may arise from more than one sand/gravel extraction operation in the wider area. Granting leave, and presumably the lodging and determination of such an application would allow for further assessment of this issue.”***

Unfortunately, the local community do not agree with their proposal above that they would complete a study after approval has been granted. Roger Goodwillie completed a study in 1972 and concluded that Red Bog is probably one of the most important SAC’s in his study. Since then, no new studies have been completed and it is therefore imperative that An Bord Pleanala refuse the substitute consent application and the accompanying new works application as the applicant has not complied with Condition 11 of their 07267 planning permission in 23 years and yet still propose to complete a study after their planning applications have been approved. This is unacceptable.

The community would like to draw An Bord Pleanala to Dr Imelda Shanahan’s submission to ABP for this application. Dr Shanahan points out that the basis of analysis provided by Hudson Brothers Limited is flawed and there is evidence to suggest that there is a potential Hydrological link between the quarry and Red Bog.

With the lack of any credible information supplied by Hudson Brothers with regards to Red Bog and the deliberate absence of a full analysis as to their quarry’s impact on Red Bog SAC, it is respectfully requested that An Bord Pleanala refuse this substitute consent application.

8. Eastern Kildare Uplands

Hudson Brothers Limited quarry is located in an area which the Kildare County Development Plan describes as being part of the “Eastern Uplands” which the plan considers as having a “High Sensitivity” under table 13.2 below. The designation in the county development plan as having the Eastern uplands as unsuitable for extraction (Circled below in red). This essentially means that An Bord Pleanala cannot approve both the substitute consent application and the new works application as it would directly contradict the proper planning processes of the Kildare County Development Plan 2023-2029.

From the above map, the protected Ridgelines protected under Chapter 13 of the Kildare County Development Plan are shown. The community represented in this community submission firmly believes that quarrying has already taken place through these protected ridgelines. An Bord Pleanála are once again asked to refuse Substitute Consent based both on the proximity to these ridgelines but also the visual impact to the area. The photo below is taken 2km from the quarry on the R410 at Eadestown Church on Sunday 21st April 2024. It clearly shows the protected ridgelines and the extent of the unauthorised quarrying from 2KM's away.



Picture taken from Eadestown Church on the R410

In addition, the photo below shows the protected ridgeline from the R410 close to the subjected site of the expansion application. The Red line denotes the ridgeline that Hudson Brothers Limited wish to quarry through and the yellow line denotes the proposed expansion area of the quarry.

In addition, there is a significant visual impact from the Caureen which is a protected Hill Top as per the Kildare County Development Plan. No effort has been made by Hudson Brothers Limited to assess the visual damage caused by their operation. In addition, no effort has been made to restore the quarry throughout their quarrying history in the area.

The restoration plan is more of a concept rather than a plan and does not explain the rationale behind their chosen concept. It also has to be noted that Hudson Brothers did not complete any restoration of the quarry in contravention of their 2007 planning.

It also has to be noted that Hudson Brothers Limited made no effort to screen the quarry as per Objective RD 044 of the county development plan. Although not a protected view,

The view from Eadestown church shown above clearly demonstrates their lack of screening.



Figure 1 The ridgeline from the R410 with the expansion area shown in yellow.

9. Gas Line & Blasting:

The Gas line runs through Hudson Brothers quarry site. This Gas Line was laid in 1984 using the building techniques at the time. Each landowner was required to sign an agreement which bound them to such conditions as not digging within 15ms of the line (at the surface), not planting trees or certain shrubs within 15 metres of the gas line and so on. The community has significant concerns regarding the safety of the gas line and the potential damage that a quarry can cause to the Gas Line.

An Bord Pleanála should also be aware that the maps of the Gas Line which Hudson Brothers Limited submitted as part of their substitute consent application are deficient in detail. It would give the reader the impression that the Gas Line stops at their property, where in reality the Gas Line goes through neighbouring properties in a diagonal manner meaning that the Gas Line is closer to potential and previous blast sites. The study completed on Blasting is wholly deficient of detail for the reader to make an informed comment on.

Conclusion

In conclusion, considering the arguments made here and indeed that in our expert planner Marston Plannings submission and indeed in the submission of Dr Imelda Shanahan, we respectfully ask that An Bord Pleanála refuse this Substitute Consent application and indeed the associated new works development. The community have provided significant information to show that A) the analysis prepared by Hudson Brothers Limited is wholly inadequate, B) there is significant impact to Red Bog SAC C)

There is significant impact to the protected Kildare Eastern Uplands D) There is significant impacts to the local community in terms of dust, noise, blasting and so on. D) Hudson Brothers Limited wholly failed to meet their planning obligation as part of their planning permission with Kildare County Council in application 07267. For these reasons An Bord Pleanála must refuse both applications by Hudson Brothers Limited. And E) That granting permission to Hudson Brothers Limited would adversely affect the water quality of the area as per the Water Framework Directive.

Appendices

Appendix 1- Letter sent on behalf of the community by Mr. Peter Thompson which was returned by ABP which is denying the public of their right to participation in the “Leave for Substitute Consent” application.

Appendix 2- Warning Letter issued by Kildare County Council on the 4th November 2020.

Appendix 3- Planners report regarding Hudson Brothers Limited Planning Application 20/532 with Kildare County Council.

Appendix 4-High Court Agreement between our community and Hudson Brothers Limited.

Appendix 5A&B- Correspondence between KCC and Hudson Brothers Limited/ Golders re the expiry of planning permission 07267

Appendix 6- Personal Impact Letters from members of the local community

Appendix 6

Athgarrett
Eadestown
Naas
Co. Kildare
23/4/24

Dear Bord Pleanala,

We wish to object to planning application 319217 from Hudson Brothers.

Our house is supplied by our own private well and we have a certified waste treatment system near our house. The well is 360m from the proposed works. We are concerned that Hudson's continued quarrying will damage our private water source. This would be in contravention of the Kildare County Development plan (2023 – 2029) Objective IN011 that promotes the protection of private water sources.

We are concerned that blasting will resume and this might damage our house. Up to 2020, when blasting ceased, the closest blasting point was 767m from us (on 10th June 2020). If blasting occurs 360m from our house, that is less than half the distance. Under the Inverse Square Law, halving the distance increases the energy by a factor of four. In 2008, when we built our house, we had not planned for such a dramatic amount of seismic energy being caused so close to our house.

We are concerned that the quarrying on a protected ridge line visible from our house



and from the R410 road will permanently damage the visual amenity of this area. The area indicated by the red line is approximately the ridge that will be removed under this application. This is in contravention of the Kildare Development Plan (2023 – 2029) table 13.4 which shows that quarrying on this protected ridge line is very unlikely to be

compatible with this sensitive landscape feature. The road, the R410, is a popular cycling touring route connecting Kildare to the Wicklow mountains and the planned Blessington Lakes Greenway.

We are concerned at the increased volume of heavy lorries that will be using the R410 if this quarry expansion proceeds. We are engaged in farming activities and must drive slow machinery on this road between 2 parcels of land. The extra volume of heavy lorries will make use of the road more difficult and dangerous. This is a road that is already notorious for crashes especially the part between Glen Ding Wood and Eadestown Graveyard.

Dust and noise from the existing quarry have adverse effects on us at present. The sound of rockbreakers and crushers starts very early in the morning. The dust from these activities blows onto our house, cars and livestock. In times of easterly winds, these conditions are predominately associated with dry weather and the east wind blows the dust from the quarry onto us. We are concerned that the increased levels of noise and dust will make farming and living here more difficult.

We often use the Glen Ding Wood amenity. Part of this wood is adjacent to quarrying sites. The proposed application will bring more quarrying right up to the very wall of this wood. This wood contains a protected structure – the Rath Turtle Moat. We are concerned that the proposed quarrying would cause irreparable damage to this ancient structure and to the wood itself.

We are proud to live beside the Red Bog Special Area of Conservation and often see wild fowl on our lands that are known to make use of the Red Bog area. We are concerned that this proposed development will cause damage to this internationally recognised jewel in Kildare's natural heritage.

We live near a natural gas transmission line that goes right through the proposed area for quarrying. We are concerned that not enough examination has been done regarding the effects of this quarry expansion on the gas pipeline. Recent natural gas pipeline accidents in highly regulated countries (eg in Canada in 2018 in Prince George, BC or in the US in 2019 in Lincoln County, KY) show that great care needs to be taken near natural gas pipelines – this does not seem to be compatible with expanding quarrying and rock blasting on lands the pipeline goes right through.

For these reasons, we hope that you will reject this application.

Yours sincerely,

Phil and Paul Dowling

David Magee & Linda Kane
Epona Lodge
Wolfestown

Eadestown
Naas
Co. Kildare
W91ACW9

23rd April 2024

Re: Hudson Brothers Limited Planning Ref 319217

Dear An Bord Pleanála:

We wish to object to planning reference 319217 on the following grounds.

This is a large development with absolutely no community consultation process followed. The quarry is operating without planning, and without regard for residents. We have complained continuously but have got nowhere. It impacts negatively on us due to noise, dust, traffic and on our visual and residential amenity.

We live within 500mtrs of the quarry and we are very worried about the effects of further scaled up development and in particular impacts of blasting to the high pressure gas line with potential for a local disaster. Blasting has negatively impacted us, our house vibrates and plaster has fallen from the ceiling. The noise and dust coming from quarry operations and uncovered lorries passing our house is also of great concern.

We believe that the quarry is operating below the water table and in time will impact our private well which we rely on for all our water needs.

With the scale of the extension, intensified quarrying and increased traffic volumes, these current issues will be exasperated. History of the developer complying to past planning conditions has been a major issue. This developer has not complied with any past planning conditions imposed by Kildare County Council. They are untrustworthy and there is no reason to believe they will ever comply with any planning conditions in the future.

Yours sincerely,

David Magee & Linda Kane

Wolftown House
Athgarrett
Eadestown
Co. Kildare
23/4/24

Dear Sir/Madam,

We wish to object to planning applications ref: 319217 for substitute Consent and ref: 319218 for new works from Hudson Brothers lodged on 29th February.

We are lucky to live in a location, East Kildare Uplands, recognised in the Kildare development plan 2023 – 2027 as an area of high Amenity because of its outstanding natural beauty and unique interest value. We are surrounded by a magic tapestry of breeding birds, frogs, insects and wildlife, a wild herd of deer, native trees and plants and a variety of agricultural livestock and horses.

The current quarry expansion will come within 180M of our property. This will have a devastating impact on our lives and surrounding environment. The Kildare Development plan highlights that one of the key objectives of the Regional Spatial and Economic Strategy (RSES) is to promote people's quality of life through the creation of healthy and attractive places to live... If these quarry applications are not refused our area will longer offer us a quality of life nor remain a health and attractive place to live.

We are deeply concerned that no engagement from Hudson Brothers with ourselves and our community regarding the impact of the proposed planning and there has been insufficient technical and expert assessment conducted to understand the environment, health and structural impacts on ourselves. Some of our areas of concern include:

The application contains a proposal to restart blasting. Our house and pictures on walls would shake when the previous blasting was occurring. With the quarry now much closer to us no assessment has been done to understand the risks of structural damage to our home and to the underlying rock base that runs underneath our house due to the increased seismic energy and what impact the increased noise levels will have on our

mental health. We both have the flexibility in our jobs to work from home, but this will become impossible with a quarry working and blasting less than 200M from our house.

Our home and neighbours' homes are supplied water from our own private wells? Based on the evidence included in the technical reports submitted on our behalf in objection to these planning applications are very concerned that our well (approximately 180M from the proposed new quarry boundary) will be damaged and any remediation if even possible will have to be borne by ourselves. This would be in contravention of the Kildare County Development plan (2023 – 2029) Objective IN011 that promotes the protection of private water sources.

The new application proposes to destroy the existing ridgeline both visible from our home and the Eadestown to Blessington road R410 running adjacent to our house. This is in contravention of the Kildare Development Plan (2023 – 2029) table 13.4 which shows that quarrying on this protected ridge line is very unlikely to be compatible with this sensitive landscape feature.

Our lives are today negatively impacted by the levels of quarry related traffic coming to and from the unauthorized quarrying at the Hudson Brothers site. The commitment to use only N roads (2007 planning) for distribution of materials has never been adhered to. Our road is a narrow road, poorly aligned in places with many dangerous bends and has been the scene of numerous accidents and near misses over the years. With the suggested material volumes that Hudson Brothers are proposing to take out of the quarry traffic volumes of trucks will increase dramatically. It is already unsafe to walk the road, but these increased volumes will significantly heighten the risk to school children getting on and off buses, learner drivers and the senior members of our community when exiting their houses. The risk of injury or death is also greatly increased for the many cyclists who use the R410.

We also have to contend with significant dust volumes due to the quarry works and the number of uncovered trucks on the R10. Hudson's employs several independent contractors whose trucks are also never covered. Our house cars, garden furniture, garage and ground are often covered in layers of dust especially in dry periods and when the wind is blowing in from the direction of the quarry. We believe this will only get worse if planning is granted.

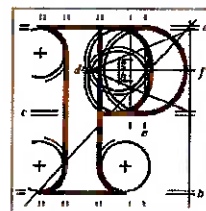
We are living today with the consequences of a Quarry operator that consider themselves above the law in being deliberate and systemic in noncompliance with planning conditions even after succeeding in putting a high court backed agreement in place. For the reasons outlined above and in support of the Kildare development plan we hope that you will reject this application.

Yours sincerely,

Simone & Shaymus Kennedy

Our Case Number: ABP-311622-21

Your reference: Save Kildare Uplands Action Group



**An
Bord
Pleanála**

Peter Thompson Planning Solutions
4 Priory Grove
Kells
County Kilkenny

Date: 21 January 2022

Re: Aggregate extraction and ancillary plant and welfare facility.
Redbog & Philipstown, Co. Kildare.

Dear Sir / Madam,

I have been asked by An Bord Pleanála to refer to the above-mentioned application for leave to apply for substitute consent and to your submission dated 13th January, 2022.

Please be advised that there is no provision in the legislation for observation/submissions to be made to the Board regarding an application for leave to apply for substitute consent.

In the event that the application is granted and subsequently comes before the Board, you will have an opportunity to make submissions at that time.

Furthermore, please note that any matters in relation to enforcement of unauthorised development is a matter for Kildare County Council. You may wish to contact them.

Enclosed are the documents lodged by you.

Yours faithfully,

Aisling Reilly
Executive Officer
Direct Line: 01-8737131

Teil
Glaó Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

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LoCall 1890 275 175
Fax (01) 872 2684
Website www.pleanala.ie
Email bord@pleanala.ie

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Comhairle Contae Chill Dara
Kildare County Council
WARNING LETTER



Ref. No. UD7620

REGISTERED POST

Hudson Brothers Limited,
11 Gortnum Cottages,
Brittas,
Co. Dublin,
D24 NY56.

Dear Sirs,

It has come to the attention of the Planning Authority that unauthorised development is being / may be carried out as follows:

1. **Operation of a quarry without the benefit of planning permission. There is no active planning permission under which extraction and processing is permitted on the lands.**
2. **Non-compliance with the requirements of conditions no. 1, 2, 4, 5, 6, 11, 15, 16, 21, 22, 25, 26, 28(b), 32(b), 33(a) & (b), 35, 36, 37, 48 & 56 of Planning File Register No. 07/0267.**

Condition No. 1

The development shall be carried out and completed in accordance with drawings submitted to the Planning Authority on 18/07/2007, as altered by revised documentation and details submitted on 12/10/2007, 04/06/2008, 28/01/2009 & 17/09/2009, except where altered or amended by conditions in this permission.

Reason: To enable the Planning Authority to check the proposed development when completed, by reference to approved particulars.

Comment: Condition not complied with as a result of non-compliance with conditions below.

Condition No. 2

The development shall be carried out, completed and maintained in accordance with undertakings for measures to mitigate its impacts as given in the Environmental Impact Statement lodged with the Planning Authority on 04/06/2008 and any additional measures undertaken subsequently, except where altered by the conditions of this permission.

Reason: To enable the Planning Authority to check the proposed development when completed, by reference to approve particulars and to restrict and minimise any adverse environmental impacts resulting from the development.

Comhairle Contae Chill Dara Kildare County Council



Comment: No indication that the development has been carried out or completed in accordance with the Environmental Impact Statement as a result of the absence of submission of information including noise and dust reports along with an Environmental Management Statement (EMS).

Condition No. 4

The development shall be carried out, completed and maintained in accordance with undertakings for measures to mitigate its impacts as given in the Environmental Impact Statement lodged with the Planning Authority on the 04/06/2008 and any additional measures contained in revised documentation, except where altered by the conditions of this permission.

Reason: To enable the Planning Authority to check the proposed development when completed, by reference to approve particulars and to restrict and minimise any adverse environmental impacts resulting from the development.

Comment: Having reviewed the EIE, the Planning Authority has deduced that the quarrying has not been undertaken as permitted on site. In this regard, amongst other matters the Planning Authority note the following:

- No evidence of benches on the site (2.3.1)
- No evidence of any on site restoration (2.3.1)
- No evidence of annual air, noise and water quality data submitted,
- EMS not submitted annually to the Planning Authority

Condition No. 5

This permission is for a period of 10 years from the date of this permission unless at the end of this period a further permission has been granted for its continuance on site.

Reason: To regulate the development and to clarify the duration of the operation hereby permitted and to limit the life of the development, in the interests of amenity and proper planning and sustainable development and to allow the Planning Authority to assess the development at the end of the stated time period.

Comment: Under Planning File Register No. 07/0267 permission was granted for continuation of aggregate extraction and processing at Philipstown and Redbog, by mechanical means, blasting, aggregate processing, washing, screening, crushing, power house, control rooms, office building, portacabins/Canteen, water recycling plant, lagoons, landscape berms and all associated site works. Permission expired on the 18/09/2020 for continuation of aggregate extraction and processing at Philipstown and Redbog, by mechanical means, blasting, aggregate processing, washing, screening, crushing, power house, control rooms, office building, portacabins/Canteen, water recycling plant, lagoons, landscape berms and all associated site works.

Comhairle Contae Chill Dara Kildare County Council



Condition No. 6

A detailed Restoration Scheme of the site according to the broad principles indicated in the Environmental Impact Statement and as amended by the details received by the planning authority on the 12th of October 2007 shall be carried out immediately following the cessation of excavation as referred to in Condition No. 5 above, unless, prior to the end of that period, planning permission shall have been granted for the continuance of use. Final details of the restoration, which shall be carried out on a phased basis shall be agreed in writing with the planning authority within three months of the date of this permission and shall be related to the agreed phasing programmed as specified in condition no.4 and shall include details relating to the following:

- a. finished gradients of the quarry cliff face
- b. Prescriptions and programme for initial aftercare and longer term management
- c. proposals for an aftercare programme (on site management and timescale)
- d. The purpose, aims and objectives for the after-use of the quarry complex
- e. Interim and proposed final site levels for excavation and restoration
- f. Details of the proposed final landform and phased progression of workings toward this form
- g. Landscaping proposals and a timescale for implementation of those proposals
- h. All existing trees and hedgerows on the site, specifying those proposed for retention, together with measures for their protection during the period in which the development is carried out
- i. A review of the nature conservation opportunities and constraints of the site
- j. Details of water (ground and surface water) management
- k. Details of soil movement and management, associated with restoration
- l. Description of target habitats and range of species appropriate to the site
- m. Details of habitat linkages and continuity of habitat within and outside the site
- n. Selection of appropriate strategies for maintaining or introducing target habitats and species
- o. Techniques and practices for establishing habitats and species
- p. Sources of soil forming materials, plant stock and other species introductions
- q. Method statement for ground forming, soil preparation and habitat and species establishment

Comhairle Contae Chill Dara Kildare County Council



r. Timing of the restoration operations in relation to phased working of the Final Phase of the site

s. Proposals for monitoring the success of all restoration works

t. Disposal of wastes arising from the restoration

u. Hours of operation of the restoration plan

The site shall be restored and landscaped in accordance with the agreed scheme.

b) A separate report shall be submitted to the Planning Authority for written agreement (or as otherwise agreed) detailing all material to be imported for restoration purposes from the adjoining pits. The location and quantum of material, haulage routes and estimated timeframe for completion shall be included.

c) The restoration and landscaping scheme shall also include an estimate of the total cost of the restoration plan along with an estimate of all individual phases. A suitably qualified and independent person acceptable to the Planning Authority shall prepare the estimate.

Reason: To regulate the development and to allow the Planning Authority assess the proposed restoration plan and to ensure that the site is restored in the interest of visual amenity, traffic safety and adjoining residential amenity and proper planning and sustainable development of the area.

Comment: The *'final details of the restoration, which shall be carried out on a phased basis shall be agreed in writing with the planning authority within three months of the date of this permission and shall be related to the agreed phasing programmed as specified in condition no.4'* was not submitted as required by the details of this condition.

Condition No. 11

Within 6 months from the granting of this permission, the developer shall submit to the planning authority for written agreement with the Heritage Officer of Kildare County Council, a detailed report assessing the impact of the Quarry in relation to Red Bog (SAC) in accordance with the Habitats Directive. Prior to the preparation of this report the applicant shall liaise with the Heritage Officer to agree a framework for the study.

Reason: In order to assess the impact of the quarry and the restoration scheme on Red Bog, a Special Area of Conservation.

Comment: No evidence on file that the required information was ever submitted to Kildare County Council.

Comhairle Contae Chill Dara Kildare County Council



Condition No. 15

Within 3 months of this permission, or such other time period as agreed with the Planning Authority, the applicant shall submit details of all existing and proposed signage located or to be located at the site entrance. These details shall also provide for a sign indicating the name of the quarry operator, contact telephone number of the quarry, the permitted working hours of the quarry, the name of the Planning Authority and the planning register number of the development.

Reason: To regulate the development in the interests of proper planning and sustainable development.

Comment: No evidence on file that the required information was ever submitted to Kildare County Council.

Condition No. 16

Within 2 months of the date of this permission, or such other time period as agreed with the Planning Authority, the quarry operator shall submit for the written consent of the Planning Authority details of warning signage to be erected at either side of the quarry entrance to warn road users of the quarry entrance.

Reason: To regulate the development and to alert road users of the location of the quarry entrance in the interests of traffic safety.

Comment: No evidence on file that the required information was ever submitted to Kildare County Council.

Condition No. 21

(a) Within 3 months of the date of this permission, or such other time period as agreed with the Planning Authority, the operator shall lodge with the Planning Authority a bond of an insurance company, a cash deposit, or other security as agreed to secure the provision and satisfactory completion and restoration of the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory reinstatement of the site including all necessary demolition and removal.

(b) The form and amount of the security shall be at least one quarter of the estimate mentioned in Condition No.6 (c) and agreed between the Planning Authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

(c) All such security provided shall be increased from January 1st next and annually thereafter (unless previously discharged) in line with the Wholesale Price Index - Building and Construction (published by the Central Statistics Office). The bond shall remain in full force and effect until discharged by the Council.

Comhairle Contae Chill Dara
Kildare County Council



Reason: To regulate the development and to ensure the satisfactory reinstatement of the site.

Comment:

- (a) No evidence on record of any bond having been lodged.
- (b) No evidence on record of any bond having been lodged.
- (c) No evidence on record of any bond having been lodged.

Condition No. 22

No muck, dirt, debris or other materials shall be deposited on the public road, footpath or verge by machinery or vehicles travelling to or from the development site during the construction phase. The applicant shall arrange for vehicles leaving the site to be kept clean. A bond of €5,000 shall be paid to the Planning Authority to ensure satisfactory compliance with this condition within 2 months following the date of this permission.

Reason: In the interest of traffic safety, amenity and orderly development.

Comment: No evidence on record of any bond having been lodged.

Condition No. 25

Within 6 months of the date of this decision, or such other time period as agreed with the Planning Authority, the quarry operator shall submit for the written approval of the Planning Authority an Environmental Management System for the site. The Environmental Management System shall provide for a review of the Environmental Management System Plan after 5 years and the proposed review shall be submitted to the Planning Authority for its written approval.

Reason: To regulate the development to ensure that the development is operated in accordance with "best practice", to control environmental, surface water, ground water or atmospheric emissions and to allow the Planning Authority monitor the operation of the development in the interests of proper planning and sustainable development.

Comment: There is no record of an EMS ever having been submitted to the Planning Authority are required by this condition.

Condition No.26

The details of the Environmental Management System shall be in accordance with the conditions contained in this decision.

Reason: To regulate the development to ensure that the development is operated in accordance with "best practice", to control environmental, surface water, ground water or atmospheric emissions and to allow the Planning Authority monitor the operation of the development in the interests of proper planning and sustainable development.

Comhairle Contae Chill Dara
Kildare County Council



Comment: There is no record of an EMS ever having been submitted to the Planning Authority are required by this condition.

Condition No. 28

(b) Within six months of the date of this decision, or such other time period as agreed with the Planning Authority, full details of the ground water monitoring programme shall be submitted for the written agreement of the Planning Authority and this programme shall ensure that the existing ground water sources serving local residents and farms in the vicinity of the site are unaffected by the development. The developer shall carry out monitoring of surface water and groundwater in the vicinity of the site to include information on groundwater levels AOD and water quality. The monitoring locations, sampling procedure, frequency and suite of water quality parameters to be tested for shall be agreed in advance with the Planning Authority and the monitoring shall begin prior to the commencement of the authorised activity.

Comment: There is no record on file of the required information having been submitted.

Condition No. 32

(b) A Dust Assessment shall be carried out on the site by a competent Environmental Consultant within 3 months of commencement of on-site operations and continuously thereafter. The locations of the dust monitoring stations shall be agreed with the Planning Authority. The Dust Assessment Reports shall be submitted to the Planning Authority on a quarterly basis.

Reason: In the interest of proper planning and development.

Comment: No record on file of any dust assessment having been submitted.

Condition No. 33

(a) The noise level attributable to all on-site operations associated with the proposed development shall not exceed 55 dB(A) (Leq) over a continuous one hour period between 0800 hours and 1800 hours Monday to Friday inclusive (excluding bank holidays), and between 0800 hours and 1300 hours on Saturdays, when measured outside any noise sensitive location house in the vicinity of the site. Sound levels shall not exceed 45 dB(A) (Leq) at any other time.

(b) A Noise Assessment shall be carried out on the site by a competent Noise Consultant within 1 month of commencement of on-site operations and at 6 monthly intervals thereafter or at any other time specified by the Planning Authority and shall give advance notice as specified by the Planning Authority. The locations of the noise monitoring stations shall be agreed with the Planning Authority. The Noise Assessment Report shall be submitted to the Planning Authority.

Reason: In the interest of proper planning and development.

Comhairle Contae Chill Dara
Kildare County Council



Comment: (a) & (b) – No evidence of a noise assessment having been submitted as required.

Condition No. 35

(a) An Environmental Audit of the site operations shall be carried out annually (by the end of January) on behalf of the developer by a competent environmental consultant. Details of the monitoring arrangements, including locations and frequency of monitoring shall be submitted to the Planning Authority within three months of commencement of planning decision. The audit should be prepared with reference and should take into account the requirements of the 2006 EPA publication 'Environmental Management Guidelines in the Extractive Industry' and shall be submitted to the Planning Authority not later than the end of February on an annual basis.

(b) The Environmental Audit shall

(i) be prepared with reference to, and should take into account, the requirements of the 2006 Environmental Protection Agency publication 'Environmental Management Guidelines in the Extractive Industry (Non-Scheduled Minerals)'.

(ii) Contain a summary of all the environmental monitoring results of the year.

(iii) List a full record of any breaches over the previous year of noise, dust and water quality.

(iv) Contain a written record of all complaints and action taken on each complaint.

Reason: In the interest of proper planning and development.

Comment: No evidence that any environmental audit was ever undertaken and/or the results of same ever submitted to the Planning Authority as required by this condition.

Condition No. 36

Within 3 months from the granting of this permission, the developer shall submit to the planning authority for written agreement a proposal for an Environmental Management System (EMS) prepared to the guidelines of Section C of the 2006 EPA publication 'Environmental Management Guidelines in the Extractive Industry'. The EMS should highlight clearly the following:

(a) Proposals for the suppression of on-site noise (in order to comply with conditions set out in this permission).

(b) Proposals for the on-going monitoring of sound emissions at the site boundaries at locations to be agreed with the planning authority.

Comhairle Contae Chill Dara Kildare County Council



(c) Proposals for the suppression of dust on site and on the access road; proposals to prevent dust escaping the boundaries of the site.

(d) Proposals for the bunding of fuel and lubrication storage areas; details of emergency action in the event of accidental spillage (where appropriate) and details of procedures to ensure refueling of vehicles and machinery is carried out in a manner that prevents contamination of the environment.

(e) Details of safety measures for the land above the quarry, to include warning signs and stock proof fencing (works to be carried out within one month of the written agreement of the planning authority to these details).

(f) Management of all landscaping, with particular reference to enhancing the ecological value of the grassland on the boundary adjoining the **proposed NHA** and buffer areas on the perimeter of the site.

(g) Monitoring of ground and surface water quality, levels and any discharges

The details of the Environmental Management System shall be in accordance with the conditions contained in this decision.

Reason: In the interest of proper planning and development.

Comment: No evidence that required EMS report was undertaken and/or the results of same ever submitted to the Planning Authority as required by this condition.

Condition No. 37

Within six months of the grant of this permission, detailed design of the entrance shall be submitted to the Planning Authority for written approval.

Reason: In the interest of traffic safety.

Comment: No record of the required information ever having been submitted to the Planning Authority as required by this condition.

Condition No. 48

A wheel wash unit shall be maintained on the site and used by vehicles exiting the site. No mud or other debris shall be deposited on the roads outside the site. The applicant to ensure that all public roadways in the vicinity of the site are swept clear of all loose material on a regular basis, and that all loose material is removed from the road verges. Details to be agreed in writing with the Planning Authority within 6 months of the grant of permission.

Reason: In the interest of traffic safety.

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Kildare County Council



Comment: No record of the required information having been submitted to the Planning Authority.

Condition No. 56

Having completed the work, the archaeologist shall submit a written report to the Planning Authority and to the Department of the Environment, Heritage and Local Government for consideration.

Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.

Comment: The required report was not submitted to the Planning Authority for consideration.

3. Possible non-compliance with conditions No. 53, 54, 55, 57 & 58 of Planning File Register No. 07/0267.

Condition No. 53

The applicant is required to engage the services of a suitably qualified archaeologist (licensed under the National Monuments Act 1930-2004) to carry out pre-development testing at the site. No sub-surface work shall be undertaken in the absence of the archaeologist without his/her express consent.

Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.

Condition No. 54

The archaeologist is required to notify the Department of the Environment, Heritage and Local Government in writing at least four weeks prior to the commencement of site preparations. This will allow the archaeologist sufficient time to obtain a licence to carry out the work.

Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.

Condition No. 55

The archaeologist shall carry out any relevant documentary research and may excavate test trenches at locations chosen by the archaeologist, having consulted the proposed development plans.

Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.

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Kildare County Council



Condition No. 57

Where archaeological material is shown to be present, avoidance, preservation in situ, preservation by record (excavation) and/or monitoring may be required and the Department of the Environment, Heritage and Local Government will advise the Applicant/Developer with regard to these matters.

Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.

Condition No. 58

No site preparation or construction work shall be carried out until after the archaeologist's report has been submitted and permission to proceed has been received in writing from the Planning Authority in consultation with the Department of the Environment, Heritage and Local Government.

Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.

Comment: A archaeological report was required. There is no record of one having been received by the Planning Authority. As the report was not received it is the case that it would appear that the conditions listed above may not have been complied with.

On land at the following address:

Hudson's Quarry site at Athgarrett, Philipstown & Redbog, Co. Kildare.

The Planning Authority's investigation to date indicates that the development as detailed above would appear to be unauthorised.

Under Section 152(4)(b) of the Planning & Development Acts 2000 (as amended) you are entitled to make submissions or observations **in writing** to Kildare County Council (Planning Enforcement Section, Planning Department) in this regard **not later than four weeks from the date of service of this warning letter.** Please clearly state the reference number in any correspondence to the Council.

Where the Planning Authority considers that unauthorised development may have been, is being or may be carried out, an Enforcement Notice, pursuant to Section 154 of the Act, may be issued.

The Planning Authority's officials or its authorised agent(s), may at all reasonable times enter onto the land for the purposes of inspection.

Section 151 of the Planning and Development Acts 2000 (as amended) provides that any person who has carried out or is carrying out unauthorised development shall be guilty of an offence.

Comhairle Contae Chill Dara
Kildare County Council



Section 154(8) of the Planning and Development Acts 2000 (as amended) provides that any person on whom an enforcement notice is served who fails to comply with the requirements of the notice within the specified period or within such extended time as the planning authority may allow, not exceeding 6 months, shall be guilty of an offence.

A person who is guilty of an offence under Section 151 and/or 154 shall be liable to a fine or term of imprisonment or both.

The possible penalties involved where there is an offence are as follows:

- **Fines of up to €12,697,380.00 on indictment, or 2 years imprisonment, or both,**
Or
- **Up to €5,000.00 on summary conviction or 6 months imprisonment, or both.**

Under Section 154(7) of the Planning & Development Acts 2000 (as amended) any costs incurred by the Planning Authority in relation to enforcement proceedings may be recovered from a person on whom enforcement notice is served or where a court action is taken.

Your attention is drawn to the provisions of Section 156(6) of the Planning & Development Acts 2000 (as amended), which places the onus on a developer to prove that a development is exempt development and it is to be assumed that it constitutes development until the contrary is shown by the developer. Note also that the onus of proof as to the existence of any planning permission lies with the developer.

Your attention is further drawn to the provisions of Section 162(3) of the Planning and Development Acts 2000 (as amended), which states that enforcement action shall not be stayed or withdrawn (including for an application under Section 160) by reason of an application for permission for retention of a development under Section 34(12) or the grant of any such permission.

Signed:

**Senior Executive Officer
Planning Department
Kildare County Council**

Date:

4th November 2020

30/10

Freehold.

KILDARE COUNTY COUNCIL

PLANNING DEPARTMENT

Planning Report



Planning Ref No. 20/532

Name of Applicant	Hudson Brothers Limited
Address of Development	Red Bog, Blessington, Co. Kildare
Development	Continuance of Extraction
Type of Permission	Permission
Date Inspected	14 th July 2020 and 21 st October 2020
Due Date	25 th November 2020

Description of Proposed Development

Planning permission is sought for the following development:

"(A) The continuation of aggregate extraction and processing as permitted under Reg. Ref. 07/267 that arose following S.261 registration of the extraction operation under reference No. QR42. (B) The lateral extension of the permitted extraction activities in westerly and northerly directions. Over a combined area of approx. 13.8 ha to match existing extraction depth that is above watertable. The proposed western extension is for the extraction of sand and gravel, and rock over an area of approx. 10.7 ha. The proposed northern extension is primarily for the extraction of sand and gravel over an area of approx. 3.1 ha. The extension areas are proposed to be extracted on a phased basis that incorporate into the existing extraction and restoration plans. The proposed lateral extension areas of sand and gravel, and rock will be processed using existing site processing facilities and are intended to maintain the extraction and aggregate production capabilities of the existing construction aggregate production operation. The proposed extension areas will include ancillary development in the form of landscaped screening bunds. (C) The replacement of existing wastewater holding system for the existing canteen/office with proprietary wastewater treatment system. (D) Ancillary site works. The application site area under reg. Ref. 07/267 was 57.9 ha. The proposed lateral extraction extension areas will increase the overall extraction area to approx. 54.3 ha. The total application area is approx. 75.0 ha and includes the ancillary processing plant and welfare facilities. The application site excludes an area of 0.23 ha that is the subject of a current planning application for retention of a maintenance shed under Reg. Ref. 19/1230. An Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) have been prepared to accompany the planning application that include the

existence of this maintenance shed in the assessment study areas. The planning application is accompanied by an Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS), for development."

Expiry of Reg. Ref. 07/267

Following registration with Kildare County Council under Section 261 of the Planning and Development Act (ref QR42 refers), Kildare County Council indicated that the quarry operator required planning permission and was required to prepare an Environmental Impact Statement in order to continue quarrying operations. Subsequently, the Applicant (Hudson Brothers Ltd) applied for planning permission under reg. ref. 07/267 with the following development description as stated in the statutory notices:

"Continuation of aggregate extraction and processing at Philipstown and Redbog, by mechanical means, blasting, aggregate processing, washing, screening, crushing, power house, control rooms, office building, portacabin / canteen, water recycling plant, lagoons, landscaping berms and all associated works. The Application Site area is ca. 57.9 ha. in size, and is the subject of Section 261 Registration Reference No. QR42.

An Environmental Impact Statement will be submitted to the planning authority with the planning application. The Environmental Impact Statement will be available for inspection or purchase at a fee not exceeding the reasonable cost of making a copy during office hours at the planning offices of Kildare County Council."

Kildare County Council issued a notification of decision to grant planning permission subject to 59 conditions. Following a first party appeal, An Bord Pleanála subsequently granted planning permission subject to 57 conditions and the final grant of permission was issued by Kildare County Council on 26th April 2010.

Condition No. 5 of that permission is stated as follows:

"This permission is for a period of 10 years from the date of this permission unless at the end of this period a further permission has been granted for its continuance on site.

Reason: *To regulate the development and to clarify the duration of the operation hereby permitted and to limit the life of the development, in the interests of amenity and proper planning and sustainable development and to allow the Planning Authority to assess the development at the end of the stated time period."*

A note to the Applicant was provided on the further information request for the subject application, Reg. Ref. 20/532, highlighting the expiry date of Reg. Ref. 07/267 as 25th July 2020. The note stated *"Therefore, no extraction or related activity shall occur on the site without a further grant of planning permission following that date in accordance with Condition no. 5 of Reg. Ref. 07/267."* It is acknowledged that the date was incorrectly calculated as it did not account for the 56 no. days as provided under emergency legislation associated with the Covid-19 pandemic. Following third party complaints and notifications

to Kildare County Council that extraction and activities permitted under Reg. Ref. 07/267 were still underway at the site, the Enforcement Section of Kildare County Council issued a letter to the Applicant highlighting the revised expiry date which included the 56 no. covid-19 days. Accordingly, the effective date of expiry of Pl. Ref. 07/267 is 18th September 2020.

Reg. Ref. 20/532

The Applicants were requested Further Information on 22nd July 2020 and the further information response was received on 01st October 2020. A site inspection was subsequently undertaken to identify if any works associated with Reg. Ref. 07/267 were still underway at the site following expiry of Reg. Ref. 07/267. The site inspection was undertaken on 21st October 2020 and noted the following:

- Trucks full of aggregate material leaving the site via the weighbridge to the N81 in the functional area of County Wicklow;
- Processing of aggregates at the subject site in County Kildare, including operation of plant and machinery in the area of the site referred to as the processing area as well as on the quarry floor:
 - o Fixed plant was in operation washing and grading aggregates at the processing area,
 - o Mobile crushing and screening plant was in operation on the quarry floor including wheeled loaders feeding material into the plant.
 - o Wastewater from the processing area was noted discharging on an automated basis to a settling pond.



Fig. 1: Washing and grading plant in operation in the processing area



Fig. 2: Loading and operation of mobile crushing and screening plant on the quarry floor



Fig. 3: Wastewater discharge from processing area



Fig. 4: Wheeled loaders moving material and loading trucks on the quarry floor



Fig. 5: Mobile plant in operation on the quarry floor

In this regard it is considered that unauthorised development has occurred as works and development permitted under Reg. Ref. 07/367 are still underway. Specifically, the following underlined items of development were underway at the site as set out in the development description of Reg. Ref. 07/267:

"Continuation of aggregate extraction and processing at Philipstown and Redbog, by mechanical means, blasting, aggregate processing, washing, screening, crushing, power house, control rooms, office building, portacabin / canteen, water recycling plant, lagoons, landscaping berms and all associated works."

While it is acknowledged that the Applicant indicated that no blasting has occurred on the site following expiry of 07/267, and that extraction has now moved to an adjacent site in the Applicant's ownership in the functional area of Wicklow County Council, it is nevertheless clear that material is being processed on the subject site itself. The on-going works contravene Condition no. 5 of Reg. Ref. 07/267 and therefore it is considered that the provisions of Section 34(12) of the Planning and Development Act 2000 (as amended) apply as follows:

"(12) 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.*

(12A) For the purposes of subsection (12), if an application for permission had been made in respect of the following development before it was commenced, the application shall be deemed not to have required a determination referred to at subsection (12)(b):

(a) development within the curtilage of a dwelling house, for any purpose incidental to the enjoyment of the dwelling house as a dwelling house;

(b) modifications to the exterior of a building.

(12B) Where a planning authority refuses to consider an application for permission under subsection (12) it shall return the application to the applicant, together with any fee received from the applicant in respect of the application, and shall give reasons for its decision to the applicant.

(12C) Subject to subsections (12) and (12A), an application for development of land in accordance with the permission regulations may be made for the retention of unauthorised development, and this section shall apply to such an application, subject to any necessary modifications."

Conclusion

In conclusion, Kildare County Council considers the planning application received on the 27th May 2020 by Hudson Brothers Limited for the continuance of use of an existing extraction facility which is accompanied by an EIAR and NIS, Reg Ref. 20/532, cannot be considered by the Planning Authority as the provisions of Section 34 (12) of the Planning and Development Act 2000 (as amended) are deemed to apply in this case.

Accordingly, the Planning Authority is precluded from considering the application and it should be returned to the Applicant, together with the fee and reasons for the decision, in accordance with Section 34(12) of the Planning and Development Act 2000 (as amended). The regularisation of the development would necessitate an application for substitute consent made to An Bord Pleanála. The provisions of Section 177D of the Planning and Development Act 2000 (as amended) refer.

Recommendation

It is recommended that the planning application **cannot be considered by the Planning Authority** for the following reasons:

1. The application for the continuance of use of an extraction facility located within the townlands of Athgarrett, Philipstown and Redbog, Blessington, Co. Kildare, which is accompanied by an EIAR and NIS (Reg Ref. 20/532), cannot be considered by the Planning Authority as it includes the retention of unauthorised development(s) which would have required one or more of the following:
 - (a) an environmental impact assessment,
 - (b) a determination as to whether an environmental impact assessment (EIA) is required,
 - Or
 - (c) an appropriate assessment.

An Appropriate Assessment is required due to the proximity and connectivity of the site to Red Bog Special Area of Conservation and the subsequent mitigation measures required to protect the integrity of the conservation objectives at the site. Threats to the conservation objectives include dust deposition and water quality, both of which have the potential to occur as a result of processing and washing of aggregates on the site.

An Environmental Impact Assessment is required under Class 2(b) of Part 2 of the Planning and Development Regulations 2001 (as amended) as the extraction area exceeds 5 hectares.


In this regard the provisions of Section 34(12) of the Planning and Development Act 2000 (as amended) apply, which states:

"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.*

Development at the site, comprising continuance of use of an existing extraction facility, is unauthorised and retention permission is required for the following reason:

- a) Development, including specifically aggregate processing, washing, screening, crushing, power house, control rooms, office building, portacabin / canteen, water recycling plant continued on site in breach of a number of conditions set out in Reg. Ref. 07/267, namely condition no. 5 which requires all activities associated with Reg. Ref. 07/267 to cease following expiry of the appropriate period on 18th September 2020.

Signed: 
Assistant Planner

Date: 27th October 2020

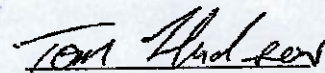
Signed: 
Acting Senior Executive Planner

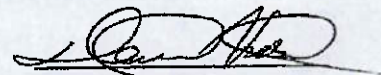
Date: 27th October 2020

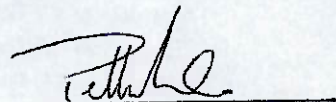

Emer Uí Fhátharta
Senior Planner

Date: 30th October 2020

Present when the Common Seal of
Hudson Brothers Limited was affixed hereto


Director



Director/Secretary



Director

Signed by Linda Kane

In the presence of

Sign here —



LINDA KANE


WOLFESTOWN
NABS
CO KILNARE

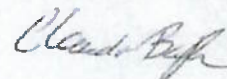
Signed by Francis Cummins

In the presence of

Sign here —


FRANCIS CUMMINS.

CLAUDIA Boyle,
16 DUNEMER PLACE
LUSK
CO DUBLIN.
ACCOUNTS ASSISTANT
OFFICE MANAGER.



THE HIGH COURT
RECORD NO. 2021/78 MCA
IN THE MATTER OF S.160 OF THE PLANNING AND DEVELOPMENT ACT 2000
(AS AMENDED) AND IN THE MATTER OF AN APPLICATION

BETWEEN

LINDA KANE AND FRANCIS CUMMINS

Applicants

AND

HUDSON BROTHERS LIMITED

Respondent

HEADS OF AGREEMENT

- A. The above-entitled proceedings shall be adjourned generally with liberty to re-enter with the intention that the proceedings be re-entered on completion of the substitute consent process and any consequential application for planning permission or prior to the completion of such process if required for enforcement of the following terms.
- B. The Parties shall consent to an Order that the Respondent comply with the following measures/conditions pending the final determination of the proceedings:

DEFINITIONS;

"2010 Permission" shall mean the reference the planning permission with register reference 07/267, County Kildare;

"Quarry Site" shall mean the lands contained within the boundary of the planning permission with register reference 07/267, County Kildare;

"Quarry Operations" shall mean the operations of the Respondent at the Quarry Site;

"The Parties" shall mean the Applicants and the Respondent;

"Substitute Consent Process" shall mean the current application for leave to seek substituted consent, any application for substituted consent or any similar subsequent applications

1. Any further extraction of material within the Quarry Site within the duration of this Agreement shall be limited to the levels of the 2010 permission and shall be contained within the area edged green on Plan 1 attached hereto and shall not be extracted by means of blasting; whether by explosives, gas pressure blasting pyrotechnics or any other form of blasting. There shall be no extraction of material carried out below a level one metre above the existing water table.
2. Within two months, a digital survey of the agreed extraction area shall be carried out by the Respondent's land surveyor and the survey furnished to the Applicants and the Applicant's solicitor after which the Applicants can have it assessed by their own independent and qualified land surveyor to demonstrate all levels and current quarry faces and gradients. The cost of the survey will be borne by the Respondent.
3. Blasting, whether by explosives, gas pressure blasting pyrotechnics or any other form of blasting, will not be carried out under any circumstances.
4. Operational access to and from the quarry site by the Respondent shall only be from the existing main quarry access road off the N81. No quarry access shall be permitted along the cul de sac 380 meters to the northeast of the main quarry road entrance save for the personal usage by members of the Hudson family.
5. The operation of the quarry shall be restricted to the Respondent and no quarrying activities shall be leased, sub-let or contracted out to any other business or company of the Applicants, save for such contracts or agreements in place as of the 3rd of May, 2022. This is strictly on the proviso that commercial relations continue with the sub-contractors in place as of the 3rd May 2022 ("the Existing Sub-Contractors"). If for any reasons commercial relations with the Existing Sub-Contractors break down, the Respondent shall be entitled to appoint a new sub-contractor in place of the Existing Sub-contractors in order to continue with its commercial activity. The Respondent shall notify the Applicants of any changes to the Existing Sub-Contractors. The Respondent acknowledges and accepts that the purpose of this clause is to ensure that there is no intensification of use during the currency of this Agreement.
6. Hours of operation at the quarry shall be restricted on the basis indicated at Condition 14 of the grant of planning permission (planning ref. no. 07/267).
7.
 - (a) No extraction of material shall be carried out below a level one metre above the existing water table.
 - (b) Within 1 month hereof, full details of a groundwater monitoring programme shall be presented to the Applicants. The programme shall ensure that the existing groundwater sources serving residents and farms in the vicinity of the site are unaffected by the quarrying operations, and the Respondent shall comply with the provisions thereof.

(c) The ground watering programme will include for monitoring of surface water and groundwater in the vicinity of the site and include information on groundwater levels AOD, water quality, monitoring locations, sampling procedures, frequency of sampling, and a suite of water quality parameters to be tested.

(d) Monitoring shall commence immediately.

(e) Where any water source within the affected area is compromised by the quarry operations, the Respondent shall take whatever measures are necessary to rectify or replace the compromised water supply within 1 week.

(f) The Respondent shall provide the consultant retained by the Applicants with the results of the monitoring (quality and levels) of all wells and boreholes within a 500m radius of the Quarry Site on a quarterly basis starting from the date of the groundwater monitoring Agreement.

(g) The Respondent will be responsible for all costs associated with compliance hereof.

8. All loads of excavated and processed material transported to and from the Quarry Site by the Respondent's vehicles shall be covered to prevent dust pollution, and every vehicle carrying fine material shall be covered in accordance with the EIS submitted as part of the 2010 permission application.

9. (a) Within 2 months hereof, the Respondent shall furnish the Applicants with a report from the Respondent's environmental consultants assessing dust emissions from all quarrying activities, and including a dust monitoring programme with agreed dust monitoring stations to include along the boundaries of the site, the nearest dwelling houses and the Red Bog SAC. Dust deposition shall not exceed a limit of 350mg/m²-day, as averaged over 28 days, when measured using Bergerhoff dust deposition gauges in accordance with VDI Method 2119.

(b) Dust monitoring reports based on sampling shall be submitted quarterly to the Applicants.

(c) If dust emissions from the Quarry Operations exceed the limits, the Respondent shall put in place such measures as required to remedy such exceedance.

(d) The Respondent shall be responsible for all costs associated with the foregoing.

10. (a) Within 2 months hereof, the Respondent shall furnish the consultant retained by the Applicants with a report from the Respondent's environmental consultants assessing noise emissions from the Quarry Operations. The report will include a noise monitoring programme specifying the location of the noise monitoring points to include points

within the vicinity of the nearest dwellinghouses to the site and any other noise-sensitive location.

(b) The report will provide that noise levels attributable to all on-site operations associated with the proposed development shall not exceed 55 dB(A) (Leq) over a continuous one hour period while the quarry is operational during the permitted hours of operation as set out in Clause 6 of this Agreement, when measured outside any of the noise-sensitive monitoring points.

(c) A noise monitoring report based on survey findings will be submitted to the Applicants within two weeks of the date hereof, and thereafter such noise monitoring reports shall be furnished to the Applicants on a two monthly basis (i.e. once every two months).

(d) If noise levels are found to exceed 55 dB(A) (Leq), the Respondent shall put in place such measures as required to prevent such exceedance.

(e) The Respondent shall be responsible for all costs associated herewith.

11. Within 1 month hereof, the Respondent will provide the Applicants with an inventory of all existing plant, machinery and buildings required for the operation of The Quarry at the date of the signing of this agreement and a map showing the location of each. Save for replacement plant, machinery and equipment, no further plant, machinery and equipment shall be brought into the quarry site and no further buildings will be erected to ensure there is no intensification. For reference, the latest inventory of existing plant, machinery and buildings within the processing area of the quarry, as listed in the current application for Leave for Substitute Consent ref: ABP LS09. 311622, is as follows:

- Canteen and welfare facilities;
- Power House
- Control Rooms (2 no)
- Maintenance shed (with storage for oils) and welfare facilities;
- Aggregate processing plant (with recycling facilities);
- Water recycling plant; and
- Fuel Tanks.

12. The Respondent shall ensure that a stock and trespass resistant fence is in place around the full perimeter of the quarry Site within 3 months hereof with appropriate interim safety and security measures put in place by the Respondent to prevent unauthorised access to the quarry.

13. The Respondent shall bear the reasonable costs of the Applicants towards their employing competent environmental consultants as provided for at conditions 7, 9 & 10 hereof to include the initial inspection of the site and

the review of the monitoring data by that consultant. The consultant shall further be entitled to inspect on notification to the Respondent.

14. The Respondent shall comply with the terms of the following conditions of planning permission 07/267 with immediate effect:

Condition 7 (wheel cleaning);
Condition 8 (disused plant, machinery and scrap)
Condition 13 (light spillage and pollution outside the site).
Condition 17 (maintaining roads in the vicinity of the site)
Condition 18 (safe site access arrangements from the public road)
Condition 19 (prohibition on landfill)
Condition 24 (management of contaminated surface water)
Condition 29 (surface water interceptors)
Condition 30 (oil, grease etc interceptors)
Condition 31 (bundling)
Condition 34 (Waste management)
Condition 40 (record of traffic movements)
Condition 44 (surface water)
Condition 46 (haul routes)

- C. The Respondent hereby contracts with the Applicants to secure the performance of the matters set out at B above until the proposed Order is discharged and to bind its successors and assigns to that contract.
- D. The Respondent shall discharge the costs of the Applicants in the above entitled proceedings to date measured in the amount of €100,000.00 plus VAT within two weeks hereof.
- E. The Respondent confirms that the provisions of the Environmental (Miscellaneous Provisions) Act 2011 applies to these proceedings.

D. H.
November

Dated this day of ~~September~~, 2022.

Comhairle Contae Chill Dara
Kildare County Council



Date: 6th October 2020.
Our Ref. PI. Ref. UD7620.

This matter will be dealt with by the Planning Control Team who may be contacted at 045-980839.

Hudson Brothers Ltd.
c/o Golder Associates Ireland Ltd.
Town Centre House,
Dublin Road,
Naas,
Co. Kildare.

Re: Aggregate extraction and processing permitted by Pl. Ref. 07/267 at Philipstown and Redbog, Co. Kildare.


Dear Sir/Madam,

I hereby acknowledge receipt of your letter dated 18th September 2020, the contents of which has been recorded on file.

I can confirm that the contents of your letter will be considered by the Planning Authority in deciding whether to commence planning enforcement procedures. If pursuant to the investigation currently taking place, Kildare County Council decides to commence enforcement proceedings then same may issue without any further notice or warning to you.

Please note the provisions of Section 162(3) of the Planning and Development Acts 2000 as amended, which states that enforcement action shall not be stayed or withdrawn (including for an application under Section 160) by reason of an application for permission for retention of a development under Section 34(12) or the grant of any such permission.

Yours sincerely,


Senior Executive Officer,
Planning Department.

Hudson Brothers Ltd.
Hudson Brothers Quarry Office,
New Paddocks,
Blessington,
Co. Wicklow.
W91 CH68.

18 September 2020

Project No. 19115799.L07.B0

Kildare County Council
Planning Control Team
Planning Department,
Áras Chill Dara,
Devoy Park,
Naas,
Co. Kildare



CONTINUATION OF AGGREGATE EXTRACTION AND PROCESSING PERMITTED UNDER PI. REF. 07/267 AT PHILIPSTOWN AND REDBOG, CO. KILDARE

Dear Sir/Madam

Thank you for the clarification of effective date of expiry of PI. Ref. 07/267 following the additional period provided in the emergency legislation due to Covid-19.

As Kildare County Council are aware there is an application currently under consideration (PI. Ref. 20/532), where the Applicant is seeking permission for the continuation of aggregate extraction and processing as permitted under PI. Ref. 07/267, a lateral extension of the permitted extraction activities, the replacement of existing wastewater holding system with a proprietary wastewater treatment system, and ancillary site works.

A request for further information has been issued and a response will be submitted to Kildare County Council by Wednesday the 30th of September 2020.

Hudson Brothers Limited shall be observant of the terms of PI. Ref. 07/267.

Yours sincerely,

Golder Associates Ireland Limited


Kevin McGillicuddy
Environmental Consultant


Barry Balding
Associate

KMG/BB/kmg

CC: Hudson Brothers Ltd

Comhairle Contae Chill Dara
Kildare County Council



Date: 9th September 2020.
Our Ref. PI. Ref. 07/267.

This matter will be dealt with by the Planning Control Team who may be contacted at 045-980839.

Registered Post.

Hudson Brothers Ltd.
c/o Golder Associates Ireland Ltd.
Town Centre House,
Dublin Road,
Naas,
Co. Kildare.

SCANNED

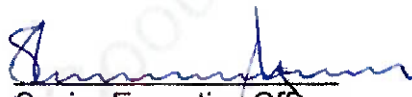
Re: Aggregate extraction and processing permitted by PI. Ref. 07/267 at Philipstown and Redbog, Co. Kildare.

Dear Sir/Madam,

Planning permission for this development was granted under PI. Ref. 07/267 on 26/4/2010 for a period of ten years. This ten year period includes a number of days which are to be disregarded for the purposes of calculating the effective expiry dates. Section 251 of the Planning and Development Act 2000 (as amended) disregards nine days each Christmas (90 days total) and a further 56 day period was provided for this year in emergency legislation due to Covid 19. Accordingly, the effective date of expiry of PI. Ref. 07/267 is 18th September 2020.

Please confirm in writing before 18th September 2020 that you will cease all works permitted under PI. Ref. 07/267. You should also be aware that any such works carried on after this date may be unauthorised.

Yours sincerely,



Senior Executive Officer,
Planning Department.

Registered Post.

Hudson Brothers Ltd.
Hudson Brothers Quarry Office,
New Paddocks,
Blessington,
Co. Wicklow.
W91 CH68.

Memorandum

TO: Stephen Cunningham

FROM: Aoife Brangan

DATE: 04/09/2020

RE: Hudson Brothers, Redbog UD 7620, Reg. Ref: 07/267



KILDARE COUNTY COUNCIL

A ten year permission was granted to Hudson Brothers on 26/04/10, Reg. Ref: 07/267 refers. This permission will expire on 18/09/20 (this date includes 90 days over the Christmas period in addition to the 56 days for Covid). As the parent permission is due to expire shortly, and no further permission has been granted, the applicant should be reminded that the permission will expire on 18/09/20, and all works associated with that permission should cease from that date.

Please issue a letter (Hudson Brothers and their planning agent details on Reg. Ref: 20/532) to the above effect, and also request a written undertaking from the developer to cease works on that date.

Please also advise the complainants on the UD file that the current permission will expire on 18/09/20.

Aoife Brangan
8/9/20

Declan and Sara Goode
Athgarrett, Eadestown
Naas, Co Kildare
W91KC9E
T:
E:

23/04/2024

Dear Sir, Madam

We wish to lodge an official objection to 'An Bord Pleanála' against the following planning applications:

Planning References: QD09.319217:

Applicant: Hudson Brothers Limited.

Description of Development: Application for substitute consent for quarry in the townlands of Philipstown and Redbog, Co. Kildare.

Planning Reference: QD09.319218:

Applicant: Hudson Brothers Limited.

Description of Development: Further development under 37L, In the townlands of Athgarrett, Philipstown and Redbog, Co Kildare;

We are in strong objection to the above planning applications.

Introducing Ourselves:

We are a local young family living in the townland of Athgarrett and in very close proximity to the proposed planning applications.

Our home is located on the R410 roadside in the townland of Athgarrett on the western side of the existing quarry, Eircode W91KC9E, and as shown on the adjoining map (Figure 1). Today we are 500m at the closest point from the existing quarry. The proposed extension of the quarry into the field on the western side of the existing quarry, would bring this operation within 250m of our property. Furthermore, our house is at an elevation of 215m. The proposal is that that the quarry excavation is brought to 200m. Thus, our house will be at a higher level than the proposed quarry extension in the field of view from our house.



Fig 1. Location of proposed extension to existing quarry and our home.

For the following reasons, we have very serious concerns over the proposed extension of the existing quarry.

Our Objection to the Proposed Planning:

Granting permission to this substitute consent and plan for further development:

- Increases the potential of damage to the nearby high-pressure gas line, which could have catastrophic effects on the local community, and Gas Networks Ireland customers
- Increases the risk of private well-water contamination, and structural damage to our homes
- Impacts negatively on the community, notably the visual and residential appeal of the area in terms of noise pollution, dust pollution, increased traffic, and irreparable landscape damage, and concomitant effect to property values
- Influences negatively on Red Bog SAC, its conservation as SAC, as well as the species habitat and ecology of the area and surroundings.
- Concedes authorisation to the applicant for this substitute consent / further development of the quarry, who has failed to operate within the parameters established in the original planning application to Kildare County Council (07267); and has not complied with the agreement achieved in High Court in recent years. This has been a recurrent issue within the community, increasing our unease and mistrust towards the operator of the quarry, as well as generating stress and anxiety within our family

The planning submission also contravenes the aims and objectives expressed in the 'Kildare County Development Plan 2023-2029'.

In more detail:

High Pressure Gas Line:

The Cork-Dublin high pressure gas line runs through an adjoining neighbouring farm immediately to the right-side of our property, and then crosses into the field where the quarry is proposed to extend. According to the plan, the quarry will be extended closer to the existing gas line, and as such rock blasting focal points will be closer. The plan acknowledges that *'fractures in the gas-line could result in gas leaks and an explosion – but that acceptable monitoring will prevent that'*. We are concerned and do not accept that the current application meets a basic criterion for having sufficient data to assume that further blasting closer to the pipeline will not represent a serious concern, and that monitoring programmes are sufficiently in place to prevent this risk.

We are aware that reparation work has taken place in recent times on the gas line directly in Athgarrett, in the farm adjacent to our property home and approximately 250m from the proposed quarry extension. We understand that this reparation work was due to a stuck Gas Pipeline PIG (Gas Pipeline Inspection Gauge) in the line. It is not fully clear to us as to the reason for this issue and whether the issue has been resolved. Considering its very close proximity to the existing quarry, it is concerning though, when one questions if there might be a relationship between this issue and former quarry blasts causing possible subsidence. Damage to the pipeline could result in serious health, safety, and environmental concerns for residents and indeed road users on the R410. In addition, an issue to the line would also negatively impact the energy supply down-stream and have major economic consequences. It is our opinion that An Bord Pleanála should not grant permission for quarry expansion until they are fully sure and have evidence to demonstrate that extending the quarry closer to the gas line brings no risk to the community.

Private Well Water and Structural Damages to Homes

We have our own private water well, and we are cognizant that there are many dwellings in close proximity to the quarry extension that also rely on private wells for drinking water. We are concerned that further quarrying in the direction of our homes, and closer to our homes, could have a negative impact on water levels and pollution. We see no data related to proving that no further extraction or blasting of rock would change watercourses and impact well water supplies. In our opinion, should this risk be materialized, it would contravene the Kildare County Development plan (2023 – 2029) Objective IN011 that promotes the protection of private water sources.

Furthermore, dwellings in proximity to the existing quarry have experienced considerable and very noticeable vibrations in our homes when blasting was formerly carried out in the current quarry up to September 2020. Cracks on walls and ceilings were noted. Our major concern is that, if further excavation of the land comes closer to our homes then there is a strong and very real possibility that we will experience further damage to our dwellings.

Noise and Dust Pollution, Impact to the Natural Beauty of the Surrounding Landscape

Today we are lucky to have a beautiful green field in full visibility in front of our home. If the proposed development proceeds, a part of the natural green environment will be destroyed and lost to existing and next generations. This area is of unique beauty and forms a unique landscape of the East Kildare / West Wicklow orography, and we strongly believe that it should be preserved. We are also observant of the very evident change that the extension of the quarry will pose to the existing ridgeline, within our view of

the field opposite our property and across the R410 road (Figure 2). To our understanding, this ridgeline is highlighted in the Kildare County Development Plan as an object subject of preservation to further “protect and enhance the county’s landscape”. The aforementioned development plan also states the incompatibility of sand, gravel and rock extraction with the identified ridgelines.



Fig. 2. View of existing ridgeline (in red) and the proposed extension of the existing quarry and its potential impact to the visual from our property.

As a results of the potential extension of the quarry closer to us, we are concerned about further noise pollution which will be heightened much more than what we experience and have to tolerate today. We should point out that today we can hear the sand and gravel movements from the existing quarry. It is very reasonable to expect that these noise disturbances will be considerably elevated if the quarry is allowed to extend closer to our location.

We are concerned and expect that the closer proximity of the quarry would result in increased levels of pollutants, such as dust and dirt. The applicants EIAR report states *'The assessment has considered the potential emissions to air and impacts from particulates, and demonstrates that the potential impact on Air Quality from the continued operation and extension of the Site will be no greater than slight, and therefore are considered to be not significant'*. However, as local users of the surrounding roads, we can attest that dust and dirt are very visible on the South-Eastern side of the quarry, in the roads adjoining the N81, where hedgerows, roadways and local housing, have been negatively impacted by the quarry for many years already. Our impression is that it shows a lack of respect and accountability that in our opinion quarry developers should have for local residents who are negatively impacted by their commercial activities. Our fear is that this will just continue, and increase due to the foreseen volume of extraction from the proposed quarry extension and the associated volume of traffic increase. As many of these trucks also use the R410 on the routes, this will only become a greater issue to us and our neighbours.

Having another 15 years of new quarrying activity with heightened traffic to and from the site, represents further pollution for those living in vicinity to the quarrying activities. Bringing the quarry closer to roadways such as the R410 will increase dust also on this road, which is used by many cyclists, some of

which are from clubs in neighbouring towns (Naas Cycling Club, Blessington Reservoir Cogs) but also from other towns taking the opportunity to enjoy the landscape of East Kildare / West Wicklow. The risk of the heightened physical pollution and quarrying traffic can negatively affect the appeal of the area for engaging in physical activities. All of these activities are supportive of the objectives of public health policy, such as Healthy Ireland and the National Physical Activity Plan.

Our family use the local area for recreation and we are regular walkers in the neighbouring Glending Forest, which is adjacent to the existing quarry. It is positive to hear of the development of a walkway directly from Blessington into the Glending forest, thus connecting by walking or cycling to the future Blessington Greenway around the Poulaphouca reservoir, and greenway route to Russborough. We can already see the significant negative impact that the existing quarry has had on the forest, and in our opinion very little planning or real thought has gone in terms of restoration after the excavation of land in the forest and surrounding areas, since we are living here. There are many very accessible high cliffs close to walkways which pose a significant safety concern to walkers and mountain bikers using the forest, which is used by lots of local people in the greater Blessington and Naas areas and represents a very valuable resource for existing and future generations. It is such a pity to see how close the quarry has been allowed to come to the Office of Public Works – *Rath Turtle Moat*, which is a prominent impressive Viking fort with spectacular views over the Blessington Lake and the Wicklow Mountains. Further excavation of the land close to the forest just heightens further destruction of the forest, and introduces additional safety concerns.

Moreover, we are cognizant of the proximity of Red Bog, a designated SAC (000397) to the existing quarry, and so to the proposed extension. We are concerned that if the quarrying activity continues in its vicinity, there is very high risk to irreversibly damage this area. Only looking at the publicly available Conservation Objection Series for Red Bog, it indicates that “the SAC is fed by rainwater percolating through the ridges of permeable gravel surrounding the SAC”, and this should raise further concerns about the quarrying activity and its potential to affect these ridges and ultimately the water flows that allows the maintenance of this unique eco-system.

Fear for the Future of Local Wildlife

We are also concerned for the local wildlife that currently inhabit the aforementioned field opposite our home. We currently count ourselves as fortunate to have daily sightings of herds of local deer and their young roaming through the proposed extension on their way in and out of the Glending forestry. Extension of the quarry into their habitat will have consequences to their daily movements and will result in them having to follow routes closer to the roadway. This will potentially increase the risk of entering the roadway (R410) and cause danger for road-users in addition to themselves.

Increased Traffic, and Safety for Locals

We are concerned about the impact that increased activity in the quarry will have, regarding heightened heavy vehicle traffic on our roadways, and the R410 particularly. The road is unusable for walkers and it is becoming more dangerous to use by cyclists (due to the higher volume of vehicles, including quarry trucks) but certainly is not safe for children and teenagers. We regularly come across serious car accidents on the roadway (R410) between Blessington and Naas, thus our fear is that any increase in heavy vehicle traffic may heighten the occurrence of such accidents. It is also important to note that the R410 is a road

servicing school traffic to the local primary school (e.g. Rathmore N.S.) but also on route for student transport to secondary schools in Naas and Blessington.

We hope that you consider our genuine concerns, and do not grant these application.

Sincerely,

Declan & Sara Goode