

Faolán Bashford

(ABP-319217-24).
LDG-071545-24.

From: Marston Planning <[REDACTED]>
Sent: Wednesday 24 April 2024 08:30
To: board@pleanala.ie; Appeals2
Subject: QD09.319217
Attachments: 32056-3 Submission to AnBP Draft.pdf; Submission on QD09.319217.pdf; RE Query.msg

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To whom it may concern

Please find attached a submission on behalf of the Save Kildare Uplands Action Group in relation to this application for substitute consent for a quarry at Philipstown and Redbog, Co. Kildare. A report by TMS Environment accompanies this submission and is submitted as a separate attachment.

As this is a substitute consent application no fee is associated with the making of a submission, and this submission is therefore made via email as per attached correspondence with the Board confirming that this could be done.

I would be grateful if the Board could confirm receipt of the attached and that all is in order. Many thanks in advance.

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Regards

Anthony Marston

Marston Planning Consultancy

[REDACTED]
[REDACTED]

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MARSTON

PLANNING CONSULTANCY

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

18th April 2024

Our Ref: 24032

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 Redbog and Philipstown, Co. Kildare.

An Bord Pleanála Ref. no. QD09.319217

Date of lodgement of application: 29th February 2024

Last day for making submission: on or before 24th April 2024

Dear Sir/Madam,

We, Marston Planning Consultancy, 23 Grange Park, Foxrock, Dublin 18, D18 T3Y4 are instructed by the Save Kildare Uplands Action Group, Harrington & Co Solicitors, Newtown, Bantry, Co. Cork, P75 EA03; to make a submission in regard to the above section 37L application lodged for substitute consent for the existing quarry on behalf of Hudson Brothers Ltd. on lands located at Redbog and Philipstown, Co. Kildare. 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. The members of the Group are listed to the rear of this submission in Appendix A.

This submission is accompanied by a submission by TMS Environment Ltd. that has reviewed the hydrological and hydrogeological elements of this and concurrent application (see accompanying report). This concludes that there are several aspects of the two applications that must be questioned relating to hydrological connection as well as whether works have extended below the water table. This must lead the Board to severely question the conclusions relating to dust and hydrological impact on the area, including the Red Bog SAC.

We have also included as part of this submission the High Court Order Settlement between local residents and the applicants in this instance the Hudson Brothers Ltd. (see Appendix B). This was taken by local residents following a failure of the applicant to comply with their original permission, as well as a failure of Kildare County Council to enforce them to uphold the permission granted under Planning Ref. 07/267. This High Court Order ties the applicant into upholding the terms and conditions of the decision made under Planning Ref. 07/267. A copy of this High Court Order accompanies this submission.

This application is made following a decision made by Kildare County Council under Planning Ref. 20/532 that they could not consider the application, as it related to unauthorised development which would have required an Environmental Impact Assessment; and an Appropriate Assessment. Following this, the applicant sought leave to apply for substitute consent under ABP Ref. LS09.311622, which was granted by An Bord Pleanála on the 1st August 2023. This required the substitute consent application to be lodged by the 17th October 2023. The Board extended this by three months and subsequently extended this by a further period to the 29th February 2024.

This application is made concurrently with an application for new quarrying and aggregate extraction works and extension of the quarry made by the same applicant under An Bord Pleanála Ref. QD09.319218. We respectfully submit that this current application for substitute consent completely fails to provide any degree of clarity in terms of the works for which substitute consent is sought. This is inferred by a set of drawings that relate to what is referred to as the baseline drawing, and existing drawings. We respectfully submit that

a review of these drawings indicates a complete lack of clarity in terms of the works that are subject of the substitute consent application. Irrespective of this matter we submit to the Board that permitting applications for planning permission to retain existing developments requiring environmental impact assessment (EIA) or appropriate assessment (AA) must be considered as being contrary to EU law.

Furthermore, the applicant appears to be using the date of the September 2020 as forming what they refer to as the baseline for the unauthorised development. It is our contention that the permission granted under Planning Ref. 07/267 expired on the 17th July 2020. Irrespective of this, there appears to be no cross-reference within the application to how this application relates to the 2007 permission, and the works permitted within it.

We respectfully submit that the failure to accurately indicate the nature and extent of the works subject of the application must lead to the invalidation of this substitute consent application. This must also lead to questions relating to the accuracy of the remedial EIAR that accompanies the application. We note that the Planning and Development, Maritime and Valuation (Amendment) Act 2022 enables a simultaneous application for new works and substitute consent to be lodged to the Board. This can only be done where there are exceptional circumstances. We would request the Board to question whether the information provided to the Board was fully correct that led to them reaching their conclusion that the exceptional circumstances threshold has been met in this instance.

We note that the remedial EIAR, and indeed the EIAR that accompanies the new works application, fail to adequately consider the project as a whole. The failure of both to undertake a project assessment must lead to a refusal or indeed the invalidation of the application on the basis that the EIAR fails to meet the required standard given the interlink between both. In simplistic terms, the new works application cannot be granted unless this substitute consent application is permitted. Their inter-linked nature, should have led to a project assessment, and the failure on this ground must lead to a refusal of permission in this instance.

We respectfully request the Board to refuse permission for the substitute consent application, and if they do so, it is also duty bound to refuse permission for the new works application as it would be resulting in the intensification of an unauthorised development.

Our client, which represents the residents of the immediate local community have been negatively affected by the unauthorised development that is subject of this substitute consent, and are therefore opposed to the proposed development on a number of fundamental and strong planning grounds.

We submit that the unauthorised works that are subject of this application have been considered and poorly conceived in terms of its negative impact on this sensitive environment and the Red Bog SAC; negative impact on the visual and residential amenity to local residents; and is in clear contravention of Kildare County Council's own planning policies as set out under the Kildare County Development Plan 2023-2029.

The proposal is therefore contrary to the proper planning and sustainable development of the area, and we accordingly request for the substitute application to be refused by An Bord Pleanála. Prior to outlining the grounds of the submission it is imperative to set out for the clarity of the Board the context of this application in terms of the sensitive nature of the site in proximity to the Red Bog SAC and the potential impact on its conservation objectives; local residents as well as it being in contravention of local planning policy.

We respectfully submit that the grounds for refusing this substitute consent application are clear and unambiguous. It clearly will materially compromise the conservation objectives of the SAC and runs contrary to a number of key Development Plan policies and objectives. In addition the impact on local amenity, when all elements are combined (noise, visual impact, dust etc.), which have failed to be adequately cumulatively assessed by the applicant, must lead the Board to conclude that permission be refused.

Prior to setting out our client's grounds for appeal their submission it is useful to set out the context of the application for the clarity of the Board.

2. Description of the subject site and vicinity

The application site extends to around 71.9 hectares and is located to the north of Blessington. It comprises lands in the townlands of Athgarrett, Philipstown and Redbog in County Kildare. It is one of three large quarries that operate from the same general location to the west of the N81 as it approaches Blessington

from the the north. The existing vehicular access to the quarries is primarily from two access points on the N81 in Co. Wicklow to the east of the quarries.

The substitute consent application site has no public road frontage but is within close proximity to a number of houses that are owned and lived in by members of the client group to the west, east, north and north-east that will be negatively impacted by the continuation and expansion of the quarry. Whilst the application is located within Co. Kildare, a significant part of the wider quarry site is within Co. Wicklow. The application boundary extends to being within c. 250m of the R410 to the west; adjoining Red Lane to the north, and adjacent to the public roads that extend from the N81 to the east.

The existing quarry has been operational since the 1950s and has caused considerable scarring of the landscape, which has been exacerbated by the works that are the subject of this substitute consent application. There are no obvious signs of site restoration for those quarry areas which have been exhausted, and we note that the restoration plan submitted with the application would appear to be at odds with the restoration plan submitted as part of the concurrent new works application.

We note that the application (section 2.3.13 of the rEiAR states that "*Restoration was never undertaken after the expiry of Planning Ref. 07/267 as the extraction for which that planning permission was granted was never undertaken*". The application indicates that the restoration plan is both for works already undertaken under the 2007 permission as well as the unauthorised works made between 2020 and 2023. It is unclear as to whether works undertaken following the making of this application are covered within this, or the concurrent application. If they are under the concurrent application, then these also amount to being unauthorised, and should have been subject to the substitute consent application. What is abundantly clear is that the nature and extent of works being applied for under the application is unclear; and it is abundantly clear that it fails to indicate how the proposed restoration of the application site will integrate with planned restoration of other lands within the applicants control; other adjacent quarries; as well as the local and wider landscape.



Aerial view of substitute consent application site (outlined in red) with boundary of new extraction works application (outlined in yellow) and 2007 application site outlined in white

The quarry that is the subject of this application came under planning control through the Section 261 registration process and subsequently with the benefit of planning permission under Planning Ref: 07/267 which was granted on the 26th April 2010 for a period of 10 years. The application site is substantively enclosed within the red line of the current. This permission has therefore expired.

Planning Ref. 07/267, which was accompanied by an Environmental Impact Statement and was described as follows:

"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. 57.9ha. in size, and is the subject of Section 261 Registration Reference No. QR42".

The permission was subject to 57 no. conditions. Condition 5 of the permission was:

"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 continuation on site".

We note that the planner's report in respect of Planning Ref. 19/1230 (which was for a truck and plant maintenance shed and other ancillary elements within the quarry as opposed to quarrying activities themselves), noted that the permission granted under Planning Ref. 07/267 expired on the 3rd June 2020. However, this was in our considered opinion a miscalculation based on the normal 5 year length of permission. In this case the permission was for ten years and therefore an additional 45 days beyond the 3rd June 2020 needs to be added to calculate the date on which the permission expired. The permission therefore expired on the 17th July 2020. This expiration date of the permission takes into account the (9 days per year for Christmas) as provided for under Section 251 of the Act, and clarified in the judgement of the High Court in *Browne v. Kerry County Council* (2009) IEHC 552.

We submit that the application is entirely incorrect therefore to claim under section 2.3.1 of the EIAR that the site is operating under Planning Ref. 07/267, which has long since expired. We would request the Board to question whether the additional 56 days for Covid should have been added, as is stated in the EIAR as the opinion of Kildare County Council. The additional 56 days does not explicitly refer to lengths of permissions and if the Board also conclude in a similar manner then we submit that it is incumbent on them to invalidate and/or refuse permission given that the assessments made would be incorrect.

We respectfully submit that as no substantive permission has been granted following this date, it is unequivocal that the existing quarrying works have operated in an unauthorised manner for the last four years. This has resulted in our clients having to endure the negative impact of unauthorised works for a substantive period that as a result of excessive noise levels, dust and other environmental impacts has negatively impacted their residential amenity.

The concurrent additional new quarrying works application seeks to extend the unauthorised works under ABP Ref. QD09.319218. The substitute consent application includes substantial parts of the application for new works. Their overlap is shown on the plan on the previous page; with the site of the now expired 2007 permission outlined in white. Sand and gravel and rock is proposed to be extracted to the west of the existing quarry and sand and gravel in the northern extension under the concurrent application.

We refer the Board to the silt pond that is full of debris arising from gravel washing and other quarry activity at the eastern end of the existing quarry. In addition we note that this silt pond and quarry works are located in close proximity to the Red Bog Special Area for Conservation (SAC) (site code: 000397) that is also identified as a pNHA. It is unclear as to whether the quarry, and works within it are hydrologically connected to the SAC or to the pond that is located within this application boundary. We refer the Board to the attached environmental report by TMS Environmental Ltd. that raises significant question marks over the connectivity between the quarry and the SAC. The small pond to the immediate west of the silt pond is of ornithological interest and supports species connected to Poulaphuca Reservoir SPA (Site code 004063) to the south-east.

We request the Board to question whether the applicant has sufficient legal interest to undertake the proposed works under both this and the application for new works. There is also a need for the Board to consider the impact and planning status of quarrying of the area to the north-east of the existing quarry (Folio Ref. 9317) relative to the other areas to be quarried, and whether these have been adequately considered in terms of the cumulative impact within the reIAR.



Silted pond within the substitute consent application boundary

We respectfully submit that it is unequivocal that the effect of the unauthorised quarrying has been that it has created a landscape that is severely scarred and which severely detracts from the surrounding rural landscape. The quarry is located within an area designated in the Kildare County Development Plan as forming part of the landscape designated as the "Eastern Uplands" which is stated as having a 'high sensitivity' under Table 13.1 of the Kildare County Development Plan 2023-2029. The description of this landscape is summarised in Table 13.2 of the County Development Plan as:

"Areas with reduced capacity to accommodate uses without significant adverse effects on the appearance or character of the landscape having regard to prevalent sensitivity factors."

The following is an excerpt from Map Ref. V1-13.2 from the County Development Plan that indicates the sensitivity of the local environment. It indicates the pNHA of the Red Bog outlined in purple and the SAC boundary indicated within that; and with the scenic route identified by way of the dashed blue line; and the protected view identified by way of the green flower like symbol (see below). The application site sits to the immediate south-west of these and we have indicated it by way of a white star for clarity purposes below.



Excerpt Map Ref. V1-13.2 from Kildare County Development Plan

Table 13.3 of the Plan indicates that sand and gravel extraction has a medium compatibility with this identified landscape character. We note the Policy LR P1 of the Development Plan seeks to:

"Protect and enhance the county's landscape, by ensuring that development retains, protects and, where necessary, enhances the appearance and character of the existing local landscape."

The Plan having regard to high sensitive landscapes states that landscape sensitivity will be an important factor in determining development (Objective LR O1). There is also a need for all quarrying activities to comply with all relevant planning and environmental legislation and the Guidelines for the Protection of Biodiversity within the Extractive Industry document 'Wildlife, Habitats and the Extractive Industry' (Objective LR O8).

Section 13.4.12 define the Eastern Uplands as follows:

"The Eastern Uplands are located in the east of the county and are part of the Wicklow Mountain complex. The topography rises from the lowland plains, through undulating terrain to the highest point of 379m above sea level (O. D.) at Cupidstownhill, east of Killeel. The elevated nature of this area provides a defined skyline with scenic views over the central plains of Kildare and the neighbouring Wicklow Mountain which further define the skyline and the extent of visibility. The East Kildare Uplands are rural in character with a number of scenic views from elevated vantage points. The general land use on the uplands is pasture, with some tillage, quarrying and forestry.

Along a number of roads, which cross the upper and lower slopes of the uplands, there are long-distance views towards the Kildare lowlands and the Chair of Kildare. The sloping land provides this area with its distinctive character and intensifies the visual prominence and potential adverse impact of any feature over greater distances. Slope also provides an increased potential for development to penetrate primary and secondary ridgelines when viewed from lower areas. In the Eastern Kildare Uplands, nearly all ridgelines are secondary when viewed from the lowland areas, as the Wicklow Mountains to the east define the skyline (i.e. form primary ridgelines). Gently undulating topography and shelter vegetation provided by conifer and woodland plantation can provide a shielding of built form. Views of the River Liffey Valley as well as of the Poulaphouca Reservoir are available from the hilltops and high points on some of the local roads".

The proposed unauthorised and new extensions to the existing quarry have and will further exacerbate the profound negative visual impact of the quarry within this identified highly sensitive landscape.

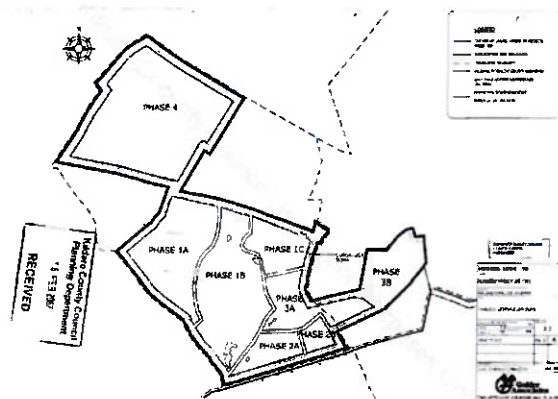
3. Description of the proposed development

The nature of this proposal is critical to the determination of this application. We note that the statutory notices, and accompanying documents and drawings are unclear and lack clarity in terms of what substitute amounts to in terms of the nature and extent of the unauthorised works. The statutory planning notices state that the final floor of the quarry will be 188m AOD. The statutory notice provides very little other information as to the nature and extent of the works for which substitute consent (retention of unauthorised works) is sought.

The description of development states:

"The development consists of a quarry over an area of 71.9 ha. with a final floor of approximately 188m AOD. The reserve consists of sand and gravel which is extracted by mechanical means, and sandstone (greywacke) which is extracted by mechanical means. The excavated sand and gravel is transported to a plant area for washing, grading and processing. The excavated rock material is crushed and graded at the working face by mobile plant. The quarry has an existing processing plant and maintenance area of approximately 5 ha. that currently holds 1 no. maintenance shed (including underbody truck wash on a concrete apron surrounding the shed, staff welfare facilities [shower and toilet], proprietary wastewater treatment system and percolation area, interceptor and soakaway), 1 no. generator/power house (within a shipping container), 1 no. control room, 1 no. office and canteen, a water recycling plant, an aggregate processing plant (washing, crushing, and screening), 1 no. bunded fuel tank and generator room, 1 no. storage shed, 1 no. shipping container storage structure, and 1 no. shipping container. Within this plant/maintenance shed area is a fuel storage and refuelling area. The quarry is located predominantly in Co. Kildare but accessed via a shared laneway connecting to a single location on the N81 which is located within Co. Wicklow. Other items not specified in this application will be the subject of a separate planning application and the requisite statutory process of consultation and determination. The existing operational quarry has been in use since the early 1950's and has been registered under S.261 of the Planning & Development Act 2000 with Kildare County Council under Quarry Ref. No. QR/42 and with Wicklow County Council under Quarry Ref. No. QY/43. Subsequent planning permission for continuance of quarrying operations was granted by the Wicklow County Council under Reg. Ref. 06/6932 in October 2009 for a period of 25 years and by Kildare County Council under Reg. Ref. 07/267 in April 2010, and subsequently by An Bord Pleanála under their Reg. Ref. PL09.235502 for a period of 10 years, which expired on 18th September 2020 after which quarrying stopped for a period."

We note that the applicant is both extremely vague in relation to the nature and extent of the works that are the subject of this substitute consent but also in relation to when works ceased and for what length of period. No evidence of this is provided and anecdotal evidence of local residents is that quarrying did not cease. This leads to several questions to be raised both in terms of the works undertaken and what are being assessed under the rEIAR. We note that the 2007 permission indicated a phased extraction of the quarry as indicated in Figure 2.3 of the Environmental Impact Statement (see below) submitted with the application.



We note that whilst there are baseline drawings, which are not in effect baseline, but the conditions in 2020, and existing drawings that indicate the conditions in September 2023, these do not indicate effectively the works that are subject of this substitute consent application. It is up to the Board and third parties in this instance to seek to establish the nature and extent of works undertaken between this period. We note that both the covering planning report and section 2 of the rEIAR are particularly silent on this matter. Some degree of greater clarity is provided within Chapter 11 of the rEIAR. This indicates that the quarried area extends to 37.3ha. and that between 2020 and 2023, the quarry had been extended vertically by c. 12m with a 1.5ha. extension in the north-west area of the quarry. We have sought to indicate this approximately in the right hand side aerial photograph below. The substitute consent application completely fails to adequately assess these works.

We respectfully submit that this is an unreasonable approach and provides the public with an inability to reasonably comment on the application. The applicant is reliant on aerial photographs in seeking to illustrate the nature of the unauthorised works. As is clearly evident below, which is taken from the applicants rEIAR, the nature and extent of the unauthorised works is incredibly hard to decipher. A review of the aerial views of the quarry following October 2023, from 2024, indicate that the quarry has continued to be extended to the north-west. These works are not covered by either application and amount to unauthorised development. The Board are therefore duty bound to refuse permission, as the substitute consent application fails to address all of the unauthorised development.



Extent of quarry in March 2020 (Figure 2-7 of the rEIAR)



Extent of quarry in October 2023 (Figure 2-9 of the rEIAR)

4. Grounds of submission

The full grounds of our submission to the Board is based on a number of factors that relate to planning matters and the content and lack of comprehensiveness of the Environmental Impact Assessment Report (EIR); inadequacy of the Appropriate Assessment Screening Report (AA) as well as being contrary to a number of policies and objectives of the County Development Plan.

Refusal warranted on applicants past failures to comply

We respectfully submit that it is not in question that the quarry has been operating in an unauthorised manner for the last almost four years. Aside from the unauthorised quarrying, the facilities within the quarry have also been operating in an unauthorised manner. During this time the local residents have had to complain to Members and the Executive of Kildare County Council and An Garda Síochána about a variety of breaches of non-compliance with planning permission, traffic violations, uncovered loads, noise and dust concerns relating to blasting etc. These complaints have been made over a number of years and are still having to be made as the applicant continues to operate the quarry in an unauthorised manner without due regard to the amenity of local residents and the environment of the area. We note that the applicant was supposed to submit two bonds to Kildare County Council under the permission granted under Rf. 07/267 and failed to do so. There would appear to be no reason therefore why the applicant would now make any such bond payments, given past failures to provide, or any reason why the restoration plan would be adhered to.

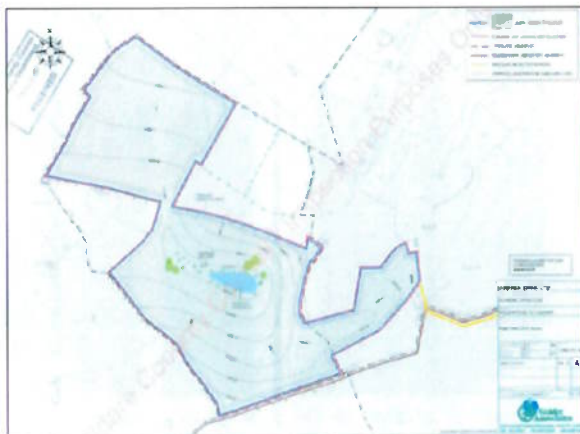
The continued unauthorised works is reflected in the High Court Order Action that was taken by local residents against the applicants Hudson Brothers Ltd. following their failure to comply with their original permission, as well as a failure of Kildare County Council to enforce them to uphold the permission granted under Planning Ref. 07/267. This High Court Order ties the applicant into upholding the terms and conditions of the decision made under Planning Ref. 07/267. A copy of this High Court Order accompanies this submission at the rear of this planning submission (Appendix B).

The local residents have had to endure some 17 years of negative environmental impacts relating to a range of factors. We submit that it is completely unreasonable for a quarry operator, who is the applicant in this instance, to receive a grant of permission for this retrospective application, when they have shown a blatant disregard to the conditions of the 2007 permission and other regulatory requirements, and have been operating in an unauthorised manner for the last four years.

We respectfully submit that when all these factors are taken into consideration, the only reasonable conclusion that can be made is that the Board should refuse permission having regard to the applicants past failures to comply with the terms and conditions of the previous 2007 permission, as is provided for under Section 35 of the Planning and Development Act 2000 (as amended).

Piecemeal and incremental degradation of the rural landscape

We respectfully submit that the rural landscape of this part of the Eastern Uplands of Co. Kildare and west Co. Wicklow has been the subject of piecemeal and incremental degradation through the uncoordinated and unauthorised development of quarrying. The application that has been made to the Board seeks to permit the currently unauthorised degradation of the rural landscape.



Restoration plan proposed under Planning Ref. 07/267

We refer the Board to the fact that the quarry restoration plan submitted by Golder Associates and approved under Planning Ref. 07/267 (see above), that was clearly inadequate and indicated a lack of planting and consideration of the environment in which it is located, has not been implemented. The need for an improved and more comprehensive restoration plan formed condition no. 6 of the 2007 grant of permission and was required to be far more detailed in nature. The details requested under that condition have not been provided under this application.

The restoration plan submitted with this substitute consent application also shows a complete disregard to the environment in which it is located. It is significantly concerning that the applicant does not have full control over parts of the north-east of the quarry, and we would question whether they have an ability to fully implement the restoration plan as now currently proposed. The status of the restoration plan under this application in light of the concurrent application for an extension to the quarry must be severely questioned.



Restoration plan proposed under substitute consent application – note land not in control of applicant to north-east

Furthermore, no attempt has been made by the applicant, to incorporate within their new proposed restoration plan, a phased restoration plan of elements of the quarry that are either already redundant or will become redundant if permission were granted in this instance. Both this and the new works application also completely lack any attempt to screen the quarry during the operational life of the site, as is required under both good planning practice but also under Objective RD O44 of the County Development Plan. Given the lack of restoration of the site, it is incumbent on the Board to attach a suitable and significant bond to the permission, to be paid prior to commencement of the new works application to ensure that the restoration plan is implemented in accordance with Objective RD O45.

This is despite the applicant committing to reinstate sections of quarries once they have been worked out to agricultural use, to plant native trees on side slopes of extracted areas and the creation of natural features and habitats from water bodies. We note that at the time of making this submission none of these commitments have been met.

The failure of other quarries in the local area to have not implemented restoration plans, both in Co. Kildare and Co. Wicklow leaves a large stretch of this highly sensitive landscape to the immediate north of Blessington scarred and void of vegetation that is completely at odds with Objectives RD O44; RD O46; RD O49; RD O50 as well as RD O51 of the Kildare County Development Plan 2023-2029.

We respectfully submit that when the cumulative impact on the environment and landscape is considered in terms of this application, and other adjacent quarries, it is unequivocal that this high amenity landscape of high sensitivity has been irrevocably damaged, partly by the works sought for substitute consent in this instance. We respectfully submit that it is incumbent on the Board to consider the cumulative impact of these

quarries and that both Kildare County Council and Wicklow County Council prepare a joint quarrying strategy for future quarry development that seeks to protect the most sensitive landscapes and reinstate the existing landscape damaged by past quarrying operations, including the wider aspects of this site.

The previous serious concerns of the County Council in relation to the above matter are well established; and under the 2007 application they raised concerns relating to the cumulative impact of all existing and future quarry operations on the natural and residential amenity of the area. Despite these previous serious concerns, the degree of assessment of the cumulative effect of the proposed development, even with the concurrent new works application, which should be considered as the project to be assessed, is significantly deficient.

The conclusions made in relation to the inadequacy of assessment of the cumulative effect of the proposed development remain, and we submit that the rEIAR submitted is significantly deficient in detail regarding the overall impact of the quarrying operations in the area, which include the proposed operations on site. We note that a review of the 2007 application indicates that the clarification of further information recommended, which included a comprehensive cumulative assessment, did not issue. The cumulative impacts of quarrying in the area (visual amenity, impacts on residential amenity etc) was never addressed, and remains not adequately addressed under both current applications.

We respectfully submit that the cumulative visual impacts of quarrying operations in the area are clearly visible when considered from the surrounding landscape in views from the local and wider area (see below). The hinterland of Blessington has been systematically scarred from quarrying operations since the 1950's with no attempt to repair the damage caused through proper site management and landscape restoration or mitigation by way of screening during the operation of the quarries. The applicant should not be granted permission in this instance for substitute consent given the ongoing non-implementation of conditions relating to the 2007 permission. The non-implementation of these conditions has led to the scarring of the landscape to the severe detriment of the visual amenity of the area, including from protected view-points such as from the viewpoint to the immediate north-east of the site (see next page).



Visual impact of quarrying from Caureen, a Protected Hill Top view-point

The remaining argument of the applicant is that the quarrying and its impact on the visual amenity and landscape is long established. No attempt to comprehensively assess in a cumulative manner the new and substitute consent application, or indeed other quarrying activities, has been made (see section 11.10 of the submitted EIAR). This must lead the Board to question the adequacy and completeness of the rEIAR, and to refuse permission.

Lack of previous and proposed quarry restoration and failure to comply with condition no. 6 of permission granted under Planning Ref. 07/267

The Board are requested to note that the Landscape and Restoration Plan permitted under Planning Ref. 07/267 provided for primarily restoration of the quarried area to agricultural pasture (see plan on page 8 of this submission). As previously noted condition no. 6 of the permission required a far more comprehensive

restoration scheme to be designed, agreed and implemented on a phased basis. There is no evidence on file, and certainly none on site of this condition having been complied with in respect of a detailed restoration plan being prepared for agreement. The failure to provide this information within three months of the permission being granted, must lead the Board to conclude that irrespective of any other issues, the development is not in compliance with the 2007 permission. The argument made in the EIAR that this is because it was not viable between 2007 and 2023 is an irrelevance having regard to the requirements of condition no. 6 of the 2007 permission.

The quarry restoration plan under the current application, submitted on behalf of the applicant by Cunneane Stratton Reynolds (Drawing no. 23386-2-101) indicates a 'concept' restoration proposal. It includes no proposal to commence phased restoration works of areas of the quarry where works have ceased, and are also not included within the new works application, and also proposes no visual mitigation around the perimeter of the site contrary to Objective RD O44 of the County Development Plan.

We note that the current application, rather than putting forward a phased restoration plan across parts of the quarry that are no longer proposed to be quarried, seeks to only implement the restoration works following the cessation of quarrying. It is unclear as to what the applicant defines as conceptual, and we request the Board to severely question the justification for a restoration plan in its current form. We also note that it indicates very little actual restoration work itself, and is significantly reliant on natural colonisation with some very moderate planting and establishment of a single small waterbody within its north-western sector.

We respectfully submit that restoration is required to be undertaken on an ongoing and phased basis, and not simply following the cessation of all quarrying works. This amounts to an ill-considered and incorrect approach to remedial works and restoration. There is a need for a much more detailed and phased approach to restoration, and we submit that the current proposal for restoration are inadequate, and by pushing all restoration to the end of the quarry life, will increase the potential for the failure to implement the scale of restoration of this high sensitive landscape that is required contrary to objective RDO50 of the County Development Plan.

Negative visual impact on the High Sensitive landscape

The quarry and its unauthorised expansion that is subject of this substitute consent application is located within the East Kildare Uplands that are designated as an "Area of High Amenity" under section 13.4 of the Kildare County Development Plan 2023-2029. They are classified as an Area of High Amenity because of their outstanding natural beauty and/or unique interest value and are generally sensitive to the impacts of development. The East Kildare Uplands form part of the Wicklow Mountain Complex. The Wicklow Mountain Uplands, 5km to the east, is a designated Area of Outstanding Natural Beauty.

The East Kildare Uplands are primarily rural in character with a number of scenic views from elevated vantage points. The general land use on the uplands is pasture, with some tillage, quarrying and forestry. In addition to more localised views of the application site and its surrounds within the East Kildare Uplands, which include views from localised public amenities/ facilities, there are a number of long-distance protected views and tourist routes within the East Kildare Uplands and elsewhere in the Wicklow Mountain Complex from which the site and surroundings are highly visible.

In support of the application the applicant has submitted a Landscape and Visual Impact Assessment (LVIA) that forms section 11.5 of the rEIAR. We respectfully submit that the approach to this LVIA is fundamentally flawed in that it considers the impact from a baseline of the 2019 landscape and existing quarrying operations, as opposed to the original landscape.

Furthermore, no regard has been had to the failure of the applicant to reinstate worked out quarry areas as they go. We submit that if the correct approach had been taken in the rEIAR then the assessment of visual impacts and effects would have been significantly greater than is presented.

Table 11.9 in the applicant's LVIA within the rEIAR highlights the applicants consideration of the sensitivity of the view, the magnitude of change as well as the significance of the visibility of the existing and proposed quarry. The assessment is undertaken from 13 locations, some in close proximity, with others further afield that are indicated in Figure 11-19 of the rEIAR. In making this submission, we have not had an opportunity to validate the view locations.

However, what is indeed clearly notable, and which is vindicated in the applicants own assessment, is that the existing quarry and new works will be highly visible and from a wide range of locations. It is notable that no assessment of the impact on the designated protected view from Caureen to the immediate north-east of the site has been undertaken. Furthermore, the quarry, in its current state, with the works that are subject of this substitute consent application, are clearly visible from the surrounding landscape. The failure of the applicant to recognise or assess this, must lead to a questioning of the robustness of the rEIAR.

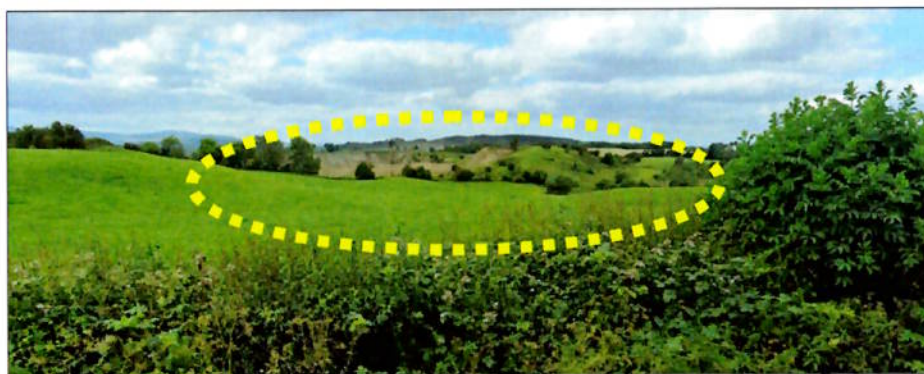
Whilst the applicants undertook a Zone of Theoretical Visibility that is indicated in Figure 11-20 of the EIAR that accompanies the concurrent new works application, no such assessment is provided under the substitute consent rEIAR. Therefore there can be no reasonable certainty from the application as submitted as to where these new works that have been undertaken in an unauthorised manner will be visible from.

A review of the area indicates that the existing quarry and its unauthorised extension will be much more visible than indicated from the 13 views assessed. The rationale and justification of these view-points must be questioned by the Board given that they are the same as those assessed under the new works application. We submit that it is incredulous that the applicant thought it appropriate to consider viewpoints where the existing or new works would not be visible, as opposed seeking to establish where the quarry would be visible from. We note that for example, quarrying activity is visible from the Blessington ring road (see next page).

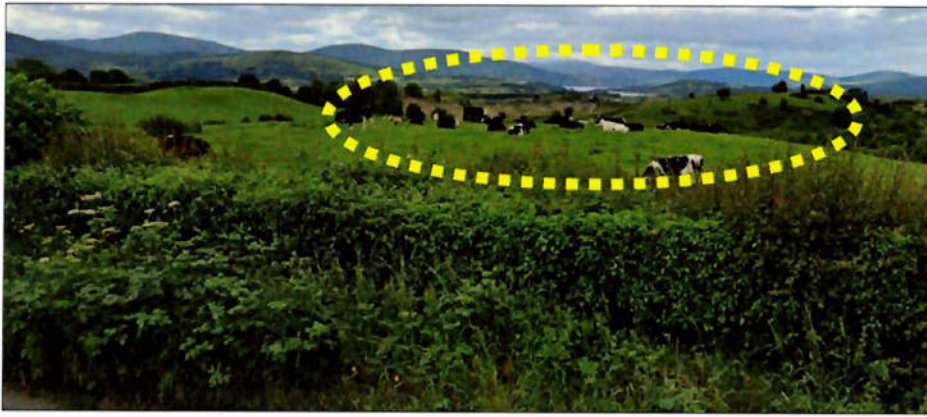


Blessington ring road where quarrying existing and proposed is visible (from 2020)

We also note that the quarry is clearly visible from locations adjacent to Viewpoint 11 along the local road to the north of the site that is identified as a designated Scenic Route and close to a designated Hilltop View Point (Caureen) as identified in the County Development Plan.



Views from the designated scenic route and below a designated hilltop view point close to LVIA VP11 with quarrying clearly visible (from 2020)



Views from the designated scenic route and below a designated hilltop view point close to LVIA VP11 with quarrying clearly visible (from 2020)

We respectfully submit that the existing quarry was and has become further visible from this designated Scenic Route No. 12 and Hilltop View (Caureen) looking south and south-west towards the substitute consent application site. The rationale and justification for not including such a view is unclear, and it is incumbent on the Board to question therefore the robustness of the LVIA in this instance.



Views from the designated scenic route and below a designated hilltop view point close to LVIA VP11 with quarrying clearly visible

The proposed development will increase the visible scarring of the landscape from these designated scenic locations in material contravention of the policies and objectives as well as section 13.5 of the County Development Plan that seek to protect designated Scenic Routes and Hilltop Views.

We respectfully submit that the LVIA does not accurately represent the potential visual impact of the existing and proposed development and fails to adequately evaluate the visual impact from Designated View Points and Scenic Routes.

The proposed development is, therefore, in contravention of Development Plan Policy LR P3- which seeks to protect, sustain and enhance the established appearance and character of all important views and prospects. We submit that the development will have a disproportionate visual impact and will significantly interfere with, or detract from, scenic upland vistas when viewed from areas nearby, scenic routes, viewpoints and settlements. We submit that when all of these matters are considered it is incumbent on the Board to refuse permission having regard to the negative impact on this high sensitivity landscape that is identified as a high amenity area.

Negative impact on ecology and protected sites

As outlined earlier in this submission, the Red Bog Special Area of Conservation (SAC) is located only 240m north-east of the quarry. It is in line of the prevailing wind and will have been impacted by dust that would have been generated from the unauthorised expansion of the quarry, as well as the internal quarry roads.

The Poulaphuca Special Protection Area (SPA) is located 2.2km to the south and south-east. Both of these Natura 2000 sites are also pNHA.

We note that whilst the new works application is accompanied by a Natura Impact Statement, the substitute application is accompanied by a Remedial AA Screening Report only. The rationale and justification for this must be considered at best open to significant questioning given the closeness of the Red Bog SAC, and the lack of monitoring of the site during this period.

The rAA Screening Report appears not to pay particular attention to dust migration from the site and the potential impact on the conservation status of the SAC and SPA. Red Bog, Kildare is a site of particular conservation significance, supporting a good example of transition mire, a habitat that is listed on Annex I of the E.U. Habitats Directive. The Red Bog SAC comprises a wetland complex of lake, fen and bog situated in a hollow between ridges of glacially-deposited material and underlain by rocks of Ordovician age. The SAC is also of ornithological, ecological and botanical interest and value. Breeding birds recorded from the site include Mute Swan, Mallard, Tufted Duck, Coot, Moorhen, Snipe and Black-headed Gull (estimated < 20 pairs).

The original designation of the bog was informed by a 1972 survey by Roger Goodwillie for Aras an Forbatha, which remains as informing the status of the SAC. This found the following:

"Evaluation - This is a most interesting eutrophic lake, rich in invertebrate and plant food. The vegetation cover is unusual and the peat development that has occurred makes the area of great ecological value. It might be described as a dry valley - bog but has more definite associations with raised bog, here at its extreme limits of climatic tolerance. The lake is important for breeding aquatic birds.

Vulnerability - Drainage would be most damaging to the present vegetation, but increased pollution might also upset the lake ecology.¹ The breeding bird population would be susceptible to disturbance.

Recommendations - A lowering of the water table in this area should be prevented. In view of the surrounding land being well-drained it is unlikely that this will be suggested. If disturbance is found to be an adverse influence, steps should be taken to lessen it. This lake would be most suitably protected by a Conservation Order under Section 46, Local Government (Planning and Development) Act 1963. Ecologically, it is the most valuable lake in Co. Kildare.²

We note that the rAA Screening report identifies that there is potential groundwater connectivity between the SAC and the proposed development site. The Report also identifies that there is potential dust connectivity between the proposed development and this SAC. Please refer to the TMS Environmental Ltd. report for greater clarity. This concludes in summary as follows:

- (i) *The project boundary used for the study arbitrarily chooses a boundary of 500m with no justification for the selection; this distance excludes several local users likely to be affected by the proposed development;*
- (ii) *Local wells within 150m of the site were considered for inclusion in the assessment but this does not include all of the well users potentially affected by the proposed development and no rationale was provided for this selection;*
- (iii) *The site water usage estimate is unreliable and underestimates the significance of the water usage and fails to acknowledge the use of groundwater at the site.*
- (iv) *Although an enormously significant extension is proposed, and with very limited existing groundwater monitoring wells at the site, including three damaged wells which could not be utilised, there are only two new boreholes reported and neither adequately assesses the potential impacts of the proposed development; the paucity of information likely explains the flawed understanding of hydrogeology at the site which could easily have been improved with further study;*
- (v) *The hydrogeological model is flawed and incorrectly interprets data from investigations. An alternative conceptual model has determined that it is probable that the quarry is working below the water table, and probably has been for many years.*

¹ My emphasis

² A Preliminary Report on Areas of Scientific Interest In County Kildare; Roger Goodwillie, Research Assistant for An Foras Forbartha, 1972 (Appendix 3)

- (vi) *There was no consideration afforded to groundwater contributions to the Redbog SAC and no evidence justifying the omissions.*
- (vii) *Water resources of local residents are at risk from the development and the subject has not been competently and fully assessed in the rEIAR.*

We respectfully submit that our clients are significantly concerned, given the above, in relation to the impact the proposed development will have on the SAC and its conservation status. Finally on this issue, while it is accepted there is unlikely to be any direct impacts from the proposed quarrying on the Poulaphuca Reservoir to the south and west of the site, dust migration must be impacting on the wildlife pond immediately to the west of large silt pond within the quarry.

This pond is of ornithological value and supports species connected to Poulaphuca (SPA and pNHA) to the south. We submit that therefore permission is refused until certainty of the impact of the proposed development both individually, and cumulatively with other quarrying activities is assessed. The use of entirely arbitrary 500m distance for cumulative effects is inadequate and must lead to a refusal of permission on the basis of the precautionary principle, in that the Board have an inadequate and potentially inaccurate level of information to assess the impact on the Natura 2000 sites.

Potential lack of facilities to serve the proposed development

We note that retention permission was granted under Planning Ref. 19/1230 on the 4th June 2020, for retaining the truck and plant maintenance shed with staff welfare facilities and associated proprietary wastewater treatment system serving the quarry.

Condition no. 3 of this permission will only permit the shed to be used for the maintenance of HGV's and plant associated with the operation of the quarry permitted under Planning Ref: 07/267. This permission has expired. The wording of this condition would suggest that the use of the sheds to be used for the maintenance of HGV's and plant associated with the operation of the extended quarry will therefore not be permitted.

This situation reinforces the point that the truck and plant maintenance shed with staff welfare facilities and associated proprietary wastewater treatment system should have formed part of the current application. The failure to include must lead to the conclusion by the Board that they are unauthorised, and therefore their use with the substitute consent application and indeed the new works application amounts to unauthorised development and should lead to a refusal of permission.

Negative impact on local residential amenity

The various member of the local group that we represent are impacted to a different degree dependent on their location to the west, or to the north-east of the overall site in relation to traffic, noise, vibration and dust. Any individual submission will highlight the nature and degree of impacts each household suffers from quarry operations and will continue to suffer if further permission is granted.

Roads and traffic

The unsurfaced nature of the internal quarry roads means there is a continual problem of dust circulating in the atmosphere and migrating to nearby residential properties, other properties and lands. We respectfully submit that it is not in question that our client's particularly to the north-east suffer from a significant degree of dust being generated by the quarry, due to their position downwind of the prevailing wind. Dust is a major environmental problem arising from the applicant's quarry and neighbouring quarries which is not regulated or controlled. We refer the Board to the fact that the Red Bog SAC is located in this area, and is likely to be impacted by dust generation from the site including internal quarry roads.

The main official access road into and out of the quarries onto the N81 is narrow, dangerous and, again, dust is a major and ongoing nuisance. There are no pedestrian facilities along this main access road, and there is insufficient space for pedestrians/ workers when two vehicles pass along this road, resulting a traffic hazard. The road also suffers from dust, fumes and noise disturbance on local amenity. Dust plumes around vehicles along the entire length of the road and out onto the public road is a continuous problem.

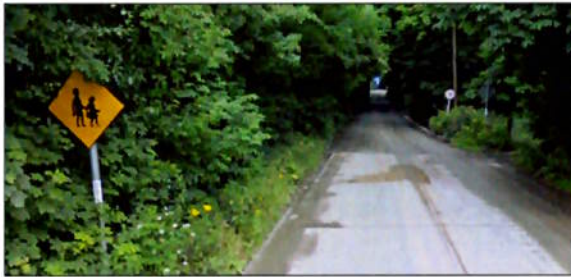


Main quarry access off N81; and entrance to access road from the N81

At the junction of the main access with the N81 the road is continually coated with a film of dust in dry weather. This is a traffic hazard and detracts from the amenity of the area.

Inadequacy of local road network

Kilbride Road is a single-carriage road, mainly without footpaths, serving around 12 houses. It is located 400m to the north-east of the official quarry entrance and is used on a regular basis by lorries from all three existing quarry operations. The use of the road by quarry traffic is a major traffic hazard. Due to the narrow width of the carriageway over most of its length, residents have to reverse back to the limited number of wider sections of the road or house entrances to give way to quarry lorries and regularly lorries have to give way to oncoming lorries, thereby, blocking the road for residents. It is most uncommon for residents to be seen walking or cycling on the road as there are no safe havens for them from passing quarry traffic.



Kilbride Road close to N81 junction



Quarry traffic using inadequate lane

The condition of the road is extremely poor in terms of surface condition due to wear and pollution from quarry dust and muck and the road edge is worn in places making it dangerous. Speed bumps have been incorporated over its length but these are ineffective in slowing quarry traffic. The speed bumps in fact introduce an additional noise nuisance for local residents when empty quarry lorries drive over them at speed. While Kilbride Road may be a historic route used by quarry traffic, a condition could be attached to this permission, irrespective of other issues raised that prohibit any quarry traffic associated with the proposed development in using the lane.



One quarry HGV exiting Kilbride Road, another about to enter the quarry – note dust generation

Existing quarry traffic exiting at either of the two entrance points referred to above either turn left towards Dublin or right into Blessington. While the road towards Dublin is wide, there is no public footpath along most of its length. This road currently operates beyond its capacity and is expected to operate at further overcapacity if permission is granted.

There are a series of bus stops along this stretch of road. Those wishing to avail of the bus service and wait at bus stops along the route must share the same carriageway as regular and quarry traffic and where there are no pedestrian facilities. With slow moving traffic exiting the quarry entrance roads, overtaking on the nearside carriageway occurs and this is evident from the worn carriageway edges where pedestrians are required to walk to reach bus stops.

There is conflict between quarry traffic and pedestrians and cyclists along this stretch of road which is extremely dangerous due to the presence and volume of quarry traffic.



N81 bus stops

Quarry traffic exiting the quarry entrance to the right travels to Blessington passing a mix of commercial, public (including schools) and residential developments within the town's built up area. Right turning quarry traffic onto the R410 can avoid the town centre before re-entering the N81 southwards or continue on the R410 north westwards towards Naas and the M7. The majority of traffic exiting the quarry southbound continues along the R410. This traffic passes the homes of many of the members of the Group living to the west and north-west of the proposed development.

The traffic studies and EIAR do not adequately consider the impact of the continuation and expansion of quarry operations on the road network beyond the N81 in the vicinity of the site entrance (350m in either direction from the main entrance). There is also no apparent regard to the significant volumes of quarry traffic generated by the other quarries in the area which use this route. Therefore, there is no cumulative effect

The R410 to the south west, west and north-west of the quarry is narrow, poorly aligned in places and worn at the edges over much of its length due primarily to the quarry traffic using the road in both directions. There are numerous residential entrances onto this stretch of road. The residents residing along the R410 that are represented in the Group object to the proposed development on traffic grounds due to the traffic hazard quarry lorries have at their entrances and along its length. The proposed development will result in an unacceptable continuation for a prolonged period of this traffic.

Residents do not walk or cycle this road mainly due to the danger caused by the width, alignment and condition of the road and the presence of quarry vehicles. Cyclists and pedestrians less familiar with the road and those with no option other than to walk or cycle on the road are at risk from traffic on the road, in particular quarry traffic. Cyclists are also at risk where the road carriageway edge is worn and lorry wheels have compacted the margin creating dangerous trenches.

Dust

Dust issues arise from the quarrying operations, the processing of quarried material and the transportation of quarried material off site. The local residents living to the east and north-east of the existing quarry have most significantly been impacted by dust arising from quarrying operations and processing.

It is noted in the section of the EIAR dealing with dust, that the two sampling locations (D1K and D2K) closest to the properties to the east (Red Bog) were discounted due to the locations being deemed to be poor locations. These were relocated to the west of the site. The findings of a third sampling location (DK4), also towards the east of the quarry, was not included in some 2019 returns as the sampling jar went missing.

We submit that the samples have shown that the dust levels arising from quarry operations and processing on site are excessive and causing significant health and safety issues for residents in the vicinity of the site. This must be partly due to the applicant's failure to restore areas that have already been quarried out, as required by the terms and conditions of previous permission. With no apparent plans for immediate restoration of areas already quarried and further quarrying operations proposed to the west and north, it can be expected all residents surrounding the quarry will have to endure the dust health and safety and amenity issues that residents living in the Red Bog area have had to endure for the last number of years.

While dust from the movement of HGVs within the site is identified by the applicant as a major contributor to dust levels, dust levels arising from the transportation of quarried material is only assessed within 350m of the existing main entrance road onto the N81.

No evaluation of dust nuisance has been undertaken beyond 350m from main entrance onto the N81. This appears to reflect the expectation that all vehicles exiting the quarry undergo wheel washing and that loads in quarry are covered.

It is not the experience of members of the Group that all loads are covered. They regularly witness significant levels of dust being blown from laden quarry truck wagons travelling along the public roads in the area.

There have been a number of complaints lodged with Kildare County Council concerning laden quarry trucks travelling along the public roads with uncovered loads, yet the practice continues.

Amongst the proposed mitigation measures outlined in the current application is for loads to continue to be covered. However, as covering all loads leaving the quarry was a requirement of Planning Ref: 07/267 which was continually breached, there is no reason to believe practices will change if permission is granted on this occasion.

Noise and vibration

Noise nuisance primarily arises from blasting, quarrying (drilling, digging, rock breaking etc and extraction) and processing (screening and crushing etc). Blasting and some methods of extraction have created the additional nuisance of vibration during the unauthorised works. Due to the local topography, to date most of the noise nuisance has been experienced by members of the Group living in the Red Bog area.

Conditions 14 and 33 of Planning Ref: 07/267 deal with limitations on hours of operation and noise levels respectively. In terms of noise levels, it is apparent no noise monitoring was undertaken at noise sensitive locations during the lifetime of quarrying under this planning permission to demonstrate whether or not limits were being adhered to or breached. In support of the current application a series of modelling scenarios have been set up and tested to establish quarrying practices which can demonstrate compliance with the limits at the nearest noise sensitive locations. The existing quarry is an operational quarry undertaking quarrying operations and processing on a daily basis and also blasting on a regular basis. It is clear from a review of all the detailed noise monitoring results that the day time limit in terms of noise was exceeded at each location on a regular basis (see Appendix 9B of the EIAR)

A list of noise mitigation measures is proposed for the quarry "extension areas" under the concurrent application. This includes the creation of 6m high berms along the boundary. No consideration of the impact of these berms, how they will be treated or planted is provided within the application.

Furthermore, we submit that given the lack of noise control over the last 17 years, and last four of which has been undertaken in an unauthorised manner, our clients do not have any confidence that any noise

mitigation will be adhered to. Noise and vibration nuisance from regular blasting has been a source of complaint to Kildare County Council throughout the life of the quarry since 2007, including complaints of property damage to homes. The extension of the quarry will bring rock blasting even closer to the 15 identified noise and vibration sensitive residences to the west of the quarry where rock is to be quarried. No further rock quarrying on the site should be permitted. There is, irrespective of the concerns raised in this submission, a need for the applicant to undertake a structural survey of the 15 most noise and vibration sensitive properties, prior to the commencement of development under this permission.

Given previous blasting from the quarry has caused damage to property in the vicinity of where monitoring was undertaken between 2018 and 2020, it is inevitable that damage from blasting up to 250m closer will and has caused further and greater damage.

Potential impact on the Dublin to Cork gas transmission pipeline

The Dublin to Cork gas transmission pipeline bisects the proposed northern extension of the quarry where sand and gravel quarrying is proposed and is within 200m of the proposed western extension of the quarry where blasting is proposed under the new application.

Gas Network Ireland prohibits any blasting within 400m of the pipeline without GNI consultation and without the carrying out of a prior assessment of the vibration levels at the pipeline. We note that quarrying requiring blasting is proposed around 150m from the pipeline under the concurrent application.

Blasting and quarrying in such close proximity to a major gas transmission pipeline and housing is a major concern for residents of these houses and the proposals in this regard are causing considerable anxiety and stress to the point of potentially being a significant health issue. Indeed we note that the EIAR states that an improperly managed blast has the potential to damage the gas transmission line (section 9.5.2.3). We submit that given the grave concerns in relation to the potential impact on the gas pipeline, we request the Board to refuse permission for the new works application, and that the substitute application should have included consultation with GNI prior to making the application.

Inadequacy of Assessments

We respectfully would severely question the correctness and robustness of the Appropriate Assessment given the sites proximity to protected Natura 2000 sites. There is clearly a hydrological and dust link between the quarry and its extension and the Red Bog SAC. This link may also apply to other aspects of the proposed development. This is further clarified within the TMS Environment Ltd. report that forms part of this submission as a separate document.

We respectfully would also severely question the correctness and adequacy of the remedial Environmental Impact Assessment Report in this instance. The proposed development has failed to have adequate regard to EIA Directives (2011/92/EU and 2014/52/EU), European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (the bulk of which came into operation in September 2018), the European Communities (Environmental Impact Assessment) Regulations 1989-2006, Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001-2023. The cumulative impact of the proposal has not, in our considered opinion, been adequately assessed.

5. Conclusions

We respectfully submit that the grounds for refusing this retrospective substitute consent application are clear and unambiguous. We respectfully submit that the applicant has failed to accurately or adequately assess the impact of the unauthorised works, on the conservation objectives and status of the Red Bog SAC and the Council's policies set out under the Kildare County Development Plan 2023-2029 in relation to development within High Amenity Areas.

It is incumbent upon the applicant to prove no link or potential negative impact on these conservation objectives. Irrespective of all the other arguments made under this submission it is this and the applicant's failure to prove this, that is critical and requires this application to be refused in this instance.

This application is made concurrently with an application for new works and a further extension of the quarry made by the same applicant under An Bord Pleanála Ref. QD09.319218. We respectfully submit that for new works application must be considered as being premature if this substitute consent application is refused.

In simplistic terms, if the Board deem it appropriate to refuse permission for this substitute consent application, which we are of the considered opinion that it should, then it is also duty bound to refuse permission for the concurrent new works application as it would be resulting in the intensification of an unauthorised development.

We submit that the application is ill-considered and poorly conceived in terms of its negative impact on this sensitive environment and the Red Bog SAC; has had a negative impact on the visual and residential amenity of local residents who have not had any discourse to make comments on an application for the last four years whilst unauthorised development has continued; and is in clear contravention of the Council planning policies as set out under the Kildare County Development Plan 2023-2029.

We therefore request the Board to refuse permission in the context of good planning practice, and the proper planning and sustainable development of the area including the preservation and improvement of amenities thereof.

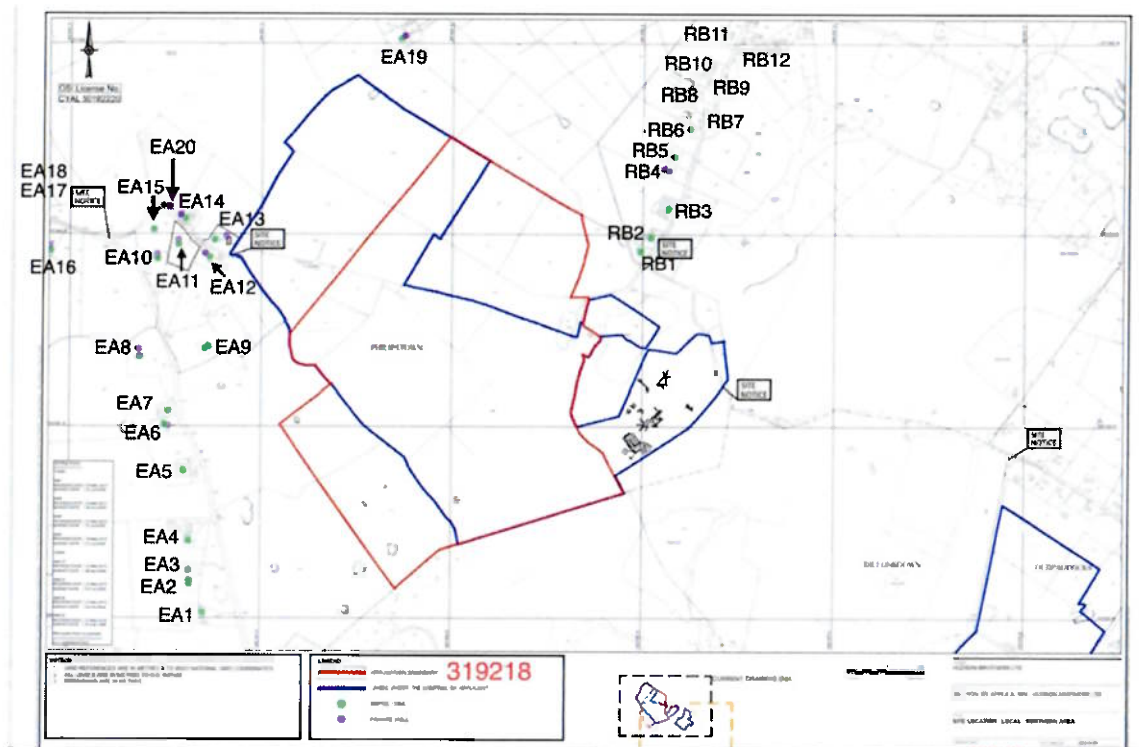
We trust that the Board will give due consideration to the grounds set out in this submission and will notify us of its decision in due course.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'Anthony Marston', written in a cursive style.

Anthony Marston (MIPI, MRTPI)
Marston Planning Consultancy

Appendix A – list and location of members of the Save Kildare Uplands Action Group



Refers to map entitled Hudson's application number 319218 Site location northern area

House no.	Name	eircode	Address				
EA1	Creag Aran Special School	W91 X795	Glen House	Athgarrett	Eadestown	Naas	Co. Kildare
EA2	Adrian Curran	W91 YP9A		Athgarrett	Eadestown	Naas	Co. Kildare
EA3	Lorraine and Pat McNamara	W91 EBCC	Glenfort House	Athgarrett	Eadestown	Naas	Co. Kildare
EA4	Ann McNamara	W91 Y367		Athgarrett	Eadestown	Naas	Co. Kildare
EA5	Tommy Shannon	W91 P281		Athgarrett	Eadestown	Naas	Co. Kildare
EA6	Declan and Sara Goode	W91 KC9E		Athgarrett	Eadestown	Naas	Co. Kildare
EA7	Patricia O'Connor	W91 FX39		Athgarrett	Eadestown	Naas	Co. Kildare
EA8	Paul and Phil Dowling	W91 C56C		Athgarrett	Eadestown	Naas	Co. Kildare
EA9	Shaymus Kennedy	W91 Y8XK	Wolfestown House	Wolfestown	Eadestown	Naas	Co. Kildare
EA10	Linda and David Magee	W91 ACW9	Epona Lodge	Wolfestown	Eadestown	Naas	Co. Kildare
EA11	Paul Magee	W91 V0YD		Wolfestown	Eadestown	Naas	Co. Kildare
EA12	Paul Woods	W91 EH48		Wolfestown	Eadestown	Naas	Co. Kildare
EA13	Maura Morrin	W91 W6R3		Wolfestown	Eadestown	Naas	Co. Kildare
EA14	Rita Morrin	W91 XT91		Wolfestown	Eadestown	Naas	Co. Kildare
EA15	John Dunne Jr	W91 W3VH		Wolfestown	Eadestown	Naas	Co. Kildare
EA16	William Hayden	W91 HW42		Poppyhill	Eadestown	Naas	Co. Kildare
EA17	Downey	W91 YTD4			Eadestown	Naas	Co. Kildare
EA18	Susan and John Dunne	W91 KNR2			Eadestown	Naas	Co. Kildare
EA19	Slattery	W91 PD81		Wolfestown	Rathmore	Naas	Co. Kildare
EA20	Agricultural shed						
RB1	Michael Vines	W91 YHP7		Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB2	Larry Kelly	W91 E7D4		Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB3	Caroline Kelly	W91 FP5H		Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB4	Gavin O'Donohoe	W91 KWY2	Hillgate	Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB5	Fran Cummins	W91 KD83		Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB6	Emma Sargent McLoughlin	W91 DW6D		Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB7	Derelict house						
RB8	Mary Sargent	W91 XF34		Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB9	Liz Lawlor	W91 XND3		Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB10	Paddy Sargent	W91 WFC4		Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB11	Mrs. Gillis	W91 Y97X	Sunset Lodge	Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB12	John and Tina Kelly			Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	

Note: house numbers are only for reference to the attached map. They have no other significance.

Note: Name and address details may be wrong.

Appendix B – High Court Judgement

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
MARS
CO KILMAREE

Signed by Francis Cummins

In the presence of

Sign here —


FRANCIS CUMMINS

CLAUSIA BOYLE
16 DUNSMITH PLACE
LUXE
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



**THIRD PARTY SUBMISSION BY LOCAL RESIDENTS IN RELATION TO
APPLICATIONS BY HUDSON BROTHERS LTD FOR QUARRYING AND
AGGREGATE EXTRACTION AT REDBOG AND PHILIPSTOWN CO KILDARE**

AN BORD PLEANALA REF QD09.319217

APPLICATION FOR SUBSTITUTE CONSENT 29/02/2024

AN BORD PLEANALA REF QD09.319218

APPLICATION FOR SIGNIFICANT EXPANSION TO 64 HECTARES 29/02/2024

Report Ref. 32056-3

Issued: 22nd April 2024

Approved By:

Imelda Shanahan

Dr Imelda Shanahan
Technical Manager

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Appendix I Request to Hudson Brothers Ltd for Information

Appendix II Report on Hudson Brothers Ltd response to Request for Information

Appendix III Private well monitoring locations

1.0 INTRODUCTION AND SCOPE

This report presents an assessment of environmental aspects of the applications submitted for significant works at Redbog and Philipstown Co Kildare behalf of Hudson Brothers Ltd. The report was prepared on behalf of a group representing the local residents that will be affected by the proposals. The report was prepared by Imelda Shanahan (Bsc, PhD, FICI, CChem, FRSC), Craig O'Connor (PGeo) and Nick Owen (BSc PhD).

Hudson Brothers Ltd have submitted an application for substitute consent for an existing quarry located in the townlands of Redbog and Philipstown, Co Kildare (An Bord Pleanala Ref QD09.319217) and a parallel application for extensive further development at the site (An Bord Pleanala Ref QD09.312918). The applications were accompanied by a Remedial Environmental Impact Assessment Report (rEIAR) and an Environmental Impact Assessment Report (EIAR). The Substitute Consent Application was accompanied by an Appropriate Assessment Screening Report (AA Screening) and the extension application was accompanied by a Natura Impact Statement (NIS).

The purpose of this report to set out the serious flaws and deficiencies in the application documents and to outline the reasons for the opposition of the residents to the proposed developments. The applications are poorly conceived and are especially deficient in their consideration of the impact on residential amenity, the impact on the Redbog SAC and the impact on the water environment, and this report will set out the details of those deficiencies.

2.0 THE PROPOSED DEVELOPMENTS

There are two separate applications lodged concurrently for substitute consent for an existing quarry that has operated without planning permission for the last four years and for extensive new works over a wide area. The Planning Permission that had previously applied (07/267) expired in 2020. Figure 2.1 shows the area of the substitute consent application (yellow outline), the proposed new extension (red outline) and the expired 07/267 planning permission (white outline). These are very extensive developments in very close proximity to a large number of residences and farms and in close proximity to the Redbog SAC.



Aerial view of application site (outlined in red) with boundary of substitute application (outlined in yellow) and 2007 application site outlined in white (Note, a small area is excluded to the north that is not part of the current application)

Figure 2.1 Boundaries of Proposed Application Sites (Reproduced from Marston Planning Consultancy Submission for the Residents Group)

3.0 RESIDENT GROUP EXPERIENCES OF EXISTING DEVELOPMENTS

The resident group for whom this report has been prepared live in close proximity to the Hudson Brothers quarries and have first-hand knowledge and experience of the ongoing failure of the quarries to comply with Planning Permissions, lack of respect for the local residents, and lack of respect of the planning, judiciary and legal systems. Specifically the residents complained of unauthorised development, operating outside permitted working hours, operating at unreasonable hours, traffic nuisance and dangers, nuisances from dust and noise and vibration, interference with water supplies and the effects of the development on the Redbog SAC. There have been complaints of constant and extensive non-compliance with the requirements of the Planning System as well as considerable adverse impacts on the amenity of the residents.

The residents have had to battle with the constant disruption and disturbance of their lives and livelihoods as a result of the quarries and in desperation, sought the protection of the High Court when the Planning System failed to afford them protection. Under the Terms of a

High Court order dated 17 November 2022 and perfected on 10 January 2023, Hudson Brothers Ltd were instructed to carry out certain investigations, surveys, monitoring and works in consultation with experts acting for representatives of the Residents. Under the terms of the agreement TMS Environment Ltd were assigned responsibility in particular for environmental matters relating to Clause 7 (water), Clause 9 (dust and emissions) and Clause 10 (noise and vibration) of the Schedule attached to the High Court Order. These Clauses are set out in Table 3.1 and an outline summary of the requirements is as follows:

- Agreement to be reached following consultation with TMS Environment Ltd on dust monitoring locations, noise monitoring locations and water monitoring locations;
- Agreement to be reached following consultation with TMS Environment Ltd on dust deposition, noise and water monitoring programmes;
- Reports to be submitted at specified intervals to TMS Environment Ltd.

The engagement of Hudson Brothers Ltd and their consultants was very limited and compliance with the requirements of the High Court order was never demonstrated or achieved. A report on the interactions was prepared and given to the Residents Group and arising from that report, a request was issued on 19 December 2023 to the consultants acting for Hudson Brothers Ltd for further information and to correct problems with their approach. The request is attached as Appendix I of this report and a summary of the deficiencies in the Hudson Brothers Ltd approach is as follows:

- Failure to follow the High Court Order in respect of consultation with the residents consultants;
- Failure to comply with either the High Court Order on dust monitoring methods or the requirements of Standard Methods;
- Failure to comply with the High Court Order on noise monitoring locations;
- Failure to comply with the High Court order on water monitoring locations, frequency or methods;
- Failure to provide any meaningful water level monitoring data;

A response to the request was received on 02 February 2024 from WSP Consultants acting for Hudson Brothers Ltd. The response was unsatisfactory in all respects and a report outlining the deficiencies in the technical responses as well as the persistence of Hudson Brothers Ltd and their consultants in ignoring the High Court Order was prepared for the

residents and is attached at Appendix II. In summary, the Hudson Brothers Ltd response persisted in applying flawed monitoring methodologies which do not conform to the requirements of Standard Methods, ignoring the specific instructions from the High Court and ignoring the wishes of the local residents in trying to manage the significant adverse impact of the quarry operations on their lives, residential amenity and livelihoods.

In view of the complete lack of respect shown by Hudsons Brothers Ltd and their consultants for the High Court order, the requirements of the Planning System and the request by the local residents for compliance, the residents have no confidence in the willingness or ability of Hudson Brothers Ltd to abide by any requirements of the Planning System or the Judiciary. The quarries have operated without permission and in a manner which has shown total disregard for the amenity of the local community in their persistent operation at unreasonable and unauthorised hours, their failure to monitor environmental impacts and their failure to operate within the restrictions imposed by the High Court to afford protection to the residents who were not protected by the planning system. In the experience of the Residents, Hudson Brothers Ltd have not behaved responsibly and cannot be considered 'Fit and Proper persons' in respect of ongoing operation of the quarries or further extensions to their activities. On behalf of the residents, it is respectfully submitted that permission for these developments should be refused for the reasons set out in this report.

4.0 DEFICIENCIES IN THE ENVIRONMENTAL AND ECOLOGICAL ASSESSMENTS FOR THE SUBSTITUTE CONSENT APPLICATION

4.1 Hydrology and hydrogeology assessments

4.1.1 Period of review for assessing impacts

A remedial EIAR (rEIAR) was prepared and submitted with the Substitute Consent application for the Hudson Brothers Ltd quarry at Redbog and Phillipstown. The application was submitted to seek permission for an activity which continued to operate and to intensify the activity after the previous planning permission expired. Chapter 6 of the rEIAR provides an assessment of the hydrological (surface water) and hydrogeological (groundwater) aspects of the Hudson Brothers Ltd Kildare quarry. This Chapter is stated by the authors to consider and assesses any potential impacts on the surface and groundwater resulting from quarrying related activities that have been carried out at the Site. The Chapter focuses only on the period after expiration of the 07/267 Planning Permission and fails to consider any impacts of prior unauthorised works at the site. This is a flawed approach and it means that a competent assessment of impacts on the Redbog SAC in particular and on water supply and quality for local residents has not been completed. The rEIAR established an artificial baseline in September 2020 after extensive unauthorised works had already taken place and therefore the baseline does not truly and reliably describe the correct baseline against which impacts should be assessed. Section 6.3.2 of the rEIAR notes the importance of the baseline for the assessment as follows:

“The potential for an impact to have occurred at a receptor has been determined using the understanding of the baseline environment and its properties and consideration of whether there is a feasible linkage between a source of impact and each receptor (i.e. a conceptual site model).”

It is clear that if the baseline is incorrectly formulated and assessed, then the assessment of potential impact cannot be relied on and any conclusions drawn which suggest that no impact has occurred should be discounted as unreliable and unproven.

4.1.2 Boundary for assessing impacts

The rEIAR considers exactly the same project boundary as the boundary for the proposed extension in activities which is the subject of the Section 37L application, and notes that the

study area is extended where required to assess downstream impacts on water features or users that may have been affected by site activities. This approach means that the rEIAR has made no attempt to differentiate between the impacts of the activity for which Substitute Consent is sought and the extension area and therefore does not identify the impacts uniquely associated with the activity for which Substitute Consent is sought.

4.1.3 Site water requirements and management

Section 6.4.4 of the rEIAR sets out the details of site water requirements and management for the site and notes that water is abstracted from Pond K2 for the processing activity on site. The rEIAR states that up to 1500L/min water is the pumping capacity of the pumps and that the site water usage is estimated at 276m³/day to include welfare, dust suppression and processing activity. This figure appears anomalous based on similar quarries and processing plant and we are concerned that the estimate is unreliable. There is more than one washing plant at the site which TMS Environment Ltd were advised during an inspection in September 2023 do operate and do require water. A washing plant needs approximately 15m³/hour to operate so each plant will use 165m³ over an 11 hour day and two plants would require 330m³/day with welfare and dust suppression requirements additional to this estimate. This volume of water could not be satisfied by rainfall and surface water runoff alone and the estimate of site water usage is considered unreliable. In our opinion, the quarry is operating below the water table and groundwater is providing water for use at the site which has not been acknowledged in the rEIAR.

Section 6.4.7.2 of the rEIAR presents aerial photos of site water features and in particular presents an image from October 2023 (Figure 6.8) and an assertion that exceptional rainfall in September – October 2023 led to a significant accumulation of surface water across the site and accounted for changes in the surface water profile across the site. However much of this water was already evident at the site on 13 September 2023 when TMS Environment Ltd personnel inspected the site and in drone footage captured by the residents group in April and May 2023 (Figure 4.1). Rainfall at Casement was not high in April 2023 (67,3mm) and May 2023 (24.3mm) and the site water profile suggests that changes had been occurring a lot earlier than the rEIAR suggests for September – October 2023. This casts significant doubt on the baseline data and does not give any confidence in the reliability of the assessments presented in the rEIAR. The assertion at Section 6.7.4.2 that this somehow supports the

hypothesis advances in the rEIAR that groundwater has not been intercepted is without foundation and is simply a statement presented with no evidence:

“HBL have confirmed that pumping was not required to remove ponded water and allow deeper extraction of the rock material. This confirms that the confined aquifer within the greywacke has not been intercepted, with dry quarrying continuing to take place.”

Similarly the assertion at section 6.4.7.5 that the groundwater table has not been intercepted is without supporting evidence or foundation and as shown below, the absence of dewatering is not proof that the water table has not been intercepted.

“The groundwater table within the greywacke and shale bedrock has not been encountered with quarrying activities, as no dewatering has taken place to date.”

In the opinion of TMS Environment Ltd, the water table in fact exists towards the base of the gravels and there is no confined aquifer deeper down in bedrock. Therefore it is probable that the quarry is working below the water table, and probably has been for many years. There would not be any big groundwater inflows at the top of rock inside the quarry due to very low permeabilities, and deeper down in the rock is essentially dry, so the quarry floor appears dry except for rainwater. The assertion in the rEIAR that the aquifer has not been intercepted is unsupported by any evidence and in our opinion is a misinterpretation and misrepresentation of the hydrogeology in the area.



Figure 4.1 Drone Footage April 2023 (LHS) and May 2023 (RHS)

4.1.4 Water levels at Redbog SAC

The Redbog SAC is located northeast of the site at approximately 240m from the site boundary. The rEIAR states that the Redbog SAC is largely recharged by rainwater percolating through topsoil and sand. Section 6.4.7.3 of the rEIAR presents information from June 2019 on water levels at the edge of Redbog SAC contrary to all other data that has been presented and assessed from September 2020. Clearly monitoring data was available and the reasoning for selective inclusion of some data while excluding all other baseline data is unclear; at the very least the omission is misleading and as noted above, the failure to consider the impact of past activities on the true baseline for the site is a cause for concern. This section of the rEIAR considers only rainfall as the primary recharge mechanism for the feature without considering or assessing the potential contributions from groundwater inflows. This appears to be the only section in Chapter 6 considering impacts on the Redbog SAC which in our opinion is deficient and fails to assess the impact of past activities on the SAC.

4.1.5 Groundwater elevations investigations

Section 6.4.9 of the rEIAR considers groundwater elevation and advances a theory that groundwater has not been intercepted. In the rEIAR, WSP suggest a deeper extensive confined aquifer occurs within bedrock which has not been intercepted by the quarry to date – this is based on the interpretation of deeper water strikes within bedrock as representing a confined aquifer. In our opinion this is a misinterpretation of the water strike data and a confined aquifer **does not exist** deeper in the bedrock. TMS propose that the water table exists at the base of the sands/gravels, in hydraulic continuity with the weathered top of bedrock, and deeper down in the bedrock there is little or no groundwater flow, explaining the dry working of the quarry floor. If this is the case, then the quarry is **working below the water table** and there is the potential for negative impact on the private wells. This has not been assessed in the rEIAR and it is respectfully submitted that the assessment is flawed and that the application should be refused.

It is the responsibility of the consultants acting for Hudson Brothers to characterise the hydrogeology and assess potential for impact, which can readily be achieved by installing separate shallow/deep monitoring wells, hydraulic testing (to test connectivity), continuous groundwater level monitoring (to assess recharge), and other routine investigation techniques.

These studies have not been reported in the rEIAR and the assessments are deficient in their absence. In fact there is no objective evidence presented in the rEIAR that supports an assertion that groundwater has not been intercepted.

The residents group for whom this report was prepared include a number of residents in close proximity to the quarry boundary who have private wells for water supply to their homes and farms. Level monitoring was carried out at 6 private wells as shown in Appendix III by TMS Environment Ltd during March and April 2024 to acquire data for the review of the rEIAR. The data, and the data presented in the rEIAR, was reviewed by TMS Environment Ltd and the following conclusions were drawn from the assessment.

- a) The lands considered are located to the west of the Hudson Brothers quarry where the private wells are located.
- b) These lands are underlain by sands/gravels, part of the same gravel body classified as locally important aquifers to the northwest ('West Blessington Gravels') and southeast ('Blessington Gravels') – the intervening area where the lands are located is not classified as an aquifer due probably to limited saturated thickness in the gravels.
- c) Bedrock is composed of greywackes (Glen Ding Formation), classified as a Poor Aquifer, tested locally by WYG as having very low permeability. Top few meters likely weathered/permeable, limited deeper groundwater circulation along isolated fractures only.
- d) This area is subject to high recharge, with limited runoff – some surface water ponding noted. Springs also noted.
- e) A Conceptual Model for the site was prepared considering the available data:
 - With a highly permeability overburden (sands/gravels) overlying a low permeability bedrock with a weathered zone at the top, you would expect a water table to occur near the top of bedrock, with the overburden and bedrock in hydraulic continuity – the water table might rise and fall across the interface depending on recharge.
 - Perched groundwater would also be expected in local areas, above the water table, where clays within the gravels intercept percolating recharge - evidenced by springs and higher groundwater levels in private wells.

- Topographic ridge to the south would be expected to act as a groundwater divide, with groundwater flowing laterally in gravels and/or weathered top of bedrock to the northwest following the topographic gradient. Little or no deeper groundwater flow in bedrock.

f) The well monitoring data was reviewed and interpreted as follows:

- 6 (No.) private wells exist along the public road (R410) west of the quarry which were included in the level monitoring programme;
- Using groundwater levels measured in these private wells and available geological information, a geological cross-section orientated northwest-southeast parallel to the road and running hydraulically downgradient would suggest that a continuous saturated zone c. 7-10m thick exists at the base of the sand/gravels. Therefore, the water table occurs at the base of the sand/gravel overburden in this area.
- Perched groundwater may be in evidence at W6 where shallow groundwater levels were measured (or levels may be influenced by the nearby pond).

The TMS review concluded that the conceptual hydrogeology Model presented above is contrary to the interpretation presented in the rEIAR, which was presented without the benefit of any monitoring in the local residents wells, and without considering the data from monitoring events and locations prior to September 2020. It is clear that the rEIAR made no attempt to consider the impact of the quarry on the water supplies of the local residents and the assessment that was presented in the rEIAR is both flawed and incomplete. Section 6.4.13 Local Water Users noted the presence of some of the wells north of the site and excluded others (Figure 6.19). The wells shown are within 150m of the site with no reasoning provided for selecting this distance.

4.1.6 Summary deficiencies in water assessments for Substitute Consent Application

We respectfully submit that the water assessments presented in the rEIAR are flawed and do not reliably assess the impact of the quarry on the Redbog SAC or water users in the area. As noted below this is uniquely significant in the assessment of impacts on the SAC since the AA Screening and Ecological Impact Assessments rely on the findings and information presented in the water assessment to inform those assessments. In summary the following deficiencies have been identified:

- (i) the limited review period of three years from September 2020 to November 2023 means that an incomplete and unreliable assessment of impacts on the Redbog SAC and water users in the area has been completed;
- (ii) The baseline conditions have been incorrectly stated to include unauthorised works and their impacts which should not have been included as baseline conditions so a true baseline was not established and considered in the assessment;
- (iii) The same project boundary was used for the study as that for the much more extensive Section 37L application which means that there the applicant has failed to consider impacts uniquely associated with the unauthorised works and the quarry activity to date;
- (iv) The site water usage estimate is unreliable and underestimates the significance of the water usage and fails to acknowledge the use of groundwater at the site.
- (v) The hydrogeological model is flawed and incorrectly interprets data from investigations. An alternative conceptual Model has been advanced which explains the hydrogeology of the area and which has determined that it is probable that the quarry is working below the water table, and probably has been for many years.
- (vi) There was no consideration afforded to groundwater contributions to the Redbog SAC and no evidence justifying the omissions.
- (vii) Water resources of local residents are at risk from the development and the subject has not been competently and fully assessed in the rEIAR.

4.2 Appropriate Assessment Screening

A remedial Appropriate Assessment Screening report was presented with the rEIAR to determine whether the existing development may have had likely significant effects on European Sites which include the Redbog SAC. The primary purpose of the rAA Screening is to determine whether there are Likely Significant Effects and to determine whether an NIS is required.

The remedial AA Screening report relies on the data presented in Chapter 6 Water of the rEIAR. In view of the deficiencies identified in that report, in our opinion the remedial AA Screening report has not competently assessed the water environment or the impacts on the Redbog SAC. Section 4.1.4 of the rAAS specifically notes that

The potential for groundwater connectivity is assessed initially based on whether the QIs associated with a European site are groundwater-dependent.

It is our opinion that the groundwater connectivity has not been probed and no objective evidence was presented to support such an assessment so no conclusions can be reliably drawn as regards to groundwater connectivity and the dependence of the SAC on groundwater. Connectivity for dust emissions was based on a note from the IAQM Guidance:

“As a point of reference, the IAQM (2016) Guidance on the Assessment of Mineral Dust Impacts for Planning indicates that significant dust impacts are typically restricted to 100 m of quarrying activities. “

This assertion based on typical distances cannot be relied on when considering the impacts on SACs which requires that impacts must be excluded beyond scientific doubt; a reliance on a statement of ‘typical’ impacts distances does not meet the required burden of proof and it is our opinion that this is a significant flaw in the approach adopted for this assessment. Table 4-1 considers connectivity for dust emissions and groundwater, and concludes that there is potential connectivity for dust and groundwater connectivity. The rAAS also correctly notes that Redbog SAC is a Groundwater Dependent Terrestrial Ecosystem within the same groundwater body as the quarry.

The rAAS considers the impact of dust emissions from the site in section 5.2.6 to 5.2.10 and relies simply on the distance from the site for the assessment. In fact, the IAQM Guidance does not include data for certain distances and the rAAS incorrectly interprets this as meaning that there is no impact. This is a flawed approach and it is not consistent with Standard methods or best practice. The EPA Guidance on the assessment of pollutant impacts requires that deposition of pollutants must be considered and especially notes that bog habitats are particularly sensitive to pollutant deposition. The pH of the dust emissions from quarrying is low and there should have been an assessment of the impact of acid deposition and sulfur and nitrogen from the site emissions on the SAC as well as a competent assessment of the impacts of total dust deposition. There was no acknowledgement presented in the rAAS that this assessment was required and no such assessment was completed. The rAAS is therefore deficient in not having competently considered all of the potential impacts of dust emissions and in particular failed to consider pollutant deposition impacts.

The rAAS has based the assessment and conclusions of potential groundwater effects on a fundamentally flawed water assessment report which has set out a flawed and incorrect conceptual hydrogeological model for the site. The rAAS states that the SAC is a perched water feature without presenting a single item of evidence to support this statement and in direct contradiction of the GSI and NPWS assessments of the site which consider the feature a Groundwater Dependent Terrestrial Ecosystem. The rAAS reached a conclusion that there was no potential for the unauthorised activities at the site to have resulted in significant effects to Redbog SAC. This conclusion was not supported by scientific evidence, it was based in part on an incorrect understanding of the hydrogeology of the site and in part on an incorrect application of an IAQM guidance to the assessment of dust emissions, it ignored the opinions of the GSI and the NPWS and it failed to even consider the impact of pollutant deposition on the SAC. The rAAS did not support conclusions with scientific evidence and did not reach the burden of proof beyond scientific doubt that there was no potential for adverse effects. In our opinion the rAAS is flawed and the application should be refused since it was not proven beyond reasonable doubt that the unauthorised activity has not already exerted significant effects on the SAC. In our opinion, the screening assessment was flawed and a competent and complete assessment would have concluded that a remedial NIS was required.

5.0 DEFICIENCIES IN THE ENVIRONMENTAL AND ECOLOGICAL ASSESSMENTS FOR THE SECTION 37L APPLICATION

5.1 Hydrology and hydrogeology assessments

An EIAR was submitted in support of the Section 37L application for a significant extension to the existing quarry. Chapter 6 Water of the EIAR considers the water environment and has been reviewed for the purpose of this submission. Chapter 6 notes that the Study Area extends to a nominal 500m from the site boundary without explaining why this nominal distance was chosen. In our opinion, water impacts can be experienced at considerably further distances and in our opinion the boundary of the assessment should have extended further and should have considered all local water users within several kilometers of the site. Most of the information presented in the EIAR for the Section 37L application is the same as that presented in the rEIAR and in our opinion, the arguments are flawed and do not reliably

assess the impact of the quarry on the Redbog SAC or water users in the area. As noted above this is uniquely significant in the assessment of impacts on the SAC since the AA Screening and Ecological Impact Assessments rely on the findings and information presented in the water assessment to inform those assessments. In summary the following deficiencies have been identified:

- (i) The project boundary used for the study arbitrarily chooses a boundary of 500m with no justification for the selection; this distance excludes several local users likely to be affected by the proposed development;
- (ii) Local wells within 150m of the site were considered for inclusion in the assessment but this does not include all of the well users potentially affected by the proposed development and no rationale was provided for this selection;
- (iii) The site water usage estimate is unreliable and underestimates the significance of the water usage and fails to acknowledge the use of groundwater at the site.
- (iv) Although an enormously significant extension is proposed, and with very limited existing groundwater monitoring wells at the site, including three damaged wells which could not be utilised, there are only two new boreholes reported and neither adequately assesses the potential impacts of the proposed development; the paucity of information likely explains the flawed understanding of hydrogeology at the site which could easily have been improved with further study;
- (v) The hydrogeological model is flawed and incorrectly interprets data from investigations. An alternative conceptual Model has been advanced in Section 4.1 which explains the hydrogeology of the area and which has determined that it is probable that the quarry is working below the water table, and probably has been for many years.
- (vi) There was no consideration afforded to groundwater contributions to the Redbog SAC and no evidence justifying the omissions.
- (vii) Water resources of local residents are at risk from the development and the subject has not been competently and fully assessed in the rEIAR.

5.2 AA Screening and Natura Impact Statement

A Natura Impact Statement (NIS) was submitted with the Section 37L application. The consultants noted that they had prepared a combined AA Screening report and NIS without

giving any reasons for this decision. The report states that the expected lifetime of the proposed development is 13 to 15 years, and the proposed extension is to the west and north of the existing site as shown in Figure 2.1.

At Section 2.1.10 the NIS notes that *“There will be no direct discharge to surface or groundwater from the quarry operations.”*. This is an incorrect assumption given the storage of water in the various reservoirs and the infiltration of water to ground. The report also notes that *“The proposed finished floor level will not take place below a level of at least 1m above the highest seasonal water table on site.”* As noted in Section 4.1 and in Section 5.1, this is an incorrect assumption and no objective reliable evidence has been presented to prove this claim.

The AA Screening (Section 4) concluded that there is hydrogeological connectivity and connectivity for dust emissions between the site and the Redbog SAC as had been concluded in the rAAS. The report found no likely significant effects for Redbog SAC and the requirement for the NIS was triggered by a loss of foraging habitat for the Greylag geese qualifying interests for the Poulaphouca reservoir. Redbog SAC is of ornithological significance and breeding birds recorded from the site include Mute Swan, Mallard, Tufted Duck, Coot, Moorhen, Snipe and Black-headed Gull. In view of the ornithological interest, it is surprising that loss of foraging habitat at the site is not deemed sufficient to trigger a requirement for NIS for Redbog SAC. In our opinion this is a flawed finding.

The NIS then considered only the potential impact on greylag geese and the Poulaphouca Reservoir and did not consider Redbog SAC.

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Appendix I

Draft

Appendix II

Draft

Appendix III

Draft

Appendix IV

Draft

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

18th April 2024

Our Ref: 24032

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 Redbog and Philipstown, Co. Kildare.

An Bord Pleanála Ref. no. QD09.319217

Date of lodgement of application: 29th February 2024

Last day for making submission: on or before 24th April 2024

Dear Sir/Madam,

We, Marston Planning Consultancy, 23 Grange Park, Foxrock, Dublin 18, D18 T3Y4 are instructed by the Save Kildare Uplands Action Group, Harrington & Co Solicitors, Newtown, Bantry, Co. Cork, P75 EA03; to make a submission in regard to the above section 37L application lodged for substitute consent for the existing quarry on behalf of Hudson Brothers Ltd. on lands located at Redbog and Philipstown, Co. Kildare. 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. The members of the Group are listed to the rear of this submission in Appendix A.

This submission is accompanied by a submission by TMS Environment Ltd. that has reviewed the hydrological and hydrogeological elements of this and concurrent application (see accompanying report). This concludes that there are several aspects of the two applications that must be questioned relating to hydrological connection as well as whether works have extended below the water table. This must lead the Board to severely question the conclusions relating to dust and hydrological impact on the area, including the Red Bog SAC.

We have also included as part of this submission the High Court Order Settlement between local residents and the applicants in this instance the Hudson Brothers Ltd. (see Appendix B). This was taken by local residents following a failure of the applicant to comply with their original permission, as well as a failure of Kildare County Council to enforce them to uphold the permission granted under Planning Ref. 07/267. This High Court Order ties the applicant into upholding the terms and conditions of the decision made under Planning Ref. 07/267. A copy of this High Court Order accompanies this submission.

This application is made following a decision made by Kildare County Council under Planning Ref. 20/532 that they could not consider the application, as it related to unauthorised development which would have required an Environmental Impact Assessment; and an Appropriate Assessment. Following this, the applicant sought leave to apply for substitute consent under ABP Ref. LS09.311622, which was granted by An Bord Pleanála on the 1st August 2023. This required the substitute consent application to be lodged by the 17th October 2023. The Board extended this by three months and subsequently extended this by a further period to the 29th February 2024.

This application is made concurrently with an application for new quarrying and aggregate extraction works and extension of the quarry made by the same applicant under An Bord Pleanála Ref. QD09.319218. We respectfully submit that this current application for substitute consent completely fails to provide any degree of clarity in terms of the works for which substitute consent is sought. This is inferred by a set of drawings that relate to what is referred to as the baseline drawing, and existing drawings. We respectfully submit that

a review of these drawings indicates a complete lack of clarity in terms of the works that are subject of the substitute consent application. Irrespective of this matter we submit to the Board that permitting applications for planning permission to retain existing developments requiring environmental impact assessment (EIA) or appropriate assessment (AA) must be considered as being contrary to EU law.

Furthermore, the applicant appears to be using the date of the September 2020 as forming what they refer to as the baseline for the unauthorised development. It is our contention that the permission granted under Planning Ref. 07/267 expired on the 17th July 2020. Irrespective of this, there appears to be no cross-reference within the application to how this application relates to the 2007 permission, and the works permitted within it.

We respectfully submit that the failure to accurately indicate the nature and extent of the works subject of the application must lead to the invalidation of this substitute consent application. This must also lead to questions relating to the accuracy of the remedial EIAR that accompanies the application. We note that the Planning and Development, Maritime and Valuation (Amendment) Act 2022 enables a simultaneous application for new works and substitute consent to be lodged to the Board. This can only be done where there are exceptional circumstances. We would request the Board to question whether the information provided to the Board was fully correct that led to them reaching their conclusion that the exceptional circumstances threshold has been met in this instance.

We note that the remedial EIAR, and indeed the EIAR that accompanies the new works application, fail to adequately consider the project as a whole. The failure of both to undertake a project assessment must lead to a refusal or indeed the invalidation of the application on the basis that the EIAR fails to meet the required standard given the interlink between both. In simplistic terms, the new works application cannot be granted unless this substitute consent application is permitted. Their inter-linked nature, should have led to a project assessment, and the failure on this ground must lead to a refusal of permission in this instance.

We respectfully request the Board to refuse permission for the substitute consent application, and if they do so, it is also duty bound to refuse permission for the new works application as it would be resulting in the intensification of an unauthorised development.

Our client, which represents the residents of the immediate local community have been negatively affected by the unauthorised development that is subject of this substitute consent, and are therefore opposed to the proposed development on a number of fundamental and strong planning grounds.

We submit that the unauthorised works that are subject of this application have been considered and poorly conceived in terms of its negative impact on this sensitive environment and the Red Bog SAC; negative impact on the visual and residential amenity to local residents; and is in clear contravention of Kildare County Council's own planning policies as set out under the Kildare County Development Plan 2023-2029.

The proposal is therefore contrary to the proper planning and sustainable development of the area, and we accordingly request for the substitute application to be refused by An Bord Pleanála. Prior to outlining the grounds of the submission it is imperative to set out for the clarity of the Board the context of this application in terms of the sensitive nature of the site in proximity to the Red Bog SAC and the potential impact on its conservation objectives; local residents as well as it being in contravention of local planning policy.

We respectfully submit that the grounds for refusing this substitute consent application are clear and unambiguous. It clearly will materially compromise the conservation objectives of the SAC and runs contrary to a number of key Development Plan policies and objectives. In addition the impact on local amenity, when all elements are combined (noise, visual impact, dust etc.), which have failed to be adequately cumulatively assessed by the applicant, must lead the Board to conclude that permission be refused.

Prior to setting out our client's grounds for appeal their submission it is useful to set out the context of the application for the clarity of the Board.

2. Description of the subject site and vicinity

The application site extends to around 71.9 hectares and is located to the north of Blessington. It comprises lands in the townlands of Athgarrett, Philipstown and Redbog in County Kildare. It is one of three large quarries that operate from the same general location to the west of the N81 as it approaches Blessington

from the the north. The existing vehicular access to the quarries is primarily from two access points on the N81 in Co. Wicklow to the east of the quarries.

The substitute consent application site has no public road frontage but is within close proximity to a number of houses that are owned and lived in by members of the client group to the west, east, north and north-east that will be negatively impacted by the continuation and expansion of the quarry. Whilst the application is located within Co. Kildare, a significant part of the wider quarry site is within Co. Wicklow. The application boundary extends to being within c. 250m of the R410 to the west; adjoining Red Lane to the north, and adjacent to the public roads that extend from the N81 to the east.

The existing quarry has been operational since the 1950s and has caused considerable scarring of the landscape, which has been exacerbated by the works that are the subject of this substitute consent application. There are no obvious signs of site restoration for those quarry areas which have been exhausted, and we note that the restoration plan submitted with the application would appear to be at odds with the restoration plan submitted as part of the concurrent new works application.

We note that the application (section 2.3.13 of the rEIAR states that "*Restoration was never undertaken after the expiry of Planning Ref. 07/267 as the extraction for which that planning permission was granted was never undertaken*". The application indicates that the restoration plan is both for works already undertaken under the 2007 permission as well as the unauthorised works made between 2020 and 2023. It is unclear as to whether works undertaken following the making of this application are covered within this, or the concurrent application. If they are under the concurrent application, then these also amount to being unauthorised, and should have been subject to the substitute consent application. What is abundantly clear is that the nature and extent of works being applied for under the application is unclear; and it is abundantly clear that it fails to indicate how the proposed restoration of the application site will integrate with planned restoration of other lands within the applicants control; other adjacent quarries; as well as the local and wider landscape.



Aerial view of substitute consent application site (outlined in red) with boundary of new extraction works application (outlined in yellow) and 2007 application site outlined in white

The quarry that is the subject of this application came under planning control through the Section 261 registration process and subsequently with the benefit of planning permission under Planning Ref: 07/267 which was granted on the 26th April 2010 for a period of 10 years. The application site is substantively enclosed within the red line of the current. This permission has therefore expired.

Planning Ref. 07/267, which was accompanied by an Environmental Impact Statement and was described as follows:

"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. 57.9ha. in size, and is the subject of Section 261 Registration Reference No. QR42".

The permission was subject to 57 no. conditions. Condition 5 of the permission was:

"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 continuation on site".

We note that the planner's report in respect of Planning Ref. 19/1230 (which was for a truck and plant maintenance shed and other ancillary elements within the quarry as opposed to quarrying activities themselves), noted that the permission granted under Planning Ref. 07/267 expired on the 3rd June 2020. However, this was in our considered opinion a miscalculation based on the normal 5 year length of permission. In this case the permission was for ten years and therefore an additional 45 days beyond the 3rd June 2020 needs to be added to calculate the date on which the permission expired. The permission therefore expired on the 17th July 2020. This expiration date of the permission takes into account the (9 days per year for Christmas) as provided for under Section 251 of the Act, and clarified in the judgement of the High Court in *Browne v. Kerry County Council* (2009) IEHC 552.

We submit that the application is entirely incorrect therefore to claim under section 2.3.1 of the EIAR that the site is operating under Planning Ref. 07/267, which has long since expired. We would request the Board to question whether the additional 56 days for Covid should have been added, as is stated in the EIAR as the opinion of Kildare County Council. The additional 56 days does not explicitly refer to lengths of permissions and if the Board also conclude in a similar manner then we submit that it is incumbent on them to invalidate and/or refuse permission given that the assessments made would be incorrect.

We respectfully submit that as no substantive permission has been granted following this date, it is unequivocal that the existing quarrying works have operated in an unauthorised manner for the last four years. This has resulted in our clients having to endure the negative impact of unauthorised works for a substantive period that as a result of excessive noise levels, dust and other environmental impacts has negatively impacted their residential amenity.

The concurrent additional new quarrying works application seeks to extend the unauthorised works under ABP Ref. QD09.319218. The substitute consent application includes substantial parts of the application for new works. Their overlap is shown on the plan on the previous page; with the site of the now expired 2007 permission outlined in white. Sand and gravel and rock is proposed to be extracted to the west of the existing quarry and sand and gravel in the northern extension under the concurrent application.

We refer the Board to the silt pond that is full of debris arising from gravel washing and other quarry activity at the eastern end of the existing quarry. In addition we note that this silt pond and quarry works are located in close proximity to the Red Bog Special Area for Conservation (SAC) (site code: 000397) that is also identified as a pNHA. It is unclear as to whether the quarry, and works within it are hydrologically connected to the SAC or to the pond that is located within this application boundary. We refer the Board to the attached environmental report by TMS Environmental Ltd. that raises significant question marks over the connectivity between the quarry and the SAC. The small pond to the immediate west of the silt pond is of ornithological interest and supports species connected to Poulaphuca Reservoir SPA (Site code 004063) to the south-east.

We request the Board to question whether the applicant has sufficient legal interest to undertake the proposed works under both this and the application for new works. There is also a need for the Board to consider the impact and planning status of quarrying of the area to the north-east of the existing quarry (Folio Ref. 9317) relative to the other areas to be quarried, and whether these have been adequately considered in terms of the cumulative impact within the rEIAR.



Silted pond within the substitute consent application boundary

We respectfully submit that it is unequivocal that the effect of the unauthorised quarrying has been that it has created a landscape that is severely scarred and which severely detracts from the surrounding rural landscape. The quarry is located within an area designated in the Kildare County Development Plan as forming part of the landscape designated as the "Eastern Uplands" which is stated as having a 'high sensitivity' under Table 13.1 of the Kildare County Development Plan 2023-2029. The description of this landscape is summarised in Table 13.2 of the County Development Plan as:

"Areas with reduced capacity to accommodate uses without significant adverse effects on the appearance or character of the landscape having regard to prevalent sensitivity factors."

The following is an excerpt from Map Ref. V1-13.2 from the County Development Plan that indicates the sensitivity of the local environment. It indicates the pNHA of the Red Bog outlined in purple and the SAC boundary indicated within that; and with the scenic route identified by way of the dashed blue line; and the protected view identified by way of the green flower like symbol (see below). The application site sits to the immediate south-west of these and we have indicated it by way of a white star for clarity purposes below.



Excerpt Map Ref. V1-13.2 from Kildare County Development Plan

Table 13.3 of the Plan indicates that sand and gravel extraction has a medium compatibility with this identified landscape character. We note the Policy LR P1 of the Development Plan seeks to:

"Protect and enhance the county's landscape, by ensuring that development retains, protects and, where necessary, enhances the appearance and character of the existing local landscape."

The Plan having regard to high sensitive landscapes states that landscape sensitivity will be an important factor in determining development (Objective LR O1). There is also a need for all quarrying activities to comply with all relevant planning and environmental legislation and the Guidelines for the Protection of Biodiversity within the Extractive Industry document 'Wildlife, Habitats and the Extractive Industry' (Objective LR O8).

Section 13.4.12 define the Eastern Uplands as follows:

"The Eastern Uplands are located in the east of the county and are part of the Wicklow Mountain complex. The topography rises from the lowland plains, through undulating terrain to the highest point of 379m above sea level (O. D.) at Cupidstownhill, east of Killeel. The elevated nature of this area provides a defined skyline with scenic views over the central plains of Kildare and the neighbouring Wicklow Mountain which further define the skyline and the extent of visibility. The East Kildare Uplands are rural in character with a number of scenic views from elevated vantage points. The general land use on the uplands is pasture, with some tillage, quarrying and forestry.

Along a number of roads, which cross the upper and lower slopes of the uplands, there are long-distance views towards the Kildare lowlands and the Chair of Kildare. The sloping land provides this area with its distinctive character and intensifies the visual prominence and potential adverse impact of any feature over greater distances. Slope also provides an increased potential for development to penetrate primary and secondary ridgelines when viewed from lower areas. In the Eastern Kildare Uplands, nearly all ridgelines are secondary when viewed from the lowland areas, as the Wicklow Mountains to the east define the skyline (i.e. form primary ridgelines). Gently undulating topography and shelter vegetation provided by conifer and woodland plantation can provide a shielding of built form. Views of the River Liffey Valley as well as of the Poulaphuca Reservoir are available from the hilltops and high points on some of the local roads".

The proposed unauthorised and new extensions to the existing quarry have and will further exacerbate the profound negative visual impact of the quarry within this identified highly sensitive landscape.

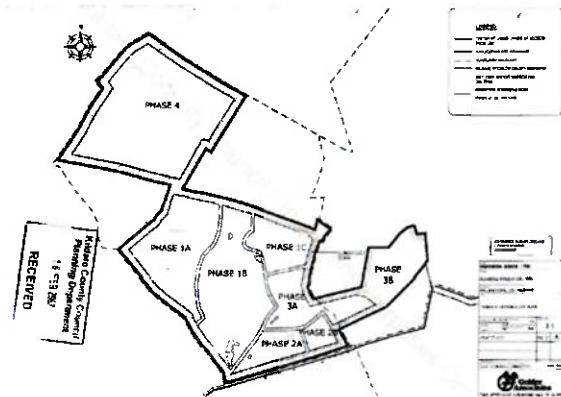
3. Description of the proposed development

The nature of this proposal is critical to the determination of this application. We note that the statutory notices, and accompanying documents and drawings are unclear and lack clarity in terms of what substitute amounts to in terms of the nature and extent of the unauthorised works. The statutory planning notices state that the final floor of the quarry will be 188m AOD. The statutory notice provides very little other information as to the nature and extent of the works for which substitute consent (retention of unauthorised works) is sought.

The description of development states:

"The development consists of a quarry over an area of 71.9 ha. with a final floor of approximately 188mAOD. The reserve consists of sand and gravel which is extracted by mechanical means, and sandstone (greywacke) which is extracted by mechanical means. The excavated sand and gravel is transported to a plant area for washing, grading and processing. The excavated rock material is crushed and graded at the working face by mobile plant. The quarry has an existing processing plant and maintenance area of approximately 5 ha. that currently holds 1 no. maintenance shed (including underbody truck wash on a concrete apron surrounding the shed, staff welfare facilities [shower and toilet], proprietary wastewater treatment system and percolation area, interceptor and soakaway), 1 no. generator/power house (within a shipping container), 1 no. control room, 1 no. office and canteen, a water recycling plant, an aggregate processing plant (washing, crushing, and screening), 1 no. bunded fuel tank and generator room, 1 no. storage shed, 1 no. shipping container storage structure, and 1 no. shipping container. Within this plant/maintenance shed area is a fuel storage and refuelling area. The quarry is located predominantly in Co. Kildare but accessed via a shared laneway connecting to a single location on the N81 which is located within Co. Wicklow. Other items not specified in this application will be the subject of a separate planning application and the requisite statutory process of consultation and determination. The existing operational quarry has been in use since the early 1950's and has been registered under S.261 of the Planning & Development Act 2000 with Kildare County Council under Quarry Ref. No. QR/42 and with Wicklow County Council under Quarry Ref. No. QY/43. Subsequent planning permission for continuance of quarrying operations was granted by the Wicklow County Council under Reg. Ref. 06/6932 in October 2009 for a period of 25 years and by Kildare County Council under Reg. Ref. 07/267 in April 2010, and subsequently by An Bord Pleanála under their Reg. Ref. PL09.235502 for a period of 10 years, which expired on 18th September 2020 after which quarrying stopped for a period."

We note that the applicant is both extremely vague in relation to the nature and extent of the works that are the subject of this substitute consent but also in relation to when works ceased and for what length of period. No evidence of this is provided and anecdotal evidence of local residents is that quarrying did not cease. This leads to several questions to be raised both in terms of the works undertaken and what are being assessed under the rEIAR. We note that the 2007 permission indicated a phased extraction of the quarry as indicated in Figure 2.3 of the Environmental Impact Statement (see below) submitted with the application.



We note that whilst there are baseline drawings, which are not in effect baseline, but the conditions in 2020, and existing drawings that indicate the conditions in September 2023, these do not indicate effectively the works that are subject of this substitute consent application. It is up to the Board and third parties in this instance to seek to establish the nature and extent of works undertaken between this period. We note that both the covering planning report and section 2 of the rEIAR are particularly silent on this matter. Some degree of greater clarity is provided within Chapter 11 of the rEIAR. This indicates that the quarried area extends to 37.3ha. and that between 2020 and 2023, the quarry had been extended vertically by c. 12m with a 1.5ha. extension in the north-west area of the quarry. We have sought to indicate this approximately in the right hand side aerial photograph below. The substitute consent application completely fails to adequately assess these works.

We respectfully submit that this is an unreasonable approach and provides the public with an inability to reasonably comment on the application. The applicant is reliant on aerial photographs in seeking to illustrate the nature of the unauthorised works. As is clearly evident below, which is taken from the applicants rEIAR, the nature and extent of the unauthorised works is incredibly hard to decipher. A review of the aerial views of the quarry following October 2023, from 2024, indicate that the quarry has continued to be extended to the north-west. These works are not covered by either application and amount to unauthorised development. The Board are therefore duty bound to refuse permission, as the substitute consent application fails to address all of the unauthorised development.



Extent of quarry in March 2020 (Figure 2-7 of the rEIAR)



Extent of quarry in October 2023 (Figure 2-9 of the rEIAR)

4. Grounds of submission

The full grounds of our submission to the Board is based on a number of factors that relate to planning matters and the content and lack of comprehensiveness of the Environmental Impact Assessment Report (EIR); inadequacy of the Appropriate Assessment Screening Report (AA) as well as being contrary to a number of policies and objectives of the County Development Plan.

Refusal warranted on applicants past failures to comply

We respectfully submit that it is not in question that the quarry has been operating in an unauthorised manner for the last almost four years. Aside from the unauthorised quarrying, the facilities within the quarry have also been operating in an unauthorised manner. During this time the local residents have had to complain to Members and the Executive of Kildare County Council and An Garda Síochána about a variety of breaches of non-compliance with planning permission, traffic violations, uncovered loads, noise and dust concerns relating to blasting etc. These complaints have been made over a number of years and are still having to be made as the applicant continues to operate the quarry in an unauthorised manner without due regard to the amenity of local residents and the environment of the area. We note that the applicant was supposed to submit two bonds to Kildare County Council under the permission granted under Rf. 07/267 and failed to do so. There would appear to be no reason therefore why the applicant would now make any such bond payments, given past failures to provide, or any reason why the restoration plan would be adhered to.

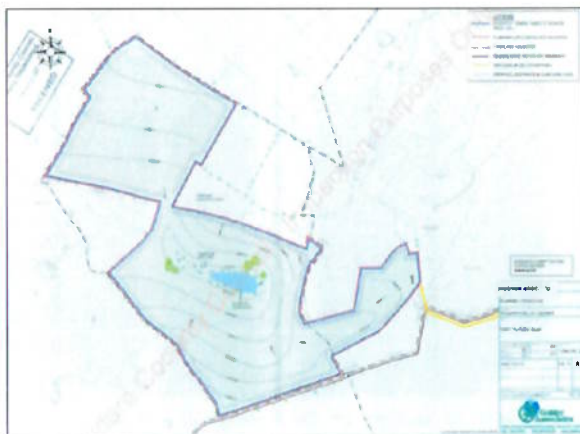
The continued unauthorised works is reflected in the High Court Order Action that was taken by local residents against the applicants Hudson Brothers Ltd. following their failure to comply with their original permission, as well as a failure of Kildare County Council to enforce them to uphold the permission granted under Planning Ref. 07/267. This High Court Order ties the applicant into upholding the terms and conditions of the decision made under Planning Ref. 07/267. A copy of this High Court Order accompanies this submission at the rear of this planning submission (Appendix B).

The local residents have had to endure some 17 years of negative environmental impacts relating to a range of factors. We submit that it is completely unreasonable for a quarry operator, who is the applicant in this instance, to receive a grant of permission for this retrospective application, when they have shown a blatant disregard to the conditions of the 2007 permission and other regulatory requirements, and have been operating in an unauthorised manner for the last four years.

We respectfully submit that when all these factors are taken into consideration, the only reasonable conclusion that can be made is that the Board should refuse permission having regard to the applicants past failures to comply with the terms and conditions of the previous 2007 permission, as is provided for under Section 35 of the Planning and Development Act 2000 (as amended).

Piecemeal and incremental degradation of the rural landscape

We respectfully submit that the rural landscape of this part of the Eastern Uplands of Co. Kildare and west Co. Wicklow has been the subject of piecemeal and incremental degradation through the uncoordinated and unauthorised development of quarrying. The application that has been made to the Board seeks to permit the currently unauthorised degradation of the rural landscape.



Restoration plan proposed under Planning Ref. 07/267

We refer the Board to the fact that the quarry restoration plan submitted by Golder Associates and approved under Planning Ref. 07/267 (see above), that was clearly inadequate and indicated a lack of planning and consideration of the environment in which it is located, has not been implemented. The need for an improved and more comprehensive restoration plan formed condition no. 6 of the 2007 grant of permission and was required to be far more detailed in nature. The details requested under that condition have not been provided under this application.

The restoration plan submitted with this substitute consent application also shows a complete disregard to the environment in which it is located. It is significantly concerning that the applicant does not have full control over parts of the north-east of the quarry, and we would question whether they have an ability to fully implement the restoration plan as now currently proposed. The status of the restoration plan under this application in light of the concurrent application for an extension to the quarry must be severely questioned.



Restoration plan proposed under substitute consent application – note land not in control of applicant to north-east

Furthermore, no attempt has been made by the applicant, to incorporate within their new proposed restoration plan, a phased restoration plan of elements of the quarry that are either already redundant or will become redundant if permission were granted in this instance. Both this and the new works application also completely lack any attempt to screen the quarry during the operational life of the site, as is required under both good planning practice but also under Objective RD O44 of the County Development Plan. Given the lack of restoration of the site, it is incumbent on the Board to attach a suitable and significant bond to the permission, to be paid prior to commencement of the new works application to ensure that the restoration plan is implemented in accordance with Objective RD O45.

This is despite the applicant committing to reinstate sections of quarries once they have been worked out to agricultural use, to plant native trees on side slopes of extracted areas and the creation of natural features and habitats from water bodies. We note that at the time of making this submission none of these commitments have been met.

The failure of other quarries in the local area to have not implemented restoration plans, both in Co. Kildare and Co. Wicklow leaves a large stretch of this highly sensitive landscape to the immediate north of Blessington scarred and void of vegetation that is completely at odds with Objectives RD O44; RD O46; RD O49; RD O50 as well as RD O51 of the Kildare County Development Plan 2023-2029.

We respectfully submit that when the cumulative impact on the environment and landscape is considered in terms of this application, and other adjacent quarries, it is unequivocal that this high amenity landscape of high sensitivity has been irrevocably damaged, partly by the works sought for substitute consent in this instance. We respectfully submit that it is incumbent on the Board to consider the cumulative impact of these

quarries and that both Kildare County Council and Wicklow County Council prepare a joint quarrying strategy for future quarry development that seeks to protect the most sensitive landscapes and reinstate the existing landscape damaged by past quarrying operations, including the wider aspects of this site.

The previous serious concerns of the County Council in relation to the above matter are well established; and under the 2007 application they raised concerns relating to the cumulative impact of all existing and future quarry operations on the natural and residential amenity of the area. Despite these previous serious concerns, the degree of assessment of the cumulative effect of the proposed development, even with the concurrent new works application, which should be considered as the project to be assessed, is significantly deficient.

The conclusions made in relation to the inadequacy of assessment of the cumulative effect of the proposed development remain, and we submit that the rEIAR submitted is significantly deficient in detail regarding the overall impact of the quarrying operations in the area, which include the proposed operations on site. We note that a review of the 2007 application indicates that the clarification of further information recommended, which included a comprehensive cumulative assessment, did not issue. The cumulative impacts of quarrying in the area (visual amenity, impacts on residential amenity etc) was never addressed, and remains not adequately addressed under both current applications.

We respectfully submit that the cumulative visual impacts of quarrying operations in the area are clearly visible when considered from the surrounding landscape in views from the local and wider area (see below). The hinterland of Blessington has been systematically scarred from quarrying operations since the 1950's with no attempt to repair the damage caused through proper site management and landscape restoration or mitigation by way of screening during the operation of the quarries. The applicant should not be granted permission in this instance for substitute consent given the ongoing non-implementation of conditions relating to the 2007 permission. The non-implementation of these conditions has led to the scarring of the landscape to the severe detriment of the visual amenity of the area, including from protected view-points such as from the viewpoint to the immediate north-east of the site (see next page).



Visual impact of quarrying from Caureen, a Protected Hill Top view-point

The remaining argument of the applicant is that the quarrying and its impact on the visual amenity and landscape is long established. No attempt to comprehensively assess in a cumulative manner the new and substitute consent application, or indeed other quarrying activities, has been made (see section 11.10 of the submitted EIAR). This must lead the Board to question the adequacy and completeness of the rEIAR, and to refuse permission.

Lack of previous and proposed quarry restoration and failure to comply with condition no. 6 of permission granted under Planning Ref. 07/267

The Board are requested to note that the Landscape and Restoration Plan permitted under Planning Ref. 07/267 provided for primarily restoration of the quarried area to agricultural pasture (see plan on page 8 of this submission). As previously noted condition no. 6 of the permission required a far more comprehensive

restoration scheme to be designed, agreed and implemented on a phased basis. There is no evidence on file, and certainly none on site of this condition having been complied with in respect of a detailed restoration plan being prepared for agreement. The failure to provide this information within three months of the permission being granted, must lead the Board to conclude that irrespective of any other issues, the development is not in compliance with the 2007 permission. The argument made in the EIAR that this is because it was not viable between 2007 and 2023 is an irrelevance having regard to the requirements of condition no. 6 of the 2007 permission.

The quarry restoration plan under the current application, submitted on behalf of the applicant by Cunnane Stratton Reynolds (Drawing no. 23386-2-101) indicates a 'concept' restoration proposal. It includes no proposal to commence phased restoration works of areas of the quarry where works have ceased, and are also not included within the new works application, and also proposes no visual mitigation around the perimeter of the site contrary to Objective RD O44 of the County Development Plan.

We note that the current application, rather than putting forward a phased restoration plan across parts of the quarry that are no longer proposed to be quarried, seeks to only implement the restoration works following the cessation of quarrying. It is unclear as to what the applicant defines as conceptual, and we request the Board to severely question the justification for a restoration plan in its current form. We also note that it indicates very little actual restoration work itself, and is significantly reliant on natural colonisation with some very moderate planting and establishment of a single small waterbody within its north-western sector.

We respectfully submit that restoration is required to be undertaken on an ongoing and phased basis, and not simply following the cessation of all quarrying works. This amounts to an ill-considered and incorrect approach to remedial works and restoration. There is a need for a much more detailed and phased approach to restoration, and we submit that the current proposal for restoration are inadequate, and by pushing all restoration to the end of the quarry life, will increase the potential for the failure to implement the scale of restoration of this high sensitive landscape that is required contrary to objective RDO50 of the County Development Plan.

Negative visual impact on the High Sensitive landscape

The quarry and its unauthorised expansion that is subject of this substitute consent application is located within the East Kildare Uplands that are designated as an "Area of High Amenity" under section 13.4 of the Kildare County Development Plan 2023-2029. They are classified as an Area of High Amenity because of their outstanding natural beauty and/or unique interest value and are generally sensitive to the impacts of development. The East Kildare Uplands form part of the Wicklow Mountain Complex. The Wicklow Mountain Uplands, 5km to the east, is a designated Area of Outstanding Natural Beauty.

The East Kildare Uplands are primarily rural in character with a number of scenic views from elevated vantage points. The general land use on the uplands is pasture, with some tillage, quarrying and forestry. In addition to more localised views of the application site and its surrounds within the East Kildare Uplands, which include views from localised public amenities/ facilities, there are a number of long-distance protected views and tourist routes within the East Kildare Uplands and elsewhere in the Wicklow Mountain Complex from which the site and surroundings are highly visible.

In support of the application the applicant has submitted a Landscape and Visual Impact Assessment (LVIA) that forms section 11.5 of the rEIAR. We respectfully submit that the approach to this LVIA is fundamentally flawed in that it considers the impact from a baseline of the 2019 landscape and existing quarrying operations, as opposed to the original landscape.

Furthermore, no regard has been had to the failure of the applicant to reinstate worked out quarry areas as they go. We submit that if the correct approach had been taken in the rEIAR then the assessment of visual impacts and effects would have been significantly greater than is presented.

Table 11.9 in the applicant's LVIA within the rEIAR highlights the applicants consideration of the sensitivity of the view, the magnitude of change as well as the significance of the visibility of the existing and proposed quarry. The assessment is undertaken from 13 locations, some in close proximity, with others further afield that are indicated in Figure 11-19 of the rEIAR. In making this submission, we have not had an opportunity to validate the view locations.

However, what is indeed clearly notable, and which is vindicated in the applicants own assessment, is that the existing quarry and new works will be highly visible and from a wide range of locations. It is notable that no assessment of the impact on the designated protected view from Caureen to the immediate north-east of the site has been undertaken. Furthermore, the quarry, in its current state, with the works that are subject of this substitute consent application, are clearly visible from the surrounding landscape. The failure of the applicant to recognise or assess this, must lead to a questioning of the robustness of the rEIAR.

Whilst the applicants undertook a Zone of Theoretical Visibility that is indicated in Figure 11-20 of the EIAR that accompanies the concurrent new works application, no such assessment is provided under the substitute consent rEIAR. Therefore there can be no reasonable certainty from the application as submitted as to where these new works that have been undertaken in an unauthorised manner will be visible from.

A review of the area indicates that the existing quarry and its unauthorised extension will be much more visible than indicated from the 13 views assessed. The rationale and justification of these view-points must be questioned by the Board given that they are the same as those assessed under the new works application. We submit that it is incredulous that the applicant thought it appropriate to consider viewpoints where the existing or new works would not be visible, as opposed seeking to establish where the quarry would be visible from. We note that for example, quarrying activity is visible from the Blessington ring road (see next page).

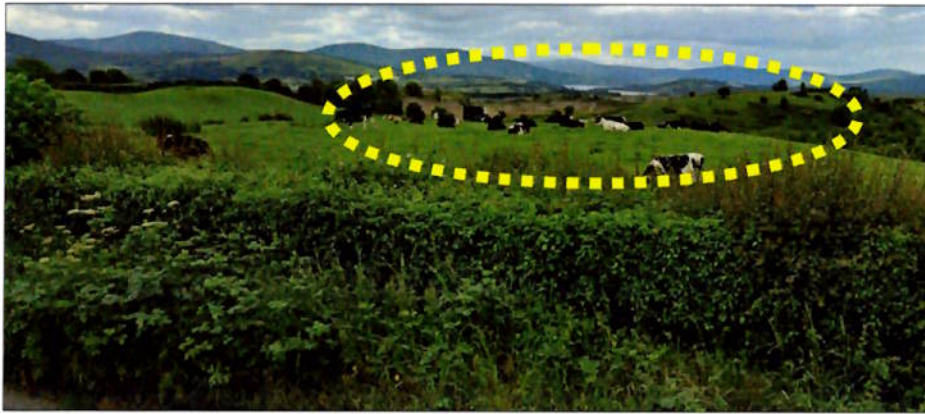


Blessington ring road where quarrying existing and proposed is visible (from 2020)

We also note that the quarry is clearly visible from locations adjacent to Viewpoint 11 along the local road to the north of the site that is identified as a designated Scenic Route and close to a designated Hilltop View Point (Caureen) as identified in the County Development Plan.



Views from the designated scenic route and below a designated hilltop view point close to LVIA VP11 with quarrying clearly visible (from 2020)



Views from the designated scenic route and below a designated hilltop view point close to LVIA VP11 with quarrying clearly visible (from 2020)

We respectfully submit that the existing quarry was and has become further visible from this designated Scenic Route No. 12 and Hilltop View (Caureen) looking south and south-west towards the substitute consent application site. The rationale and justification for not including such a view is unclear, and it is incumbent on the Board to question therefore the robustness of the LVIA in this instance.



Views from the designated scenic route and below a designated hilltop view point close to LVIA VP11 with quarrying clearly visible

The proposed development will increase the visible scarring of the landscape from these designated scenic locations in material contravention of the policies and objectives as well as section 13.5 of the County Development Plan that seek to protect designated Scenic Routes and Hilltop Views.

We respectfully submit that the LVIA does not accurately represent the potential visual impact of the existing and proposed development and fails to adequately evaluate the visual impact from Designated View Points and Scenic Routes.

The proposed development is, therefore, in contravention of Development Plan Policy LR P3- which seeks to protect, sustain and enhance the established appearance and character of all important views and prospects. We submit that the development will have a disproportionate visual impact and will significantly interfere with, or detract from, scenic upland vistas when viewed from areas nearby, scenic routes, viewpoints and settlements. We submit that when all of these matters are considered it is incumbent on the Board to refuse permission having regard to the negative impact on this high sensitivity landscape that is identified as a high amenity area.

Negative impact on ecology and protected sites

As outlined earlier in this submission, the Red Bog Special Area of Conservation (SAC) is located only 240m north-east of the quarry. It is in line of the prevailing wind and will have been impacted by dust that would have been generated from the unauthorised expansion of the quarry, as well as the internal quarry roads.

The Poulaphuca Special Protection Area (SPA) is located 2.2km to the south and south-east. Both of these Natura 2000 sites are also pNHA.

We note that whilst the new works application is accompanied by a Natura Impact Statement, the substitute application is accompanied by a Remedial AA Screening Report only. The rationale and justification for this must be considered at best open to significant questioning given the closeness of the Red Bog SAC, and the lack of monitoring of the site during this period.

The rAA Screening Report appears not to pay particular attention to dust migration from the site and the potential impact on the conservation status of the SAC and SPA. Red Bog, Kildare is a site of particular conservation significance, supporting a good example of transition mire, a habitat that is listed on Annex I of the E.U. Habitats Directive. The Red Bog SAC comprises a wetland complex of lake, fen and bog situated in a hollow between ridges of glacially-deposited material and underlain by rocks of Ordovician age. The SAC is also of ornithological, ecological and botanical interest and value. Breeding birds recorded from the site include Mute Swan, Mallard, Tufted Duck, Coot, Moorhen, Snipe and Black-headed Gull (estimated < 20 pairs).

The original designation of the bog was informed by a 1972 survey by Roger Goodwillie for Aras an Forbatha, which remains as informing the status of the SAC. This found the following:

"Evaluation - This is a most interesting eutrophic lake, rich in invertebrate and plant food. The vegetation cover is unusual and the peat development that has occurred makes the area of great ecological value. It might be described as a dry valley - bog but has more definite associations with raised bog, here at its extreme limits of climatic tolerance. The lake is important for breeding aquatic birds.

Vulnerability - Drainage would be most damaging to the present vegetation, but increased pollution might also upset the lake ecology.¹ The breeding bird population would be susceptible to disturbance.

Recommendations - A lowering of the water table in this area should be prevented. In view of the surrounding land being well-drained it is unlikely that this will be suggested. If disturbance is found to be an adverse influence, steps should be taken to lessen it. This lake would be most suitably protected by a Conservation Order under Section 46, Local Government (Planning and Development) Act 1963. Ecologically, it is the most valuable lake in Co. Kildare².

We note that the rAA Screening report identifies that there is potential groundwater connectivity between the SAC and the proposed development site. The Report also identifies that there is potential dust connectivity between the proposed development and this SAC. Please refer to the TMS Environmental Ltd. report for greater clarity. This concludes in summary as follows:

- (i) *The project boundary used for the study arbitrarily chooses a boundary of 500m with no justification for the selection; this distance excludes several local users likely to be affected by the proposed development;*
- (ii) *Local wells within 150m of the site were considered for inclusion in the assessment but this does not include all of the well users potentially affected by the proposed development and no rationale was provided for this selection;*
- (iii) *The site water usage estimate is unreliable and underestimates the significance of the water usage and fails to acknowledge the use of groundwater at the site.*
- (iv) *Although an enormously significant extension is proposed, and with very limited existing groundwater monitoring wells at the site, including three damaged wells which could not be utilised, there are only two new boreholes reported and neither adequately assesses the potential impacts of the proposed development; the paucity of information likely explains the flawed understanding of hydrogeology at the site which could easily have been improved with further study;*
- (v) *The hydrogeological model is flawed and incorrectly interprets data from investigations. An alternative conceptual model has determined that it is probable that the quarry is working below the water table, and probably has been for many years.*

¹ My emphasis

² A Preliminary Report on Areas of Scientific Interest In County Kildare; Roger Goodwillie, Research Assistant for An Foras Forbartha, 1972 (Appendix 3)

- (vi) *There was no consideration afforded to groundwater contributions to the Redbog SAC and no evidence justifying the omissions.*
- (vii) *Water resources of local residents are at risk from the development and the subject has not been competently and fully assessed in the rEIAR.*

We respectfully submit that our clients are significantly concerned, given the above, in relation to the impact the proposed development will have on the SAC and its conservation status. Finally on this issue, while it is accepted there is unlikely to be any direct impacts from the proposed quarrying on the Poulaphuca Reservoir to the south and west of the site, dust migration must be impacting on the wildlife pond immediately to the west of large silt pond within the quarry.

This pond is of ornithological value and supports species connected to Poulaphuca (SPA and pNHA) to the south. We submit that therefore permission is refused until certainty of the impact of the proposed development both individually, and cumulatively with other quarrying activities is assessed. The use of entirely arbitrary 500m distance for cumulative effects is inadequate and must lead to a refusal of permission on the basis of the precautionary principle, in that the Board have an inadequate and potentially inaccurate level of information to assess the impact on the Natura 2000 sites.

Potential lack of facilities to serve the proposed development

We note that retention permission was granted under Planning Ref. 19/1230 on the 4th June 2020, for retaining the truck and plant maintenance shed with staff welfare facilities and associated proprietary wastewater treatment system serving the quarry.

Condition no. 3 of this permission will only permit the shed to be used for the maintenance of HGV's and plant associated with the operation of the quarry permitted under Planning Ref: 07/267. This permission has expired. The wording of this condition would suggest that the use of the sheds to be used for the maintenance of HGV's and plant associated with the operation of the extended quarry will therefore not be permitted.

This situation reinforces the point that the truck and plant maintenance shed with staff welfare facilities and associated proprietary wastewater treatment system should have formed part of the current application. The failure to include must lead to the conclusion by the Board that they are unauthorised, and therefore their use with the substitute consent application and indeed the new works application amounts to unauthorised development and should lead to a refusal of permission.

Negative impact on local residential amenity

The various member of the local group that we represent are impacted to a different degree dependent on their location to the west, or to the north-east of the overall site in relation to traffic, noise, vibration and dust. Any individual submission will highlight the nature and degree of impacts each household suffers from quarry operations and will continue to suffer if further permission is granted.

Roads and traffic

The unsurfaced nature of the internal quarry roads means there is a continual problem of dust circulating in the atmosphere and migrating to nearby residential properties, other properties and lands. We respectfully submit that it is not in question that our client's particularly to the north-east suffer from a significant degree of dust being generated by the quarry, due to their position downwind of the prevailing wind. Dust is a major environmental problem arising from the applicant's quarry and neighbouring quarries which is not regulated or controlled. We refer the Board to the fact that the Red Bog SAC is located in this area, and is likely to be impacted by dust generation from the site including internal quarry roads.

The main official access road into and out of the quarries onto the N81 is narrow, dangerous and, again, dust is a major and ongoing nuisance. There are no pedestrian facilities along this main access road, and there is insufficient space for pedestrians/ workers when two vehicles pass along this road, resulting a traffic hazard. The road also suffers from dust, fumes and noise disturbance on local amenity. Dust plumes around vehicles along the entire length of the road and out onto the public road is a continuous problem.

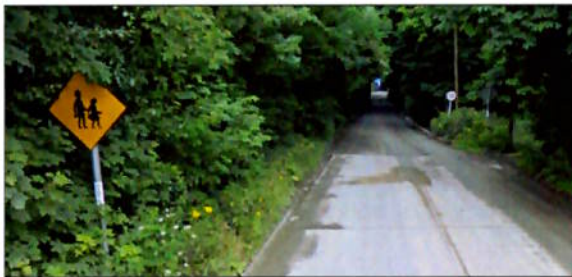


Main quarry access off N81; and entrance to access road from the N81

At the junction of the main access with the N81 the road is continually coated with a film of dust in dry weather. This is a traffic hazard and detracts from the amenity of the area.

Inadequacy of local road network

Kilbride Road is a single-carriage road, mainly without footpaths, serving around 12 houses. It is located 400m to the north-east of the official quarry entrance and is used on a regular basis by lorries from all three existing quarry operations. The use of the road by quarry traffic is a major traffic hazard. Due to the narrow width of the carriageway over most of its length, residents have to reverse back to the limited number of wider sections of the road or house entrances to give way to quarry lorries and regularly lorries have to give way to oncoming lorries, thereby, blocking the road for residents. It is most uncommon for residents to be seen walking or cycling on the road as there are no safe havens for them from passing quarry traffic.



Kilbride Road close to N81 junction



Quarry traffic using inadequate lane

The condition of the road is extremely poor in terms of surface condition due to wear and pollution from quarry dust and muck and the road edge is worn in places making it dangerous. Speed bumps have been incorporated over its length but these are ineffective in slowing quarry traffic. The speed bumps in fact introduce an additional noise nuisance for local residents when empty quarry lorries drive over them at speed. While Kilbride Road may be a historic route used by quarry traffic, a condition could be attached to this permission, irrespective of other issues raised that prohibit any quarry traffic associated with the proposed development in using the lane.



One quarry HGV exiting Kilbride Road, another about to enter the quarry – note dust generation

Existing quarry traffic exiting at either of the two entrance points referred to above either turn left towards Dublin or right into Blessington. While the road towards Dublin is wide, there is no public footpath along most of its length. This road currently operates beyond its capacity and is expected to operate at further overcapacity if permission is granted.

There are a series of bus stops along this stretch of road. Those wishing to avail of the bus service and wait at bus stops along the route must share the same carriageway as regular and quarry traffic and where there are no pedestrian facilities. With slow moving traffic exiting the quarry entrance roads, overtaking on the nearside carriageway occurs and this is evident from the worn carriageway edges where pedestrians are required to walk to reach bus stops.

There is conflict between quarry traffic and pedestrians and cyclists along this stretch of road which is extremely dangerous due to the presence and volume of quarry traffic.



N81 bus stops

Quarry traffic exiting the quarry entrance to the right travels to Blessington passing a mix of commercial, public (including schools) and residential developments within the town's built up area. Right turning quarry traffic onto the R410 can avoid the town centre before re-entering the N81 southwards or continue on the R410 north westwards towards Naas and the M7. The majority of traffic exiting the quarry southbound continues along the R410. This traffic passes the homes of many of the members of the Group living to the west and north-west of the proposed development.

The traffic studies and EIAR do not adequately consider the impact of the continuation and expansion of quarry operations on the road network beyond the N81 in the vicinity of the site entrance (350m in either direction from the main entrance). There is also no apparent regard to the significant volumes of quarry traffic generated by the other quarries in the area which use this route. Therefore, there is no cumulative effect

The R410 to the south west, west and north-west of the quarry is narrow, poorly aligned in places and worn at the edges over much of its length due primarily to the quarry traffic using the road in both directions. There are numerous residential entrances onto this stretch of road. The residents residing along the R410 that are represented in the Group object to the proposed development on traffic grounds due to the traffic hazard quarry lorries have at their entrances and along its length. The proposed development will result in an unacceptable continuation for a prolonged period of this traffic.

Residents do not walk or cycle this road mainly due to the danger caused by the width, alignment and condition of the road and the presence of quarry vehicles. Cyclists and pedestrians less familiar with the road and those with no option other than to walk or cycle on the road are at risk from traffic on the road, in particular quarry traffic. Cyclists are also at risk where the road carriageway edge is worn and lorry wheels have compacted the margin creating dangerous trenches.

Dust

Dust issues arise from the quarrying operations, the processing of quarried material and the transportation of quarried material off site. The local residents living to the east and north-east of the existing quarry have most significantly been impacted by dust arising from quarrying operations and processing.

It is noted in the section of the EIAR dealing with dust, that the two sampling locations (D1K and D2K) closest to the properties to the east (Red Bog) were discounted due to the locations being deemed to be poor locations. These were relocated to the west of the site. The findings of a third sampling location (DK4), also towards the east of the quarry, was not included in some 2019 returns as the sampling jar went missing.

We submit that the samples have shown that the dust levels arising from quarry operations and processing on site are excessive and causing significant health and safety issues for residents in the vicinity of the site. This must be partly due to the applicant's failure to restore areas that have already been quarried out, as required by the terms and conditions of previous permission. With no apparent plans for immediate restoration of areas already quarried and further quarrying operations proposed to the west and north, it can be expected all residents surrounding the quarry will have to endure the dust health and safety and amenity issues that residents living in the Red Bog area have had to endure for the last number of years.

While dust from the movement of HGVs within the site is identified by the applicant as a major contributor to dust levels, dust levels arising from the transportation of quarried material is only assessed within 350m of the existing main entrance road onto the N81.

No evaluation of dust nuisance has been undertaken beyond 350m from main entrance onto the N81. This appears to reflect the expectation that all vehicles exiting the quarry undergo wheel washing and that loads in quarry are covered.

It is not the experience of members of the Group that all loads are covered. They regularly witness significant levels of dust being blown from laden quarry truck wagons travelling along the public roads in the area.

There have been a number of complaints lodged with Kildare County Council concerning laden quarry trucks travelling along the public roads with uncovered loads, yet the practice continues.

Amongst the proposed mitigation measures outlined in the current application is for loads to continue to be covered. However, as covering all loads leaving the quarry was a requirement of Planning Ref: 07/267 which was continually breached, there is no reason to believe practices will change if permission is granted on this occasion.

Noise and vibration

Noise nuisance primarily arises from blasting, quarrying (drilling, digging, rock breaking etc and extraction) and processing (screening and crushing etc). Blasting and some methods of extraction have created the additional nuisance of vibration during the unauthorised works. Due to the local topography, to date most of the noise nuisance has been experienced by members of the Group living in the Red Bog area.

Conditions 14 and 33 of Planning Ref: 07/267 deal with limitations on hours of operation and noise levels respectively. In terms of noise levels, it is apparent no noise monitoring was undertaken at noise sensitive locations during the lifetime of quarrying under this planning permission to demonstrate whether or not limits were being adhered to or breached. In support of the current application a series of modelling scenarios have been set up and tested to establish quarrying practices which can demonstrate compliance with the limits at the nearest noise sensitive locations. The existing quarry is an operational quarry undertaking quarrying operations and processing on a daily basis and also blasting on a regular basis. It is clear from a review of all the detailed noise monitoring results that the day time limit in terms of noise was exceeded at each location on a regular basis (see Appendix 9B of the EIAR)

A list of noise mitigation measures is proposed for the quarry "extension areas" under the concurrent application. This includes the creation of 6m high berms along the boundary. No consideration of the impact of these berms, how they will be treated or planted is provided within the application.

Furthermore, we submit that given the lack of noise control over the last 17 years, and last four of which has been undertaken in an unauthorised manner, our clients do not have any confidence that any noise

mitigation will be adhered to. Noise and vibration nuisance from regular blasting has been a source of complaint to Kildare County Council throughout the life of the quarry since 2007, including complaints of property damage to homes. The extension of the quarry will bring rock blasting even closer to the 15 identified noise and vibration sensitive residences to the west of the quarry where rock is to be quarried. No further rock quarrying on the site should be permitted. There is, irrespective of the concerns raised in this submission, a need for the applicant to undertake a structural survey of the 15 most noise and vibration sensitive properties, prior to the commencement of development under this permission.

Given previous blasting from the quarry has caused damage to property in the vicinity of where monitoring was undertaken between 2018 and 2020, it is inevitable that damage from blasting up to 250m closer will and has caused further and greater damage.

Potential impact on the Dublin to Cork gas transmission pipeline

The Dublin to Cork gas transmission pipeline bisects the proposed northern extension of the quarry where sand and gravel quarrying is proposed and is within 200m of the proposed western extension of the quarry where blasting is proposed under the new application.

Gas Network Ireland prohibits any blasting within 400m of the pipeline without GNI consultation and without the carrying out of a prior assessment of the vibration levels at the pipeline. We note that quarrying requiring blasting is proposed around 150m from the pipeline under the concurrent application.

Blasting and quarrying in such close proximity to a major gas transmission pipeline and housing is a major concern for residents of these houses and the proposals in this regard are causing considerable anxiety and stress to the point of potentially being a significant health issue. Indeed we note that the EIAR states that an improperly managed blast has the potential to damage the gas transmission line (section 9.5.2.3). We submit that given the grave concerns in relation to the potential impact on the gas pipeline, we request the Board to refuse permission for the new works application, and that the substitute application should have included consultation with GNI prior to making the application.

Inadequacy of Assessments

We respectfully would severely question the correctness and robustness of the Appropriate Assessment given the sites proximity to protected Natura 2000 sites. There is clearly a hydrological and dust link between the quarry and its extension and the Red Bog SAC. This link may also apply to other aspects of the proposed development. This is further clarified within the TMS Environment Ltd. report that forms part of this submission as a separate document.

We respectfully would also severely question the correctness and adequacy of the remedial Environmental Impact Assessment Report in this instance. The proposed development has failed to have adequate regard to EIA Directives (2011/92/EU and 2014/52/EU), European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (the bulk of which came into operation in September 2018), the European Communities (Environmental Impact Assessment) Regulations 1989-2006, Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001-2023. The cumulative impact of the proposal has not, in our considered opinion, been adequately assessed.

5. Conclusions

We respectfully submit that the grounds for refusing this retrospective substitute consent application are clear and unambiguous. We respectfully submit that the applicant has failed to accurately or adequately assess the impact of the unauthorised works, on the conservation objectives and status of the Red Bog SAC and the Council's policies set out under the Kildare County Development Plan 2023-2029 in relation to development within High Amenity Areas.

It is incumbent upon the applicant to prove no link or potential negative impact on these conservation objectives. Irrespective of all the other arguments made under this submission it is this and the applicant's failure to prove this, that is critical and requires this application to be refused in this instance.

This application is made concurrently with an application for new works and a further extension of the quarry made by the same applicant under An Bord Pleanála Ref. QD09.319218. We respectfully submit that for new works application must be considered as being premature if this substitute consent application is refused.

In simplistic terms, if the Board deem it appropriate to refuse permission for this substitute consent application, which we are of the considered opinion that it should, then it is also duty bound to refuse permission for the concurrent new works application as it would be resulting in the intensification of an unauthorised development.

We submit that the application is ill-considered and poorly conceived in terms of its negative impact on this sensitive environment and the Red Bog SAC; has had a negative impact on the visual and residential amenity of local residents who have not had any discourse to make comments on an application for the last four years whilst unauthorised development has continued; and is in clear contravention of the Council planning policies as set out under the Kildare County Development Plan 2023-2029.

We therefore request the Board to refuse permission in the context of good planning practice, and the proper planning and sustainable development of the area including the preservation and improvement of amenities thereof.

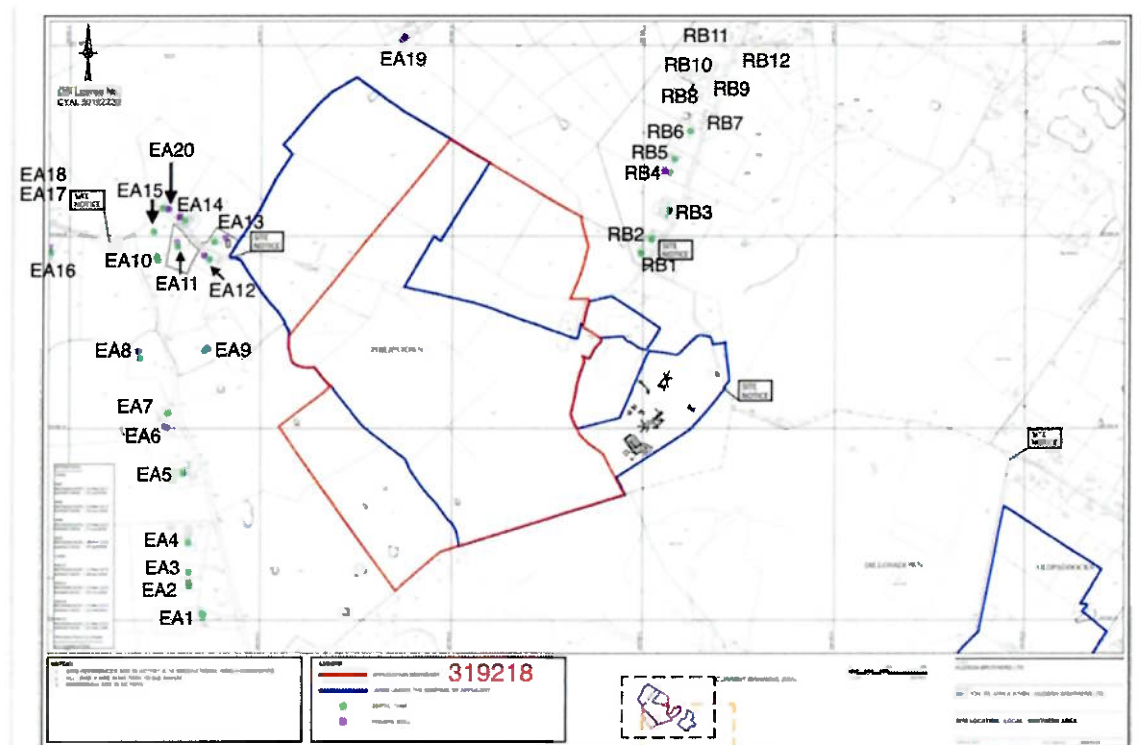
We trust that the Board will give due consideration to the grounds set out in this submission and will notify us of its decision in due course.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'Anthony Marston', written in a cursive style.

Anthony Marston (MIPI, MRTPI)
Marston Planning Consultancy

Appendix A – list and location of members of the Save Kildare Uplands Action Group



Refers to map entitled Hudson's application number 319218 Site location northern area

House no.	Name	eircode	Address				
EA1	Creag Aran Special School	W91 X795	Glen House	Athgarrett	Eadestown	Naas	Co. Kildare
EA2	Adrian Curran	W91 YP9A		Athgarrett	Eadestown	Naas	Co. Kildare
EA3	Lorraine and Pat McNamara	W91 E8CC	Glenfort House	Athgarrett	Eadestown	Naas	Co. Kildare
EA4	Ann McNamara	W91 Y367		Athgarrett	Eadestown	Naas	Co. Kildare
EA5	Tommy Shannon	W91 P281		Athgarrett	Eadestown	Naas	Co. Kildare
EA6	Declan and Sara Goode	W91 KC9E		Athgarrett	Eadestown	Naas	Co. Kildare
EA7	Patricia O'Connor	W91 FX39		Athgarrett	Eadestown	Naas	Co. Kildare
EA8	Paul and Phil Dowling	W91 C56C		Athgarrett	Eadestown	Naas	Co. Kildare
EA9	Shaymus Kennedy	W91 Y8XK	Wolfestown House	Wolfestown	Eadestown	Naas	Co. Kildare
EA10	Linda and David Magee	W91 ACW9	Epona Lodge	Wolfestown	Eadestown	Naas	Co. Kildare
EA11	Paul Magee	W91 V0YD		Wolfestown	Eadestown	Naas	Co. Kildare
EA12	Paul Woods	W91 EH48		Wolfestown	Eadestown	Naas	Co. Kildare
EA13	Maura Morrin	W91 W6R3		Wolfestown	Eadestown	Naas	Co. Kildare
EA14	Rita Morrin	W91 XT91		Wolfestown	Eadestown	Naas	Co. Kildare
EA15	John Dunne Jr	W91 W3VH		Wolfestown	Eadestown	Naas	Co. Kildare
EA16	William Hayden	W91 HW42		Poppyhill	Eadestown	Naas	Co. Kildare
EA17	Downeys	W91 YTD4			Eadestown	Naas	Co. Kildare
EA18	Susan and John Dunne	W91 KNR2			Eadestown	Naas	Co. Kildare
EA19	Slattery's	W91 PD81		Wolfestown	Rathmore	Naas	Co. Kildare
EA20	Agricultural shed						
RB1	Michael Vines	W91 YHP7		Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB2	Larry Kelly	W91 E7D4		Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB3	Caroline Kelly	W91 FP5H		Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB4	Gavin O'Donohoe	W91 KWY2	Hillgate	Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB5	Fran Cummins	W91 KD83		Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB6	Emma Sargent McLoughlin	W91 DW6D		Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB7	Derelict house						
RB8	Mary Sargent	W91 XF34		Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB9	Liz Lawlor	W91 XND3		Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB10	Paddy Sargent	W91 WFC4		Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB11	Mrs. Gillis	W91 Y97X	Sunset Lodge	Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	
RB12	John and Tina Kelly			Redbog	Blessington	Co. Kildare (but postal address is Co. Wicklow)	

Note: house numbers are only for reference to the attached map. They have no other significance.

Note: Name and address details may be wrong.

Appendix B – High Court Judgement

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


Director

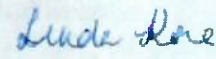

Director/Secretary



Director

Signed by Linda Kane

In the presence of

Sign here —


LINDA KANE



WOLFESTOWN
MRS
CO KILNARE

Signed by Francis Cummins

In the presence of

Sign here —


FRANCIS CUMMINS

CLAUDIA Boyle.
16 DUNSMUR 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.

