

STATEMENT OF EXCEPTIONAL CIRCUMSTANCES

Planning Application for Substitute Consent for Development of Tromman Quarry totalling 21.64Ha to include erection of unauthorised structures in the manufacturing yard to the north of the site and the unauthorised continuation of use of the quarry and associated structures

***Keegan Quarries,
Tromman Quarry,
Rathmolyon,
Co. Meath.***

Date of Report: February 2024

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1 INTRODUCTION

This report forms part of a planning application for Substitute Consent ('SC') which has been prepared for development at the quarry and the ancillary precast concrete manufacturing yard totalling some 21.64Ha in extent, consisting of the unauthorised construction of an electrical substation, a concrete batching plant with technical lab and associated lagoon system; a Limestone Powder plant, comprising feed hopper, crushing and screening plant, dispatch points, drying plant, storage sheds and gas tank fuel storage and the unauthorised construction of a precast concrete manufacturing industrial unit.

In addition, the unauthorised continuation of extraction and associated mineral processing activities and the continued use and or operation of previously authorised structures; to include a block yard, office, canteen, weighbridge and wheelwash (00/2075); a precast manufacturing facility, associated batching plant and fuel storage (TA20408); an administrative office, septic tank, workshop, weighbridge, wheelwash, fuel store, pump house, steam cleaner and ancillary development (TA130400 & TA130581) beyond the expiry of extraction consents on the 5 August 2018 to which the ancillary consents for buildings plant and structures were co-terminus.

The site is located in the Townland of Tromman some 2.2 kilometres northwest of Rathmolyon Village and some 6.4km south of the town of Trim. The site is bounded to the west by Kilsaran's Tromman Quarry, to the south by the regional road R156 and to the north and east by agricultural fields.

Full details of the SC proposals are provided within the accompanying Remedial Environmental Impact Assessment Report (REIAR).

The application seeks the regularisation of structures associated with quarrying operations that Meath County Council consider to be unauthorised and the existing extraction operations that post-date the extended appropriate period of 5th of August 2018 for the quarrying operations.

The remainder of the structures situated in the concrete products area towards the northern end of the site are covered by individual planning consents that run contemporaneously with the mineral extraction consents, other than the concrete silo that had consent that was limited in duration by condition to period of 3 years. Cumulatively, it is considered that the continued operation of the quarry and the associated structures require environmental impact assessment as a single project.

It is to be noted that Leave to Apply has previously been granted by the Board under Reference ABP-303334-19 in May 2019 (See Inspector's Report, Board Order and Direction held at Appendix 1). In previous granting leave to apply for SC, the Board has previously confirmed the existence of exceptional circumstances, concluding that:

"Taking all of the above into consideration, it is considered that exceptional circumstances exist such that it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent".

Notwithstanding the above, it is acknowledged that the decision of the Board on the leave to apply case was challenged through the judicial process and the Board's decision was quashed.

It is also acknowledged that the provisions of Section 177K of the Planning and Development Act 2000 (as amended) states that when deciding whether or not to grant substitute consent, the Board shall not be bound by, take account of, or otherwise have regard to, any decision of the Board under section 177D as to the existence of exceptional circumstances in relation to an application under section 177C.

The aim of this report is to provide the Board with such information as is considered material for the purposes of the Board satisfying itself as to the existence of exceptional circumstance with regards to the SC application.

2 **LEGISLATIVE CONTEXT**

Section 177K (1A) of the PDA states that:

a) *The Board shall not grant substitute consent (whether subject to conditions or not) unless it is satisfied that exceptional circumstances exist that would justify the grant of such consent by the Board.*

b) *When deciding whether or not to grant substitute consent, the Board shall not—*

- i. be bound by,*
- ii. take account of, or*
- iii. otherwise have regard to,*

any decision of the Board under section 177D as to the existence of exceptional circumstances in relation to an application under section 177C.

Section 177K (1A) (c) confirms that:

“A member (including the chairperson) of the Board who participated in the making of a decision by the Board under section 177D to grant leave to apply for substitute consent shall not participate in the consideration of, or the making of a decision under this section in relation to, an application under section 177E made pursuant to the grant of leave concerned”.

Section 177K(1J) states that:

“In considering whether exceptional circumstances exist under subsection (1A)(a) the Board shall have regard to the following matters:

- a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;*
- b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;*
- c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;*
- d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;*
- e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;*
- f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;*

g) such other matters as the Board considers relevant”.

In addition to this framework there is inevitably discussion surrounding *C-215/06 Commission v Ireland* on the requirement that development prior to EIA assessment should be the exception, rather than the rule. Paragraph 57 of the ruling states that:

“While Community law cannot preclude the applicable national rules from allowing, in certain cases, the regularisation of operations or measures which are unlawful in the light of Community law, such a possibility should be subject to the conditions that it does not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception”.

However, it is considered that this would be applying too narrow an interpretation and relates to projects for which EIA has not been undertaken, prior to substantive development. This is not the case at Tromman Quarry and is not applicable, as it is considered that the continuation of extraction activities, repeatedly and previously evaluated in accordance with the EIA Directive, is in accordance with the requirements that EIA should be performed at the earliest possible stage, when all options were still open.

Furthermore, when considering planning definitions relating to exceptional circumstances there is a body of Case law relating to the protection of Green Belt Policy in England with a substantial amount of focus being on how to interpret the meaning of “Exceptional Circumstances”, where Sir Duncan Ouseley sitting as a High Court Judge¹ states:

¹ *Compton Parish Council v Guildford Borough Council* [2019] EWHC 3242 (Admin)

“71. There is however a danger of the simple question of whether there are “exceptional circumstances” being judicially over-analysed. This phrase does not require at least more than one individual “exceptional circumstance”. The “exceptional circumstances” can be found in the accumulation or combination of circumstances, of varying natures, which entitle the decision-maker, in the rational exercise of a planning judgment, to say that the circumstances are sufficiently exceptional”.

It is considered that this statement provides an appropriate rationale to be employed when a decision maker is balancing a combination of circumstances before applying judgement to the question of exceptional circumstances.

The remainder of this report provides information which the applicant considers material for the purposes of the Board satisfying itself as to the existence of exceptional circumstances in accordance with Section 177K (1A)(a) of the PDA.

3 EXCEPTIONAL CIRCUMSTANCES

3.1 Potential for circumvention of the EIA or the Habitats Directive

The SC application is accompanied by a REIAR and RNIS. The REIAR concludes that the development which has occurred, is occurring and which may be reasonably likely to occur has not resulted in any significant effects upon the environment.

The RNIS concludes that on the basis of best scientific knowledge, the development has not affected the integrity of any European Sites as a result, taking account of the sites' conservation objectives, either individually or in combination with other plans or projects.

The site has an extensive and progressive planning history dating back to the initial extraction consent granted in 1998. Since then, a sequence of extraction applications, have been accompanied by Environmental Impact Statements, providing detailed chronological assessment. This approach has delivered analysis of site activities in line with the EIA Directive, over a period of 15 years and analysis in line with the Habitats Directive. The planning history for the Site is provided at Appendix 2 for a complete summary of the consent history and the application history.

The extraction applications that the site has ostensibly operated under and were previously considered by the Board, are PL17.206702 and PL17.235960. Copies of the Inspector's report and associated Board direction are provided as Appendix 3A and 3B of this Report.

Therefore, it is considered that the regularisation of the development concerned would not circumvent the purpose and objectives of the EIA Directive or the Habitats Directive.

This is a position that the Board are understood to be in agreement with, as they stated within their determination of QV17.0217 that:

“The planning history of the subject lands, extending back to 1998, the detailed environmental information including the Environmental Impact Statement submitted with the application for permission and appeal in respect of (i) planning register reference number TA/30334 (An Bord Pleanála appeal reference number PL 17.206702) and (ii) planning register reference number TA/900976 (An Bord Pleanála appeal reference number PL 17.235960) and the fact that the lands have been the subject of environmental impact assessment on two separate occasions by An Bord Pleanála in 2004 and 2010 which resulted in the granting of planning permission”

and further in relation to the Habitats Directive:-

“Having evaluated all the available scientific and technical information relating to the subject site, the Board considered that, by itself, and in combination with other plans or projects, the development on this site after the 26th day of February 1997 would not have been likely to have had a significant effect on any European Site.”

Pre-application discussions were initiated with the Planning Authority, culminating in a formal meeting on 2 August 2018 (reference PP 7503) where alternative approaches to regularise activities were considered to include; retrospective applications for the structures in the northern part of the Site; continuation applications and s.5 alternatives.

Ultimately the Council proposed that the Applicant should consider applying under s.34 of the Planning and Development Act for the continuation of operational development of the quarry and then follow this up, should the application prove to be successful, with a retention application for the unauthorised ancillary structures in the northern part of the Site.

However, the Applicant took the view that this approach would be construed as splitting a single project, as without the existence and supply of the quarry there would be no requirement for the northern structures.

Furthermore, the trigger for the SC application is driven by the construction of the ancillary development within the manufacturing (northern) part of the Site in 2015.

An application for leave to apply for SC was (reference LS. 303334) submitted to the Board in December 2018 on behalf of the Applicant, seeking to avail of the facility to apply for SC.

The Board held that the subject application was one which met the requirements of Section 177C(2)(a)(ii) and that exceptional circumstances existed in this case and by Order directed the applicant to make an application for SC, accompanied by REIAR and RNIS.

The application for SC was subsequently made to the Board in July 2019 and registered under the reference ABP-305049-19. During the period in which the SC application was being determined by the Board, the decision of the Board on the leave to apply case was challenged through the judicial process and the Board's decision was quashed. The Board confirmed to the Applicant in a letter dated 13th

December 2022 that consequent to the quashing of the grant of leave to apply, that it could not continue processing the SC application. The application was deemed invalid and returned.

Due to these exceptional delays since the original submission of the SC application in July 2019, it is considered prudent for the Board to consider the material changes to the site that have occurred during this consent lacuna. To this end, the existing Site Layout drawing included within the SC application illustrates the current face positions. It remains relevant that **no extraction has occurred that wasn't proposed as part of previous applications**, assessed in accordance with EIA requirements and ultimately consented by the Board by the consents held in Appendix 3A and 3B.

At the time of submission of the SC application it was the presence of the unauthorised manufacturing structures, ancillary to the quarrying, such as to form a single project, that it is considered would have required a determination as to whether an EIA was required.

Due to the legal challenges and changes in legislation encountered during the processing of the previously submitted SC application, it was considered appropriate to provide contemporary site plans and for the Applicant to provide a chronological record of the attempts made to regularise and mitigate against further elements of the ancillary infrastructure becoming unauthorised, due to the expiration of time limits, by submitting applications under s.34 of the Act to Meath County Council.

Planning Applications were made to Meath Co. Co. in December 2020 under Section 34 of the PDA for the retention of development at the

Site and continuation and future extraction at the quarry under Meath Co. Co. Planning References TA201910 and TA201918 respectively.

The Applicant's original interpretation had been borne out by the actions of Meath County Council which upon receipt of the applications considered the ancillary development to be intrinsic to the larger project, which is subject to the SC application and have refused to validate and process applications citing s.34(12) of the Act. Please find letters in Appendix 4.

Therefore, it is concluded that the attempt to regularise development via this SC application is completely in accordance with this sub section, as it absolutely complies with the purpose and objectives of the EIA Directive and the Habitats Directive and provides for transparency and public participation.

3.2 Applicant's belief that the development was not unauthorised

The quarry site has been operating under multiple planning consents, as outlined above and most recently under two s.42 time extension consents up to the 5 August 2018 under two planning authority issued consents, TA/130581 and TA/130400, that extends consents PL17.206702 & PL17.235960, that cover the totality of the extraction zone of the quarry and therefore the extractive development was appropriately authorised.

The Applicant held the view that the developments carried out from the period post 2013, on lands owned by a separate legal entity but within the Keegan Group, were exempted development. The Applicant believed that the development constituted extensions,

replacements, additions and were and are in the nature of plant and machinery or, structures of the nature of plant and machinery. This plant and machinery did not change the use of the land or the appearance of the area as outlined by the Board's Inspector below.

The veracity of the Applicant's belief is further reinforced by their stance with respect to the Planning Authority's determination under s.261A(2)(a) that a Remedial Natura Impact Statement was required, and Substitute Consent applied for. The Applicant disagreed with the Council's determination and sought a review by the Board and obtained confirmation that their understanding was correct in the Board's direction QV0217 (Appendix 5), to set aside the Planning Authority's decision. However, had the Applicant not had such a staunch belief that existing development was authorised then this option would have been a readymade solution to the regularisation of the problems that have now arisen.

The Applicant held this bona fide belief, that the extensions made within the permitted blockyard from 2013 onwards constituted exempted development in accordance with the 2009 judgement of the High Court in Michael Cronin (Readymix) and An Bord Pleanála [2007 144JR] (Appendix 6).

In order to obtain confirmation of this position the Applicant, as previously noted by the Board and their Inspectors in PL17.248115 and PL17.249285 (see Appendix 7A and 7B) sought confirmation in 2016 from the Planning Authority that the said extensions and improvements were exempted development under s.5 of the Planning and Development Act 2000. The planning authority provided a determination in June 2016, advising that the development in their opinion was not exempted.

Whilst the Applicant did not agree with the planning authority's all-encompassing determination and specifically their interpretation of the Development Class 21 criteria:

1. Any such development shall not materially alter the external appearance of the premises of the undertaking.

Following the reversal of the judgement in the Cronin (Readymix) case by the Supreme Court of Appeal, also in May 2017(Appendix 8), the Applicant took steps to remedy the element of the structures that they considered to fall outside the 15m height criteria, as provided for in Schedule 2 Part 1 Class 21(a)(iii)(1) of the Planning and Development Regulations 2001 (as amended).

Accordingly, an application was submitted and ultimately affirmed by the Board in PL17.248115, in September 2017, see Appendix 7A.

This application, which arguably covers the most visually intrusive element of the additional structures with regard to external appearance, is considered to go to the heart of the matter, with respect to exempted development. The Inspector's analysis of "material alteration to the external appearance of the premises", illustrates the external impact, or lack thereof, in which he outlines (emphasis added):

"The structure for which retention of planning permission is sought is large at 28.6 metres in height. However, it is set in amongst existing buildings associated with the precast concrete facility and is therefore nestled within an industrial type setting - albeit in a rural area. Furthermore, the structure is located to the rear of the quarry and

approximately 800 metres from the R156 Regional Route. Having visited the site, I noted that the structure is not visible from any vantage point along the R156 in the vicinity of the site. In fact, the Board will note that the structure is only barely visible from within the confines of the parking area and reception office of the quarry. The structure is located within a quarry floor and the intervening topography surrounding the site screens the structure from views of the wider area.

Finally, in relation to the issue of visual amenity the structure in question is located within an existing precast concrete facility which has the benefit of planning permission and surrounded by a quarry. In my view the character of the area therefore has been significantly altered from a greenfield site in a rural area and this makes the building for which retention is sought more acceptable in my view...

The Applicant concurs with the above analysis provided by the Inspector and would contend that this is equally applicable to the remaining, less imposing structures.

Nevertheless, given the grounds for refusal provided by the Board under PL17.249285 (Appendix 7B) and the concerns raised regarding the piecemeal and disorderly approach to compliance adopted at the site and the subsequent time expiration of extraction consents, it was considered that uncertainty remained with respect to the Site's planning status, pertaining to certain structures and activities.

Accordingly, the Applicant obtained the opinion of mineral planning experts and counsel to advise on the matter and has acted on the direction that an application for SC should be submitted to the Board. It is considered that the actions of the Applicant, as illustrated by the Planning History held in Appendix 2, demonstrate a bona fide belief

that all their activities were authorised and when this baseline altered, whether due to changes in legislation or case law, every attempt has been made to remedy the situation

In short, the Applicant has cooperated with the Planning Authority and ascertained its views on how best to regularise matters pertaining to the site. The Applicant, with the benefit of advice pertaining to the then prevailing jurisprudence, proceeded in what was then a permissible manner. There was a subsequent change in the law as a result of the Supreme Court decision in the Cronin (Readymix) case which caused the Applicant to reconsider matters. The Applicant no longer had the benefit of exempted development which it had previously bona fide believed to be the case. The Applicant pursued an application under s.37L of the Act, in parallel to the substitute consent application, to regularise matters somewhat only to be rejected by the Board (addressed further below). The Applicant proceeded in the manner previously suggested by the Planning Authority pursuant to s.34 of the Act only to be rebuffed.

As is apparent, the Applicant has sought through numerous mechanisms available to it to regularise matters pertaining to the site. Through no fault of the Applicant those efforts have not succeeded. The Applicant is entitled to a remedy and the fact that the Applicant, in the exceptional circumstances of this case, has exhausted the remedies available to it such that this Application for SC is now necessary is, of itself, an exceptional circumstance such as to warrant the granting of the application. To find otherwise is to render the Act redundant in the circumstances of this site, which simply cannot be correct.

3.3 Ability to carry out a remedial EIA/ AA

Unlike other cases brought before the Courts, exceptionally in this instance, the pre-development baseline has already been established for the project and verified by the Board, via consecutive EIA's.

The extraction at Tromman Quarry, both pre and post the 5th August 2018, has previously been the subject of pre-development EIA on **three separate occasions** and on each occasion has been considered to be both environmentally acceptable and in accordance with the proper planning and sustainable development of the area.

Indeed, the contravention of the permitting regime (as it is sometimes colloquially referred to) and the imposition of a time limit for the expiration of a permit, is not to be confused with the requirements under EIA Directive. It is considered that the continuation of extraction of resource, repeatedly and previously evaluated in accordance with legislation, is in accordance with the requirements that EIA should be performed at the earliest possible stage, when all options were still open.

Accordingly, it is considered that the ability to prepare an EIA or an Appropriate Assessment (AA) has not been substantially impaired.

Each of the three applications for substantive development referenced above were ultimately decided by the board following third party participation. Furthermore, the SC application now before the Board will be the subject of third-party scrutiny.

3.3.1 Remedial Environmental Impact Assessment (REIAR)

The Applicant has submitted a REIAR with a baseline commencement that coincides with the date that the ancillary structure was erected.

As previously stated, an aerial and topographical survey update was provided of the site in August 2018, to accurately capture the status of operations at the point at which extraction activities became unauthorised. However, given that the previous application was deemed invalid and returned as a result of the leave to apply case being challenged through the judicial process, it is considered appropriate to seek regularisation via a new SC application.

The scope of the REIAR has established the baseline with specialist input focussing on a range of environmental topics including the Water Environment, Noise, Air Emissions, and Landscape and Visual.

Section 37L Application

An application under s37L of the PDA was previously submitted to the Board to regularise the totality of the site and bring all existing quarrying and ancillary activities under a single planning unit (ABP Ref ABP-305384-19).

The application sought to consolidate all the former extraction consents and provided a robust quarry development strategy, with the provision of geotechnically evaluated development phases that will see the removal of the significant overburden landform in to the floor of the quarry providing significant landscape and visual betterment.

The proposed development sought via the 37L Application sought the continued development of the quarry to previously permitted depths, providing a long-term strategy for the continuation of supply of

resource for both the dry stone and value-added business, allowing the company to concentrate on the continued growth in to innovative market places.

Unfortunately, erroneously it is considered, the legislation at the time of submission was so crafted as to only permit s.37L to be submitted to the board when seeking substitute consent pursuant to subsections (7),(10) or (12) of s.261A and not via the s.177E Leave to Apply route. Accordingly the Board returned the application, as it did not have the powers to consider the same.

Therefore, an application was submitted to Meath County Council under s.34 of the Act (Ref TA201918) to cover a similar project, endeavouring to minimise the unauthorised period. The scope of the s.34 EIAR covered all of the aspects of the project and evaluates against the existing baseline.

Under the terms of Section 34 (12) of the Act, the Planning Authority refused to consider the application and it was returned in February 2021, see Appendix 4.

Following the implementation of Section 17 of the Planning and Development, Maritime and Valuation (Amendment) Act 2022, which amends Section 37L of the 2000 Act, it is now possible to seek permission for the development of the land the subject of the application for SC. As such, a application is made under S37L of the PDA for future quarrying and continued use of the buildings and structures and accompanies the SC application.

The Site has a well-documented planning application history, with all extraction applications having been accompanied by Environmental

Impact Statements as referenced above. It is worthy of note that all the mineral extracted both pre-August 2018 and subsequently, has been taken from the resource that has been assessed against EIA regulations and the removal of the same was considered to be acceptable to the Competent Authority.

A mineral application assesses the potential worst-case impacts arising from the extraction of a determined volume of mineral, to a specified datum and up to a prescribed maximum annual extraction rate.

Following evaluation, the decision maker generally imposes a time limit which at best is derived from dividing the total volume by the maximum extraction rate and when, as has happened at Tromman Quarry, the actual extraction volumes fall for an extended period, below the predicted maximum levels, unworked resources remain insitu despite having had the potential environmental impacts of their extraction previously assessed.

Therefore, in common with the Board's determination in QV17.0217 (Appendix 5) which states:

“the detailed environmental information including EIS contained in the applications for permission/appeal under register reference (i) TA/30334 (PL17.206702) and (ii) TA/900976 (PL17.235960) and the fact that the lands have been the subject of environmental impact assessment on two separate occasions by An Bord Pleanála – in 2004 and 2010 and the lack of any particular environmental threat being identified as a consequence of those assessments”

the approach to planning for operational development is considered exceptional to quarrying (mineral development) and results in a unique

set of circumstances that will be discussed later in this report. However, the removal of the previously assessed mineral is not thought to contravene EIA regulations.

This information coupled with the ongoing monitoring and periodic reporting of the site emissions and discharges, ensures that the ability to carry out an assessment of the environmental impacts of the development, for the purpose of an EIA or an AA and to provide for public participation in such an assessment has not been impaired, substantially or otherwise.

3.4 The actual or likely effects on the Environment and/or European Sites

The SC application is accompanied by a REIAR and RNIS. The REIAR concludes that the development which has and is occurring has not and is not resulting in any significant effects upon the environment.

The RNIS concludes that on the basis of best scientific knowledge, the development has not affected the integrity of any European Sites as a result, taking account of the sites' conservation objectives, either individually or in combination with other plans or projects.

The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development, in isolation or combination with other projects has been previously considered by the Board (Ref PL17.QV0182) when considering the in-combination effects of the quarry, where it was concluded, see Appendix 9 that;

“Having evaluated all the available scientific and technical information relating to the subject the Board considered that, by itself, and in combination with other plans or projects, the development on this site after the 26th day of February, 1997 would not have been likely to have had a significant effect on any European Site”

3.5 Extent to which the effects of the development can be remediated

Given the conclusions of the accompanying REIAR and RNIS, the development has been demonstrated not to have resulted in any significant effects on the environment or adverse effects on the integrity of a European Site. As such, no remediation is required.

3.6 Compliance with previous Planning Permissions

It is considered that a rationale has been provided at Section 3.2 above as to how the Applicant reasonably held a bona fide belief that the additions to the Concrete Product Manufacturing area constituted authorised development. Indeed, as recently as May 2017 the Inspector reporting on the retention of the concrete silo application (Ref PL17.248115) commented that:

“the structure in question is located within an existing precast concrete facility which has the benefit of planning permission and surrounded by a quarry”.

However, following on from the Planning Authorities negative s.5 determination and subsequent planning report in February 2017, the Inspector in PL17.249285 has acknowledged in their report dated March 2018 that an enforcement notice was served in March 2017 to

cover the plant and structures covered by the Applicant's previous section 5 determinations, however, the Planning Authority have taken no further action in this regard.

Furthermore, it is considered that the analysis provided in the Board's decision with respect to planning compliance at the Site provides an accurate representation where it is stated at (I) in QV17.0217 (Appendix 5) that:

“(i) the generally favourable compliance history of the facility with respect to its various grants of planning permission”

encapsulates the planning performance at the site.

3.7 Other Relevant Matters

3.7.1 Role of the Site in the Local, Regional and National Economy

Keegan Quarries is a family run business. John Keegan (Company Director) started out as a sole trader in 1989 with one truck supplying stone and fill materials from various rented quarries around Meath. Keegan Quarries was incorporated in the early 1990s and the company has grown substantially in terms of employees and product range to produce ready mix concrete, stone products, limestone powders, blocks and specialist precast products.

The head office is based at the subject quarry in Tromman, Co Meath, which provides professional technical, accounting and engineering support to the wider business, along with the necessary administrative functions.

The business has some 140 direct employees and a further 40 full time sub-contractors, with a direct wage bill and associated contractors wage bill approaching €12M per annum. Keegan Quarries makes a significant contribution to the rural Meath economy providing for a highly skilled workforce. Turnover has increased from c.€13 million in 2013 to c.€38 million in 2022

A significant amount of the Company's total revenue stream is derived from export sales to the UK, bringing external revenue into the Irish and Meath economy. Such is the importance of the export market that the growth and expansion in the business experienced has seen internal investment focussed on satisfying the demands of this area.

The mineral resource at Tromman quarry is a high purity limestone with levels of 97-99% calcium carbonate, which has many, chemical specific, applications from producing limestone powders as a cement replacement / additive, to high quality aggregates for inclusion in all concrete products. The unquestionable purity of the limestone extracted from Tromman was particularly relevant in the remediation of housing development, indeed in the case of *James Elliot v Lagan Asphalt* – which concerned pyrite and the remediation of properties affected by it – the limestone from Tromman was used as a test sample of material to ameliorate problems, the resource is exceptionally low in sulphur, does not expand and is pyrite free. Tromman Quarry subsequently provided limestone for remediation work on houses affected by pyrite and now mica.

The employment generated across the Keegan group of companies is vital to the local economy, both in terms of the direct employment at the Tromman site but also in the associated downstream uses

associated with the end use of the mineral products. Figure 1 below, shows the employee numbers for the years covering the timeframe being considered in the SC application, indicating continued growth.

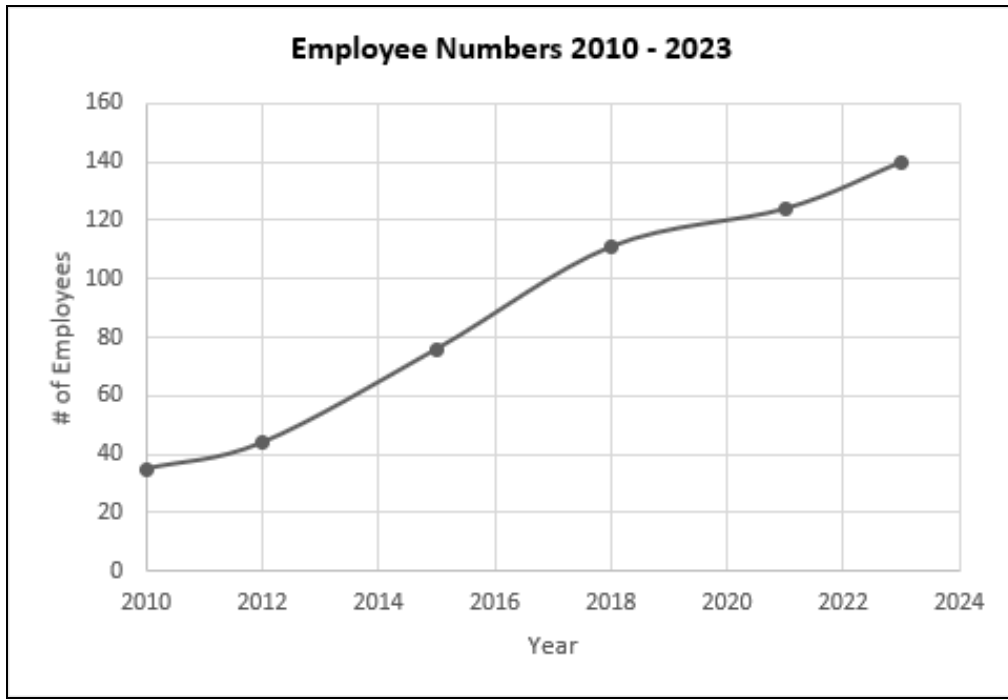


Figure 1 – Keegan Group - Employment Figures

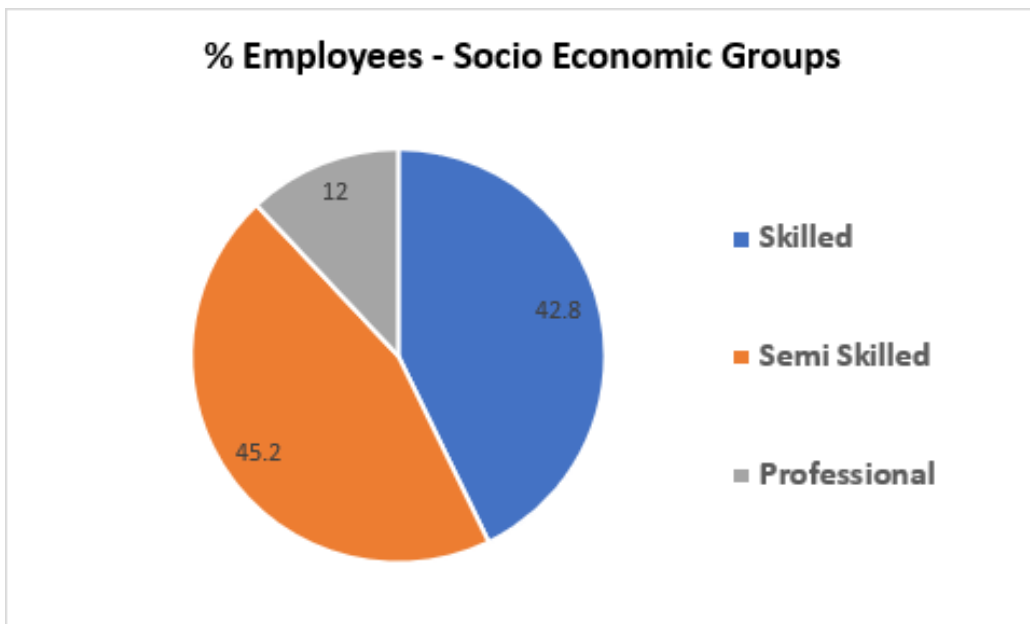


Figure 2 – Employment by percentage of Socio Economic Groups

Figure 2 illustrates total employment at the company's Tromman Site, expressed by skill sectors. The figure highlights the breadth of skills covered at the Site, extending beyond those normally expected in a traditional extraction/manufacturing site.

Over the course of the period being assessed in the SC application, projects which have been supplied from the Tromman site include housing; infrastructure; healthcare; and education, for example:

- Keegan Precast supplied all of the vertical wall elements for the National Children's Hospital in Dublin. The new children's hospital will be 7 storeys at its highest, comprising of approx. 160,000m² of accommodation;
- Keegan Precast were involved in the Design and build of 2 new primary school buildings in Mullingar, Co. Westmeath, with a total combined floor area of 3,150m² for the Department of Education;
- Keegan Precast completed the supply to a new healthcare and nursing facility at Peamount Healthcare, Newcastle, Co. Dublin. This involved the construction of a new two storey healthcare unit to accommodate 100 individuals;
- Keegan Group completed the supply of the precast element at the former ESB bulk fuel storage facility at Ringsend, Dublin Port for the National Oil Reserves Agency to refurbish and upgrade the existing storage facility to enable the storage of gas, oil and diesel for the next 20 years, and storage for approx. 140,000m³ of oil.

Over the assessment period, Keegan Group has also attracted inward expenditure in to Ireland via its supply of construction materials for projects in the UK. As an example, Keegan Quarries supplied a range of construction materials for the completion of the Swansea University Halls of residence, providing beds for over 1600 students.



Figure 3- Swansea Halls of Residence Projects

The current operations at the quarry maintain the supply of the primary resource to the added value manufacturing element of the Site which has maintained the competitive capabilities of the business with continued sales growth anticipated in these value added products and an associated reduction in dry sales, thus maximising the end use of the high purity resource.

The site supplies a range of aggregates and pre-cast products to a number of construction projects currently ongoing in the wider Dublin

region. For example, works are currently under way for a 258-home residential scheme in Belmayne, Dublin. This €100+ million scheme with Sisks as the design and build contractor is set to achieve LEED Gold standard sustainability (Leadership in Energy and Environmental Design, US Building Council). Fifty of the homes will be available for social housing and the remaining 208 homes for private rental. Keegan Precast and Keegan Quarries are involved in delivery wall, slabs and ready-mix concrete to the site.

2023 also saw Keegan Precast deliver walls and floors to Oxford University for its new 'Life and Mind Building' as part of a £200 million project. The building represents the largest building project ever undertaken on behalf of the University and will be its largest teaching facility. The building covers 25,000 sqm set over two wings.

The continuation of the business results in the continuation of expenditure into the local economy via direct purchases, the use of local services and via expenditure of wages by local staff. The site also contributes to public expenditure through the payment of business rates and taxes.

3.7.2 Properties of the Limestone Resource

In addition to its very significant role in the local/regional economy of County Meath and the eastern seaboard the Trommon site, because of the exceptional quality of its limestone, also plays an important role at the national level.

Because of this quality, a relative rarity in the Irish context, the output from Trommon features in the planned solutions to a number of national challenges. These challenges include:

- the contribution of Tromman's products to the achievement of significant reductions in the carbon dioxide emissions of the construction industry.
- the ongoing housing crisis and in particular the availability of social and affordable housing;
- the contribution of Tromman's products to the efficient realisation of key elements of national infrastructure of strategic importance; and
- the refurbishment of properties affected by pyrites and mica failures;

each of these key sectors above will be considered below.

Limestone Powder Plant

European Standard EN 197 identifies two types of Portland limestone cements: Type II/A-L containing 6-20% and Type II/B-L containing 21-35% limestone addition. The substitution of parts of cement clinker by limestone filler has several demonstrated technical advantages over the conventional mix.

Cement manufacture is recognised as a major source of CO₂ (i.e. carbon) emissions – accounting for some 7% of total global emissions. The production of one tonne of cement produces 0.6 tonnes of CO₂. Cement is an integral component of concrete which remains the essential construction material worldwide – in fact it has been estimated that concrete is the second most consumed product globally after water.

As concrete is likely to remain the construction material of choice for the foreseeable future much effort has been placed on securing

reductions in the carbon footprint of cement manufacture in recent years.

However, such substitution can also assist in the reduction of carbon dioxide emissions from the manufacturing process. The Global Cement and Concrete Association (GCCA) identifies ground limestone (and other materials) that can be added to deliver concretes with reduced CO₂ emissions but still the required performance.

Such substitutions form an important part of the industry's global "Roadmap to Net Zero Carbon Concrete" and potential overall reductions in carbon emissions of up to 11% in cement manufacture are achievable according to GCCA.

Increased use of ground limestone of the quality produced at Tromman, can offer important reductions in energy consumption and thus in overall carbon emissions in Irish cement manufacture. It can thereby help Ireland achieve its mandated statutory goal of an average 7% year on year reduction in overall greenhouse gas emissions in the period to 2030 (51% in total) and to achieving net zero emissions by 2050.

In 2015 Keegan Quarries initiated an investment programme to exploit the fact that the Tromman Quarry resource is a high purity limestone 97-99% pure Calcium Carbonate. The €4M investment specifically provided a plant to mill the limestone in to powders and produce material for the specialist precast division. The investment in the equipment enabled the company to produce an industrial grade powder, which due to its natural curing properties and strength, when added to "standard" Portland CEM-I cement can be used to produce

a CEM-II cement, as highlighted in the table below, the 27 products in the family of common cements.

This recognised process of blending high grade limestone powder with the imported CEM-I has environmental benefits, as the on-site production of limestone powder requires significantly less energy and associated carbon emission. Further more, by using the high purity limestone powders as a cement replacement, the company has reduced its emissions in the order of 11,000 tonnes of carbon per annum.

EN 197-1:2000

Table 1- The 27 products in the family of common cements

Main types	Notation of the 27 products (types of common cement)		Composition [proportion by mass ¹⁾]										Minor additional constituents		
			Main constituents												
			Clinker K	Blastfurnace slag S	Silica fume D ²⁾	Pozzolana		Fly ash		Burnt shale T	Limestone*				
natural P	calcined Q	siliceous V				calcareous W	L	LL							
CEM I	Portland cement	CEM I	95-100	-	-	-	-	-	-	-	-	-	-	-	0-5
	Portland-slag cement	CEM II/A-S	80-94	6-20	-	-	-	-	-	-	-	-	-	-	0-5
		CEM II/B-S	65-79	21-35	-	-	-	-	-	-	-	-	-	-	0-5
	Portland-silica fume cement	CEM II/A-D	90-94	-	6-10	-	-	-	-	-	-	-	-	-	0-5
	Portland-pozzolana cement	CEM II/A-P	80-94	-	-	6-20	-	-	-	-	-	-	-	-	0-5
		CEM II/B-P	65-79	-	-	21-35	-	-	-	-	-	-	-	-	0-5
		CEM II/A-Q	80-94	-	-	-	6-20	-	-	-	-	-	-	-	0-5
		CEM II/B-Q	65-79	-	-	-	21-35	-	-	-	-	-	-	-	0-5
		CEM II/A-V	80-94	-	-	-	-	6-20	-	-	-	-	-	-	0-5
		CEM II/B-V	65-79	-	-	-	-	21-35	-	-	-	-	-	-	0-5
	Portland-fly ash cement	CEM II/A-W	80-94	-	-	-	-	-	6-20	-	-	-	-	-	0-5
		CEM II/B-W	65-79	-	-	-	-	-	21-35	-	-	-	-	-	0-5
		CEM II/A-T	80-94	-	-	-	-	-	-	-	6-20	-	-	-	0-5
		CEM II/B-T	65-79	-	-	-	-	-	-	-	21-35	-	-	-	0-5
	Portland-burnt shale cement	CEM II/A-L	80-94	-	-	-	-	-	-	-	6-20	-	-	-	0-5
		CEM II/B-L	65-79	-	-	-	-	-	-	-	21-35	-	-	-	0-5
		CEM II/A-LL	80-94	-	-	-	-	-	-	-	-	-	6-20	-	0-5
		CEM II/B-LL	65-79	-	-	-	-	-	-	-	-	-	21-35	-	0-5
	Portland-composite cement ³⁾	CEM II/A-M	80-94	<----- 6-20 ----->						-	-	-	-	0-5	
		CEM II/B-M	65-79	<----- 21-35 ----->						-	-	-	-	0-5	
	Blastfurnace cement	CEM III/A	35-64	36-65	-	-	-	-	-	-	-	-	-	-	0-5
		CEM III/B	20-34	66-80	-	-	-	-	-	-	-	-	-	-	0-5
		CEM III/C	5-19	81-95	-	-	-	-	-	-	-	-	-	-	0-5
	Pozzolanic cement ³⁾	CEM IV/A	65-89	-	<----- 11-35 ----->						-	-	-	0-5	
		CEM IV/B	45-64	-	<----- 36-65 ----->						-	-	-	0-5	
	Composite cement ³⁾	CEM V/A	40-64	18-30	-	<----- 18-30 ----->				-	-	-	-	0-5	
		CEM V/B	20-38	31-50	-	<----- 31-50 ----->				-	-	-	-	0-5	

1) The values in the table refer to the sum of the main and minor additional constituents. 2) The proportion of silica fume is limited to 10%.
3) In Portland-composite cements CEM II/A-M and CEM II/B-M, in Pozzolanic cements CEM IV/A and CEM IV/B and in Composite cements CEM V/A and CEM V/B the main constituents besides clinker shall be declared by designation of the cement.
* L : total organic carbon (TOC) shall not exceed 0.5% by mass; LL: TOC shall not exceed 0.20% by mass.

Table 1: Common Cements and their products

The other advantage to the investment in the new limestone plant is in the ability to manufacture sand on the site which is used in all the site's ready mix and precast products. This approach further increases the site's self-sufficiency by dramatically reducing the requirement to import sand to the site for the manufacture of concrete products saving in fuel and transport costs and the associated additional land take by shallower sand and gravel deposits.

Whilst initially the development of the limestone powder plant was to supply internal requirements a burgeoning external market is developing and the Company supplies powders in to animal feed and animal nutrition manufactures, and a variety of construction related products e.g. lime mortars, asphalts etc. This market is important to Keegan Quarries and has grown to a level of 10% of Company turnover. There are further industrial applications for which enquiries have been received in the UK and further afield in Europe that the company are actively pursuing.

Keegan Quarries have continued to expand the market for this premium cement replacement product and have recently invested over €3 million in a state-of-the-art facility in Drogheda Port, to export the high purity limestone. The company is actively marketing the powders in the British Isles & Holland and intend to commence exporting the high purity limestone in the near future.

As is apparent, the quarry at Tromman is home to mineral products the purity of which is exceptional which, in turn, have not only reduced significantly the carbon footprint of Keegan Quarries but have a positive impact on the construction industry as a whole and more. Given the national impetus to reduce carbon emissions, being driven by the Government, it is important to find ways of doing so whilst at the

same time sustaining industry. Keegan Quarries is now an innovator and market leader in that regard, but is reliant on its continued use of the quarry at Tromman to do so. Not only is the purity of the natural resource available there exceptional, but so too is the use to which it is being put nationally.

Keegan Precast

In 2007 the business invested in a new precast concrete operation under the 2003 planning consent and selected German technology to manufacture a precast twin wall system. This system was unique to Ireland at that time and secured a full order book from the time the factory became operational.

However, in 2009, at the height of the recession, with no internal market the Company began to market their twin wall product in the UK, as there was only one other facility in the UK producing the same system.

As a result, the Company has a 50% market share of the UK Twin Wall system market. Following on from this success the Company now produces an insulated twin wall system and a brick finished panel which offers a complete precast one stop solution to customers and again is unique to Keegan Precast.

The success of these products in the UK market meant that the original factory was unable to keep the UK market supplied with Twin Wall system such was the demand. The business began to lose work due to lead times and manufacturing capacity and therefore the Precast business had no option but to expand the existing precast facility or risk losing previously hardwon customers.

In 2016 the manufacturing capacity was increased by the introduction of a new line (manufacturing plant) that is housed within a portal steel structure. The new line, manufactures the brick finish twin wall and the insulated twin wall. It can also produce the same product as the original line. This structure incorporated the best high-tech German technology available on the market and secures work for Keegan Precast well into the future.

The current housing crisis is causing significant strain on resources in Ireland and to address this there is currently a huge emphasis on off-site construction. Keegan Precast's modular twin wall system offers an excellent solution to this crisis, as they can design, manufacture, supply and erect approximately two housing units per day with our new high-tech facility. Keegan Precast are currently involved in a fast track sheltered housing project for Focus Ireland (see below) where the precast twin wall system proved invaluable in the delivery of this fast track housing project.

The total value of the Keegan Precast investment between the original precast manufacturing base and the new line is in the order of €15,000,000. The investment and uniqueness of the product underpins the employment of highly skilled engineers and draughtsmen in the head office in Tromman. The Company employs approximately 25 people in administration and the balance of the workforce are drivers or skilled operatives based in the Tromman operation.

Keegan Quarries Limited's Tromman site continues to be involved in an extensive number of prestigious and vital projects as outlined above.

3.7.3 Concrete Block/ Remediation Programmes

Despite having developed markets in fast tracking housing units and the emphasis on offsite production, Keegan Quarries, who have been producing concrete blocks since 2001 still sell a large volume of standard concrete blocks as many house builders prefer the traditional system for building houses i.e. concrete blocks & mortar.

The 2008 recession caused a huge amount of quarry operators and block manufactures to exit the business and within a 25-mile radius of the Tromman site there are only three companies manufacturing concrete blocks.

Keegan Quarries is a significant producer of blocks, by volume, with 5 million blocks produced annually.

Given recent legal cases and media reports where aggregate containing pyrite and muscovite mica were found in blocks causing huge problems to the home owners, it is absolutely essential that high quality aggregates are used in the manufacture of blocks. The Tromman quarry provides excellent aggregates for this purpose.

A pyrite remediation scheme was established by the Government under the Pyrite Resolution Act 2013 aimed at repairing certain homes affected by significant pyritic damage where homeowners had no other practicable option for redress. The scheme was initially focussed on homeowners in Kildare, Meath, Offaly and Dublin.

More recently, homeowners have been faced with another manifestation of the effects of employing poor quality construction products, known as the “mica crisis”.

This crisis has gathered momentum since 2013 and appears to disproportionately affect property in Donegal and Mayo. Both private homes and social housing are affected.

Remediation or replacement works will be necessary at some thousands of homes in the affected counties and the total costs is reported as likely to amount to several billion Euro.

As with the pyrites problem, sources of high-quality construction materials, such as that found at Tromman, will be required as part the solution.

Up to 2,000 legal actions, with a total value of €550 million, concerning mica-affected concrete blocks were expected before the end of 2023, it has been claimed in High Court proceedings with some 1,100 cases having already been issued².

Up to 7,000 homes in Donegal, Mayo and Sligo are thought to have been built using defective blocks (containing mica) and the redress scheme could result in around one-third of the affected homes being demolished, however the working group report that more than half the homes availing of the current Mica scheme have applied for the complete demolition of their homes.

Keegan Quarries have commissioned studies providing sample blocks to Dr Robbie Goodhue, PGeo and Director of Fastnet Analytical Ltd, for use as a representative control test sample of blocks, and tests are ongoing. The quarry at Tromman was also used as an example of material that did not expand in the pyrite remediation scheme and

² Irish Times, 15th March 2023, accessed 23/

was subsequently used to supply affected homes. This product can be used with confidence as it is free from contamination by pyrites and is of a very high quality. In this way the site is contributing to the resolution of this particularly unfortunate occurrence.

3.7.4 Housing and Infrastructure Delivery

Department of Housing, Local Government and Heritage data³ describes how there were 13,318 people homeless across Ireland in December 2022. The number of people who are homeless rose by 2,186 people since December 2023, an 18% increase on the previous year. In Meath, there were some 234 adults accessing emergency accommodation in December 2023 with 88 families across the Mid-East Region.

As a result of the recognised housing crisis within Ireland, the Government has introduced the “Housing for All - a New Housing Plan for Ireland”. This is the government’s housing plan to 2030. It is a multi-annual, multi-billion euro plan which seeks to improve Ireland’s housing system and deliver more homes of all types for people with different housing needs. The plan estimates that Ireland will need an average of 33,000 new homes to be provided each year from 2021 to 2030.

Statistics from the Department of Housing, Local Government and Heritage⁴ states that 22,443 new homes were completed in the first nine months of 2023- an increase of 14% on the same period last year. The Housing for All Q3 2023 Progress Report⁵ states that:

³ Available at <https://www.gov.ie/en/collection/80ea8-homelessness-data/>

⁴ Available at <https://www.gov.ie/en/publication/97015-housing-for-all-action-plan-update-and-q3-2023-progress-report/>

⁵ Ibid

“The coming year will see over €5 billion of capital investment in housing, a record figure. We will continue to increase the housing stock in the country while progressing major reforms in our housing system. We can look forward to a strong 2024, with almost 24,000 new homes having commenced in the first 9 months of this year. There are currently over 22,600 social homes at various stages of delivery and 2,700 additional affordable homes already approved for funding.”.

The Government has stated⁶ that in response to Brexit and wider challenges such as climate change, a core tenet of the Government's strategy is to bring greater economic resilience to Ireland's regions by addressing the infrastructure deficits that currently exist. Under this €116 billion plan, public capital investment will reach 4% of national income, placing Ireland well above the recent EU average of 2.9%.

When launched in 2018 Project Ireland included over 150 projects which each have a value in excess of €20 million. This pipeline of projects has continued to expand and evolve since then, with numerous major projects being completed and many more projects entering into the pipeline. There are now over 200 large projects at various stages of the project lifecycle.

The Mineral Products Association (MPA; trade association for aggregates in the UK) estimates that 50 tonnes of aggregate is required for the construction of a typical house. With the widely recognised unprecedented demand in Ireland for housing and the programme of infrastructure delivery which is ongoing, naturally the demand for

⁶ Project Ireland 2040, Prospects Ireland's Pipeline of Major Infrastructure Projects, Investment Projects and Programmes Office, December 2019

aggregate used in the construction of housing units and infrastructure projects reflects this demand.

It has been, and continues to be, of vital Socio Economic importance that a steady and adequate supply of aggregate in Ireland is maintained, attempting to satisfy society's long-term housing and infrastructure requirements.

The physical infrastructure required to drive construction has been, and continues to be driven by mineral quarried at the application site. The proposed development has and will result in a tangible positive impact via the continued supply of construction materials required to deliver the housing and infrastructures projects, which have been identified for the wider region for years to come.

3.7.5 Legislative Framework surrounding consenting procedure for quarries in Ireland

Finally, we would like the Board to consider the legislative framework surrounding the consenting procedure and case law governing quarry operations in Ireland and consider within development classes it is exceptional.

Reverting to first principles we will consider the interpretations provided within the PDA. Section 3 states that:

“development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land”.

It is considered that the extraction of minerals in the context of the above definition is unique within development types as it substantially differs to the works element of the above definition. Indeed, it bears more similarities to the 'use' aspect, to the extent that it is a continuous activity which can take place over many years and is means to an end in itself.

It is a continuous operation and each shovelful extracted from an area is a quarrying operation, constituting a separate act of development.⁷

Exceptionally, a quarry operator has their own explicit definition within the Act, unlike any other category of developer.

'operator' in relation to a quarry means *"a person who at all material times is in charge of the carrying on of quarrying activities at a quarry or under whose direction such activities are carried out"*;

Likewise, a quarry also benefits from its own explicit definition:

"quarry" means *an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or bore-hole or a well and bore-hole combined, and shall be deemed to include—*

(i) any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing

⁷ Thomas David (Porthcawl) Ltd v Penybont Rural District Council [1972] EWCA Civ J1005-1

or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on;

(ii) any place occupied by the owner of a quarry and used for depositing refuse from it but any place so used in connection with two or more quarries, and occupied by the owner of one of them, or by the owners of any two or more in common, shall be deemed to form part of such one of those quarries as the Minister may direct;

(iii) any line or siding (not being part of a railway) serving a quarry but, if serving two or more quarries shall be deemed to form part of such one of them as the Minister may direct;

(iv) a conveyor or aerial ropeway provided for the removal from a quarry of minerals or refuse.

Thus building a specific or exceptional status for a quarry and its operation within the Act.

Although the removal of the finite resource often takes place over a long period of time, often decades in the case of hard rock operations, quarrying is considered a temporary use of land, with the quarry ultimately being subject to a form of restoration.

This differs from typical development types whereby when development consent is granted, it is granted in perpetuity. Also, this differs from other land uses that may be subject to the SC regime and/or retrospective EIA in other member states and until the introduction of the Planning and Development, Maritime and Valuation (Amendment) Act 2022 was recognised by Irish legislators by specifically providing the opportunity for contemporaneous assessment

and decision making under section 37.L of the Act, but in doing so they made this exception only for Quarries. Whilst now altered in legislation, it is still considered that this previous provision highlights the case that quarrying is its own unique development type.

By way of example, where development consent is granted for the erection of a factory unit or a power plant, the continued use and operation of that building is conferred via the grant of consent and its use is not considered to be operational and continuation does not constitute a separate act of development.

Conversely for quarrying, development consent differs as it is granted for the “getting”, as provided for in the definition above or quarrying as it is defined in the Act and the use of the land as a quarry. In this respect, development consent sought for quarrying operations is in itself exceptional, as it differs from all other development in so far as the continued use, despite whether it has been previously assessed or not, requires “further” development consent.

In terms of the opportunities for regularisation, the SC process is unable to grant any planning permission for future development. For typical “built development”, the grant of Substitute Consent regularises the development and the use of the land in perpetuity. For quarrying, this is not the case due to the act of mineral extraction constituting an act of development. Quarrying operations are reliant upon this act of development in order to remain operational and it is the only development type which after regularisation, due to its very nature, that cannot continue without explicit development consent.

As referenced above, this particular point has been previously acknowledged by the legislators, who in part reflected this exceptional circumstance related to quarrying when introducing s.37L of the Act.

Given that the introduction of the SC process was to remedy the State's own failures in transposing the EIA and Habitat Directives, quarry operators find themselves in an exceptional position whereby due to the nature of development, the consent process does not grant permission for the continued use of the land for quarrying. Due to these failures, the State requires an operator to cease operations, prepare and submit an Application for SC (accompanied by an REIAR and/or RNIS) and upon any grant of consent, exceptionally the operator does not benefit from a form of regularisation (permission) for the continued use of the land as a quarry.

It is worthy of note that any consent for future working will again be the subject of a time limit, that does not necessarily reflect the project as assessed, with decision makers adopting the arbitrary recommendations in guidance⁸ with respect to operational term, rather than employing judgement based upon environmental information provided when balanced against capital expenditure, as commended.

It is considered an exceptional case that quarrying operators are expected to withstand the financial burden associated with this process thrust upon it by the State's inability to transpose EU Law, whilst revisiting the financial burden of environmental assessment for the same mineral resource on more than one occasion.

⁸ Section 4.9 The Quarries and Ancillary Activities Guidance DOEHLG April 2004

The CJEU has affirmed in numerous decisions that national rules which allow for the regularisation of developments but only in the exception, are permissible (Case 348/15 Stadt Wiener and Case C-196/16 Commune di Corridonia). Again, the Case Law revolves around built development (a fuel preparation plant and a plant for the generation of electricity from biogas, respectively) and differs from the operational development type associated with quarrying.

It is noted from the "Ballysax" case that Clarke J found the provisions of Sections 177C of the Act could not be fairly described as being exceptional but instead were quite general and quite broad.

It is accepted that many quarries could be captured by the provisions, but it is contended that this is more due to the exceptional operational nature of quarry development coupled with the inability of the legislators to provide legislation that is fit for purpose. The result of which is that every quarry has the potential to readily fall into unauthorised development territory and it is this, that provides the appearance of "generality".

Therefore, the development consent process, in terms of the opportunity for regularisation provided by the Substitute Consent process, coupled with the inability of the process to grant future development consent and the unique circumstances which quarrying operators in Ireland find themselves in, as a result of the state's failure to transpose EU Directives into Irish Law is considered to be exceptional in its entirety in the context of Member States.

4 CONCLUSION

Prevailing planning legislation states that the Board shall not grant SC unless it is satisfied that exceptional circumstances exist that would justify the grant of such consent by the Board.

The legislation prohibits the Board from considering its previous conclusions as to the existence of exceptional circumstances in relation to the application in its decision to grant leave to apply for SC.

This report provides information which the applicant considers material for the purposes of the Board satisfying itself as to the existence of exceptional circumstances.

The report details how the SC application is accompanied by a REIAR and RNIS which concludes that the development has not resulted in any significant effects upon the environment or affected the integrity of any European Sites.

The extraction at Tromman Quarry, both pre and post the 5th August 2018, has previously been the subject of pre-development EIA on three separate occasions and on each occasion has been considered to be both environmentally acceptable and in accordance with the proper planning and sustainable development of the area.

Details are provided as to the Applicant's belief that the development was not unauthorised and that no circumvention of the EIA or Habitats Directive has been experienced. The development is not considered to have resulted in any significant effects upon the environment and therefore no remediation is necessary.

It is considered that the high-quality resource, that has previously been environmentally assessed for extraction, coupled with the social and economic contribution that the resource at Tromman has made provides an exceptional case and to sterilise the exposed resource and the associated infrastructural investment would be contrary to sustainable development principles.

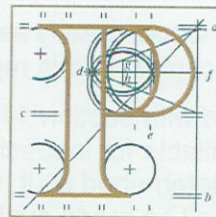
It is of undeniable importance to the 140 direct employees and 40 subcontractors, that the quarry continues to operate and the whole site be regulated from a planning standpoint.

Appendix 1

Inspector's Report, Board Order and Direction for ABP-303334-19

Our Ref: ABP-303334-19

Your Ref: Keegan Quarries



An
Bord
Pleanála

Quarryplan Limited
10 Saintfield Road
Crossgar
Downpatrick
Co. Down
BT30 9JN
Northern Ireland

9th May, 2019

Re: Leave to apply for substitute consent for a quarry
Trammon, Rathmolyon, Co. Meath

Dear Sir / Madam

An order has been made by An Bord Pleanála determining the above-mentioned matter under the Planning and Development Acts 2000 to 2018. A copy of the order is enclosed.

The effect of this order is to direct you to make an application to the Board for substitute consent not later than 12 weeks after the date of the giving of the Board's decision (or such further period as the Board may allow). The application shall be accompanied by a remedial Environmental Impact Assessment report and a remedial Natura impact statement, and shall be in respect of the entire quarry and all of the plant and structures, including the ancillary concrete products manufacturing area to the north of the quarry extraction area, the entire area being as outlined in red on drawing number KEE_TR/01, submitted to An Bord Pleanála on the 21st day of September 2018, and shall relate to the quarrying development that has taken place since the expiry of the planning permission for quarrying on the 5th day of August 2018, and to all manufacturing and processing activities, including the expansion of the blockyard, carried out on the overall site since 2013, but shall not include any proposed further quarrying or any further manufacturing or processing.

Please note that the final date for the making of an application for substitute consent is the 1st day of August, 2019.

Section 177E of the Planning and Development Act, 2000, as amended, sets out the requirements for a valid substitute consent application and your attention is also drawn to Part 19 of the Planning and Development Regulations, 2001, as amended, which requires, inter alia, the applicant to submit to the Board a newspaper/site notice. You are requested to contact the Board at bord@pleanala.ie in relation to the wording of the public notice prior to publication of same, or any other matter concerning the making of the application, A fee is also payable to the Board in respect of the substitute consent application.

Teil	Tel	(01) 858 8100
Glaos Áitiúil	LoCall	1890 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

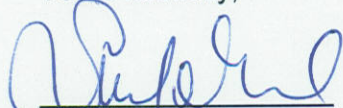
Separately, it would greatly assist to Board to have a soft copy of the entire application submitted with six hard copies. In this regard, the drawings on the soft copy should be in PDF format.

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of 5 years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Inspector's Report, the Board Direction and Board Order in respect of the matter on the Board's website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

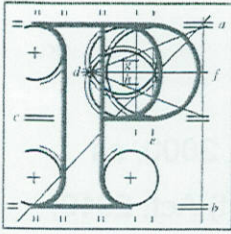
The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

A further enclosure contains information in relation to challenges by way of judicial review to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

Yours faithfully,



Sue Morel
Executive Officer



An
Bord
Pleanála

Board Order
ABP-303334-19

Planning and Development Acts 2000 to 2018

Planning Authority: Meath County Council

Application for Leave To Apply For Substitute Consent, by Keegan Quarries care of Quarry Plan Limited of 10 Saintfield Road, Crossgar, Downpatrick, County Down.

Development: Quarry at Trammon, Rathmoylon, County Meath.

Decision

GRANT leave to apply for substitute consent under section 177D of the Planning and Development Act 2000, as amended, based on the reasons and considerations set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

Having regard to Section 177D, Planning and Development Act, 2000, as inserted by Section 57, Planning and Development (Amendment) Act, 2010, the Board is satisfied that an environmental impact assessment and an appropriate assessment is required, in the light of the scale and nature of the quarrying and ancillary manufacturing activities that has been carried out.

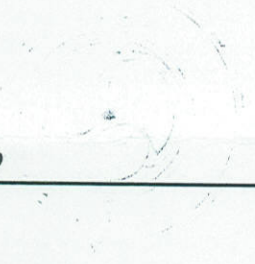
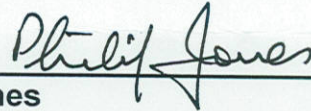
Furthermore, the Board examined whether or not exceptional circumstances exist such that it would be appropriate to allow the opportunity for regularisation of the development by permitting leave to make an application for substitute consent.

In this regard, the Board

- considered that the regularisation of the development would not be likely to circumvent the purpose and objectives of the Environmental Impact Assessment Directive or of the Habitats Directive,
- considered that the applicant could reasonably have had a belief that the development that took place was not unauthorised, having regard to the planning history of the existing quarrying development and case law at the time that the development took place,
- considered that the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment and to carry out an appropriate assessment, and for the public to participate in such assessments, has not been substantially impaired,

- considered the nature of the actual/likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out of the development,
- considered that the actual or likely significant effects on the environment, and likely significant effects on a European site resulting from the development could be remediated;

Taking all of the above into consideration, it is considered that exceptional circumstances exist such that it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.



Philip Jones

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this *8th* day of *May* 2019.



An
Bord
Pleanála

inspector's Report ABP-303334-19

Development	Retain quarry and ancillary concrete products manufacturing area.
Location	Trammon, Rathmolyon, Co. Meath
Applicant(s)	Keegan Quarries.
Type of Application	Leave to appeal for substitute consent under section 177C(2)(b) of the Planning and Development Act 2000 (as amended).
Type of Appeal	First Party Direct Application
Date of Site Inspection	12 th March 2019.
Inspector	Karen Kenny

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1.0 Introduction

- 1.1. This is an application for leave to apply for Substitute Consent for a quarry and ancillary manufacturing uses under section 177C(2)(C) of the Act.

2.0 Site Location and Description

- 2.1. The existing quarry is located approximately 2 kilometres to the north-west of the village of Rathmoylan and approximately 7 kilometres to the south of Trim in County Meath. The R156 road (which extends west from Dunboyne to meet the N4 National Primary Road close to Mullingar) runs along the southern boundary of the site.
- 2.2. The quarry site is long and narrow. It extends by almost a kilometre north from the R156 and at its widest is approximately 300 metres in width. The site is accessed from the R156 and there is a site office and car park adjacent to the entrance. The main quarry void is in the southern part of the site. To the north, there is an open yard, two large manufacturing buildings and other associated structures. Concrete products are manufactured and stored in this section of the site. An internal access road runs through the site from the R156 northward along the western perimeter of the site.
- 2.3. There is an adjoining quarry to the immediate west of the site that is in separate ownership (Kilsaran). There is scattered residential development along the local road network and Kill National School lies c.900 metres to the south east of the site entrance.

3.0 Planning History

- 3.1.1. Planning applications relating to the overall landholding:

PA Ref. 97/1868: Permission granted for quarrying of limestone on a site of 8.5 hectares to the north of the R156 in 1998. Condition no. 2 of this permission limited the operation of the quarry to a period of 15 years. Permission was subsequently granted in 2013, under PA. Ref. TA/130399, to extend the duration of this permission to 5th August 2018.

PA Ref. TA/2075: Permission granted in 2001 for a mobile block making plant, concrete yard and water settlement tank, temporary office and storage shed and an access road from the existing quarry.

PA Ref. TA/20408: Permission granted in 2003 for the erection of a building to manufacture concrete floors, pipes, blocks/bricks and associated products adjacent to the existing block yard permitted under PA Ref. 00/2075.

ABP Ref. PL17.206702 and PA Ref. TA/30334: Permission granted by the Board in 2004 (upholding the decision of the planning authority) for the continuance and extension of the quarrying of limestone over an area of 9.06 ha including the quarrying of 3 no. lower benches and progressive restoration, replacement settlement lagoons, pump house, relocated percolation area and ancillary works. Permission was also granted for the retention of an extension of quarrying over an area of 4.88 ha to the north, south and east of the area permitted under PA Ref. 97/1868, for an overburden storage area, settlement lagoon and stilling pond, offices / workshop, septic tank and percolation area and modifications to the layout permitted under PA Ref. 97/1868 over 10.53 ha on an overall site of 15.88 hectares. The existing quarry floor level was stated as 65.51m AOD and the proposed quarry finished quarry floor area was 71m AOD. Condition no. 8 of the permission limited the operation of the quarry to a period of 9 years and condition no. 2 stated that there shall be no excavation below a level of 7 metres OD. The application was accompanied by an Environmental Impact Statement. The duration of the permissions was extended in 2013 under PA Ref. TA/130400 to 5th August 2018.

ABP Ref. PL17.226884 and PA Ref. TA/60629: Permission refused by the Board in 2009 (overturning the decision of the planning authority) for an extension to the existing quarry and to establish a pre-cast concrete plant and concrete block plant on lands to the south of the R156, on grounds of visual impact, impact on amenities, disorderly development and potential impacts on groundwater and surface waters including an unacceptable risk of environmental pollution. An EIS accompanied this application.

ABP Ref. PL17.235960 and PA Ref. TA/900976: Permission granted by the Board in 2010 (upholding the decision of the planning authority) for a c.2.85ha extension to existing permitted extraction area (estimated extraction of c.1.33m tonnes over a period of up to 10 years at a maximum rate of 250,000 tonnes per annum), plus

ancillary development. Condition no.2 of the permission requires a 60m setback from roadside boundary and condition no.3 prohibits extraction below 50m OD. An EIS accompanied the application. The duration of this permission was extended under PA Ref. TA/130581 to 5th August 2018.

ABP Ref. QV0217: The Board under Section 261 of the Planning and Development Act 2000, as amended, determined having regard to the planning history of the site (inc. permissions granted under PL17.235960 (2010), PL17.206702 (2004) and 97/1868 (1998)), that permission was granted in respect of the quarry on the subject site and that the requirements in relation to registration of quarries under Section 261, as amended, were not applicable.

ABP Ref. PL17.248115 and PA Ref. TA/161419: The Board granted temporary permission in 2017 for three-years for the retention of a concrete silo structure. The submitted documents state that the structure is associated with and ancillary to the precast concrete facility permitted under PA Ref. TA/20408.

3.1.2. Referrals under Section 5 of the Planning and Development Act:

PA Ref. TA/S5/1655: Meath County Council determined in 2017 that a lime drying and batching plant incorporating storage bays and a storage hopper and an enclosure over the plant for the purposes of dust control constituted development which was not exempted development.

PA Ref. TA/S5/1656: Meath County Council determined in 2017 that an ESB substation installed for the purposes of supplying power to the precast concrete facility constituted development which was not exempted development.

PA Ref. TA/S5/1623: Meath County Council determined in 2017 that works including an ESB substation and lime drying and batching facility and an enclosure over the plant for the purposes of dust control constituted development which was not exempted development.

3.1.3. License to Discharge Trade Effluent to Waters

PA Ref. 04/2: Discharge licence for the discharge of treated effluent from quarry dewatering operations. The license specified the effluent treatment to be as follows - to be directed through settlement lagoons of min. 3600m³ capacity and then through Klargest Interceptor type NS 15 Class 1 full retention which accepts a normal flow of 14l/s unless otherwise agreed with the licensing authority; to pass through 30m

section of 10-15mm crushed rock berms and discharge through a v-notch weir to the receiving waters. Sets qualitative and quantitative standards for effluent characteristics, limiting total volume to 58m³ per hour or 1400m³ in any one day and setting maximum limit values. Set monitoring regime requirements and recording / log requirements.

3.1.4. Enforcement History:

Under PA. Ref. UD/15/284: An enforcement notice was served on the applicant in relation to 'unauthorised newly constructed block work electrical sub-station, construction of pre-cast concrete units i.e. silos/storage bays, 2 no. concrete batching plants and associated plant and a large industrial building'. There is no indication of any court proceedings or conviction in respect of the enforcement notice. The details submitted by the PA refer to other enforcement files that would appear to have been opened in response to third party complaints (PA Ref. UD/11/098, PA Ref. UD/10/388, PA Ref. UD/09/068, PA. Ref. UD/07/162, PA. Ref. UD/07/123, PA. Ref. UD/07/040, PA. Ref. UD/07/010, PA. Ref. UD/03/192). It appears that no warning letters or enforcement notices were served in these cases.

4.0 Natural Heritage Designations

- 4.1.1. The designated area of the River Boyne and River Blackwater SAC (site code 002299), is approximately 900 metres to the west of the appeal site at the closest point.
- 4.1.2. The designated area of the River Boyne and River Blackwater SPA (site code 004232) is approximately 2.6 kilometres to the north west of the appeal site at the closest point.

5.0 Legislative Context

- 5.1. Section 177C of the planning act states *inter alia*

(1) A person who has carried out a development referred to in subsection (2) may apply to the Board for leave to apply for substitute consent in respect of the development.

(2) A development in relation to which an applicant may make an application referred to in subsection (1) is a development which has been carried out where an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required, and in respect of which—

(b) the applicant is of the opinion that exceptional circumstances exist such that it may be appropriate to permit the regularisation of the development by permitting an application for substitute consent.

Section 177D states –

(1) Subject to section 261A(21), the Board shall only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required in respect of the development concerned and where it is further satisfied—

(b) that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

(2) In considering whether exceptional circumstances exist the Board shall have regard to the following matters:

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

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

(c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;

(d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;

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

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

(g) such other matters as the Board considers relevant.

6.0 The Application

6.1. Applicant's Submission

6.1.1. The applicant requests that the board grant leave to apply for substitute consent in respect of the works already carried out on the site. The case put forward by the applicant can be summarised as follows:

- The site has an extensive and progressive planning history and applications have been accompanied by Environmental Impact Statements, providing analysis in line with the EIA Directive and the Habitats Directive.
- The site has operated under applications previously considered by the Board (PL17.206702 and PL17.235960). The subject application is triggered by ancillary development in 2015 within the concrete manufacturing lands. These structures would have required a determination as to whether an EIA is required. The submission sets out the following reasons in respect of the applicants belief that development was not unauthorised:
 - The quarry site has been operating under multiple planning consents up to 5th August 2018 that cover the totality of the extraction area.
 - The applicant held the view that developments carried out from 2013 were exempted development on the basis that they constituted extensions, replacements, additions and that the use of the land did not change.

- The PA determined under S.261A(2)(a) that a Remedial NIS and Substitute Consent was required. On review the Board set aside the PA's determination (ABP Ref. QV0217).
- The applicant sought Section 5 declarations in relation to development and was advised that the developments were not exempted. Permission was sought to retain a silo and to relocate the concrete block yard and develop an ancillary mixing / batching plant on lands to the south of the R156. On appeal the Board granted permission for the silo (ABP Ref. PL17.248115) but refused permission for the relocation of the yard and development of a mixing / batching plant (ABP Ref. PL17.249285). On foot of concerns raised in relation to a piecemeal and disorderly approach at the site it was considered that uncertainty remained with respect to the sites planning status.
- EIA has been undertaken on site up to August 2018 (including monitoring regimes).
- Following legal opinion, work has commenced on preparing a remedial Environmental Impact Assessment Report (EIAR) for the overall site. The remedial EIAR baseline coincides with the 2015 date of structures that have triggered the requirement for substitute consent.
- Timeline limitations imposed under previous applications were derived from the volume of material and the extraction rate. Extraction volumes fell for an extended period due to economic factors, leaving unworked resources in situ.
- The application sets out details of the history of the applicants overall quarrying and value-added businesses, the quality of the limestone deposits being extracted, the value of recent investments, the contribution of the business to the local economy and the value of products in providing off site solutions for development nationally and internationally.

6.2. Planning Authority Submission

- 6.2.1. The submission of the Planning Authority welcomes the application and indicates support for the continued planned development of the site. The submission states

that subject to relevant assessments the proposals are generally supported by Section 12.0 and Policies RD POL 21 to RD POL 27 of the Meath County Development Plan 2013-2019.

6.3. Applicants Further Submissions

- 6.3.1. The applicant made a further submission following circulation of the submission of the Planning Authority. No new issues were raised.

7.0 Assessment

- 7.1.1. This is an application for leave to apply for Substitute Consent for a quarry and ancillary manufacturing use under section 177C(2)(C) of the Act. Section 177D(1) of the Act specifies that the Board can only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment was or is required in respect of the development concerned and where it is further satisfied that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.
- 7.1.2. The proceedings that have led to the making of this application are summarised as follows:
- Planning permission was originally granted for a limestone quarry on 8.5 hectares of land to the north of the R156 in 1998, under PA Ref. 97/1868. The area and depth of extraction approved under this permission would appear to be completed.
 - The extent of the quarry (area and depth) was increased in 2004 under ABP Ref. PL17.206702 (PA Ref. TA/30334). This application was accompanied by an Environmental Impact Statement.
 - The duration of the 1998 and 2004 permissions were extended in 2013 under PA Ref. TA/130399 and PA Ref. TA/130400 to 5th August 2018.

- In 2010, the extraction area of the quarry was further extended by c.2.85ha on land to the east of the original quarry under ABP Ref. PL17.235960 and PA Ref. TA/900976. This application was accompanied by an Environmental Impact Statement. The duration of this permission was extended in 2013 under PA Ref. TA/130581, again to 5th August 2018.
- Permission was granted on lands to the north of the extraction zone for a block making and pre-cast concrete manufacturing facility in 2001 and 2003 respectively, under PA Ref. 00/2075 and PA Ref. TA/20408. Conditions of these permissions required these developments to cease when the quarry development ceases.
- The planning authority, under Section 261 of the Act, directed the owner / operator of the quarry to apply for Substitute Consent in respect of quarrying activities on the site and advised that the application should be accompanied by a remedial EIS or a remedial NIS, or both. The Board determined in 2013, having regard to the planning history of the site that the requirements in relation to registration of quarries under Section 261 of the Act were not applicable (ABP Ref. QV0217).
- The submitted details state that the substitute consent application would incorporate the totality of the operational area at the quarry to include both the quarry and the ancillary concrete products manufacturing area, including the continued development of the quarry to previously permitted depths.

7.2. Requirement for Environmental Impact Assessment (EIA)

- 7.2.1. It is clear on the basis of the planning history detailed in Section 3.0 above that the planning consents pertaining to the subject site have expired and that permission would be required to retain the continuance of both the extraction and manufacturing activities, all of which were ongoing at time of site inspection.
- 7.2.2. The thresholds concerning EIA are set out in the *Planning and Development Regulations 2001* (as amended). With respect to the extraction activities, Schedule 5, Part 2, Class 2 (b) sets out the following applicable threshold: “*Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares*”.

- 7.2.3. The existing quarry exceeds the 5-hectare threshold. The quarrying activities permitted in 1998, 2004 and 2010 were all subject to EIA and no significant environmental impacts were identified as part of these assessments. A refusal of permission for an expansion of the quarry and the establishment of a new pre-cast concrete plant and concrete block plant on lands to the south referred to potential visual impacts, impact on amenities and potential impacts on groundwater and surface water (ABP Ref. PL17.226884).
- 7.2.4. While the approved quarrying activities on the site have been subject to EIA, the overall “project” to include the ancillary manufacturing activities has not been the subject of EIA. In addition, given the passage of time coupled with the expiration of consents, in addition to the fact that the overall “project” has not had the benefit of EIA I am of the view that the broad scope and purpose of the EIA Directive has not been met and that any application to regularise activities on the site would have a requirement for EIA. In coming to this conclusion, I have had regard to the fact that manufacturing uses on the site use aggregates from the existing quarry and that the manufacturing facility is therefore ancillary to and reliant on the continued operation of the quarry, thus forming one project for the purposes of EIA.
- 7.2.5. In conclusion, having regard to the scale and nature of the development that has taken place, and for which regularisation would be sought, I am of the view that a requirement for EIA with respect to Article 109(2), Planning and Development Regulations 2001, as amended, arises and that the likelihood of significant effects on the environment cannot be excluded for the purposes of EIA. The development, therefore, does qualify for consideration for leave to apply for substitute consent being a development in respect of which EIA is required.

7.3. Requirement for Appropriate Assessment (AA)

- 7.3.1. The second issue is whether the quarry development and manufacturing development that would be retained, would have required or requires Appropriate Assessment. Based on the source-pathway-receptor model, I consider the River Boyne and River Blackwater SAC and the River Boyne and River Blackwater SPA to be the relevant European Sites. The qualifying interests and conservation interests of these sites is summarised below.

River Boyne and River Blackwater SAC (Site Code: 002299)

Objective: To maintain or restore the favorable conservation condition of the Annex 1 habitat(s) and/or the Annex II species for which the SAC has been selected, namely:

- Alkaline fens.
 - Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, Alnion incanae, Salicion albae).
 - River Lamprey (*Lampetra fluviatilis*).
 - Salmon (*Salmo salar*).
- Otter (*Lutra lutra*).

The designated area of this site is located 900 metres to the west of the quarry site at the closest point.

River Boyne and River Blackwater SPA (Site Code: 004232)

Objective: To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA, namely:

- Kingfisher (*Alcedo atthis*).

The designated area of this site is located 2.6 km to the north west of the quarry site at the closest point.

- 7.3.2. The main potential for impact would appear to relate to changes in water quality in the SAC and SPA as a result of the development that would impact on the qualifying interests of the SAC and SPA. There is a hydrological connection between the site and the River Boyne and River Blackwater SAC and the River Boyne and River Blackwater SPA. The unnamed stream that runs along the northern site boundary discharges into the Trammon Stream which forms part of the designated area of the River Boyne and River Blackwater SAC from a location that is c. 900 metres downstream of the site. De-watered groundwater discharges from the subject site (under license) to this unnamed stream showing a clear pathway for pollutants. The potential for interaction between ground water and surface waters would also need to be considered, particularly as the existing quarry operates below the level of the water table. No habitats of conservation significance were noted within the site during site inspection. The potential for in combination impacts arising from other

plans and projects, including other quarries in the area, would also need to be considered.

AA is required in my opinion, as it cannot be excluded, on the basis of objective information, that the development either alone or in combination with other plans or projects, would not have had a likely significant effect on the River Boyne and River Blackwater SAC (Site Code: 002299) and the River Boyne and River Blackwater SPA (Site code: 004232) having regard to the qualifying interests and conservation objectives for these sites. The development, therefore, does qualify for consideration for leave to apply for substitute consent being a development in respect of which AA is required.

7.4. Exceptional Circumstances

- 7.4.1. With regard to exceptional circumstances, I propose to assess the subject application by reference to the matters to which the Board is required to have regard under S.177 D (2).

Would regularisation of the development concerned circumvent the purposes and objectives of the EIA Directive or the Habitats Directive?

- 7.4.2. I am satisfied on the basis of the site history and the level of environmental assessment that has been undertaken in respect of previous planning applications, that the regularisation of the subject development would not circumvent the purpose and objectives of the EIA Directive or the Habitats Directive.

Whether the applicant has or could reasonably have had a belief that the development was not unauthorised.

- 7.4.3. A robust argument has been submitted in respect of the above. The submission states that the owner / operator of the site did not have a belief that the development was unauthorised. It is clear that the site had the benefit of planning consent for a significant proportion of the quarrying and ancillary manufacturing activities to August 2018. I refer the Board to the summarised planning history in Section 3.0 above. It is not unreasonable in this context to accept that the applicant had a belief that the development in its entirety was not unauthorised. I am therefore, satisfied that the applicant could reasonably have had the belief that development within the site was not unauthorised.

7.4.4. Whether the ability to carry out EIA or AA and to provide for public participation in such an assessment has been substantially impaired.

I do not consider that there is any impairment to carrying out EIA and AA, including providing for public participation. In this regard, I would note the availability of baseline environmental data from EIS documents prepared in respect of previous planning applications on the site.

7.4.5. The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development.

I would note that previous EIA in respect of approved developments within the site did not identify any significant environmental impacts.

7.4.6. The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated.

In relation to EIA and AA, I am of the view that there is scope to address any potential impacts (e.g. on water quality) through avoidance or remediation and good management practices.

7.4.7. Whether the applicant has complied with previous permissions granted or has previously carried out unauthorised development.

There is no evidence to suggest that the applicant has any difficulties in relation to these matters.

Such other matters as the Board considers relevant.

The submission refers to the quality of the limestone deposits at this location and their role in producing concrete products for the national and international building markets and the economic value of activities that are being undertaken within the site.

7.5. Conclusion

- 7.5.1. It is my conclusion that exceptional circumstances do exist in this case as the regularisation of the development would not circumvent the purposes or objectives of the EIA Directive and the Habitats Directive; the applicant could reasonably have

had a belief that the development was not unauthorised; the ability to carry out EIA and AA and provide of public participation has not been substantially impaired; and the limited nature of any actual or likely effects on a European site resulting from the development and its continued use.

8.0 Recommendation

- 8.1. I recommend that the board grant leave to apply for substitute consent and direct that the application be accompanied by a remedial Environmental Impact Assessment Report and a remedial Natura Impact Statement.

9.0 Reasons and Considerations

Having regard to Section 177D of the Planning and Development Acts, 2000-2016 the Board is satisfied that:

- a) the development is one where an EIA or a determination as to whether EIA is required, and
- b) that exceptional circumstances exist by reference, in particular, to the following:
 - the fact that the regularisation of the development would not circumvent the purpose or objectives of the Environmental Impact Assessment Directive or Habitats Directive;
 - that the ability to carry out EIA and AA and provide for public participation has not been substantially impaired;
 - the reasonableness of the grounds for believing that the development was not unauthorised arising from the level of permitted development on the site; and
 - the nature and extent of the actual or likely significant effects on the environment resulting from the development.

The Notice to the applicants advising of the decision should also direct that:

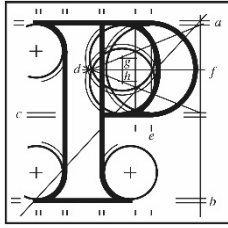
- a) the application be made within 12 weeks of the giving of the notice or such longer period as the Board may, on request, consider appropriate, and

b) The application includes a remedial Environmental Impact Assessment Report and a remedial Natura Impact Assessment.

Karen Kenny

Senior Planning Inspector

14th March 2019



An
Bord
Pleanála

Board Direction
BD-002900-19
ABP-303334-19

The submissions on this file and the Senior Planning Inspector's report were considered at a Board meeting held on April 30th 2019.

The Board decided that:-

- (a) An Environmental Impact Assessment is required, and a Natura Impact Assessment is required,
- (b) exceptional circumstances exist in the subject case, whereby it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent, and
- (c) the application for substitute consent shall be in respect of the entire quarry and all of the plant and structures, including the ancillary concrete products manufacturing area to the north of the quarry extraction area, the entire area being as outlined in red on drawing number KEE_TR/01, submitted to An Bord Pleanála on the 21st day of September 2018, and shall relate to the quarrying development that has taken place since the expiry of the planning permission for quarrying on the 5th day of August 2018, and to all manufacturing and processing activities, including the expansion of the blockyard, carried out on the overall site since 2013, but shall not include any proposed further quarrying or any further manufacturing or processing.

Accordingly,

- The Board decided to grant leave to apply for substitute consent, for the Reasons and Considerations set out below,
- To direct that the application for substitute consent shall include a remedial Environmental Impact Assessment Report and a remedial Natura Impact Statement.

REASONS AND CONSIDERATIONS

Having regard to Section 177D, Planning and Development Act, 2000, as inserted by Section 57, Planning and Development (Amendment) Act, 2010, the Board is satisfied that an environmental impact assessment and an appropriate assessment is required, in the light of the scale and nature of the quarrying and ancillary manufacturing activities that has been carried out.

Furthermore, the Board examined whether or not exceptional circumstances exist such that it would be appropriate to allow the opportunity for regularisation of the development by permitting leave to make an application for substitute consent.

In this regard the Board

- considered that the regularisation of the development would not be likely to circumvent the purpose and objectives of the Environmental Impact Assessment Directive or of the Habitats Directive,
- considered that the applicant could reasonably have had a belief that the development that took place was not unauthorised, having regard to the planning history of the existing quarrying development and case law at the time that the development took place.
- considered that the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment and to carry out an appropriate assessment, and for the public to participate in such assessments, has not been substantially impaired,
- considered the nature of the actual/likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out of the development,
- considered that the actual or likely significant effects on the environment, and likely significant effects on a European site resulting from the development could be remediated;

Taking all of the above into consideration, it is considered that exceptional circumstances exist such that it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

Note 1: The notice to the applicants advising of this decision should also direct that:

- (a) the application must be made within 12 weeks of the giving of the notice or such longer period as the Board may, on request, consider appropriate, and
- (b) the application must include a remedial EIAR and a remedial NIS.

Note 2: In deciding that appropriate assessment is required in this instance, which differs from the Board decision in 2014 under file reference number QV0217, the Board concurred with the view of the Inspector in the current case and noted that the development to which its decision under file reference number QV0217 related solely to the quarry extraction, whereas the development that would be subject of the application for substitute consent would encompass the totality of development at this location, including quarrying activity since the expiry of planning permission for such development and also the concrete block manufacturing area, which area is located immediately adjacent to the watercourse to the north of the site. Furthermore, the Board had regard to the judgement of the European Court of Justice in the case of People Over Wind – v – An Bord Pleanála (C-323/17).

[Please issue a copy of this Direction with the Order.]

Board Member

Date: 30th April 2019

Philip Jones

Appendix 2

Planning and Legal Site Chronology

Planning and Relevant Legal Proceeding / Case Law Chronology pertaining to Tromman Quarry

The following provides in chronological order, from the most recent to the oldest, the planning permissions and recent planning applications (in black) covering the site, along with the recent threatened legal proceedings and pertinent case law (in blue) and the applications that the Council and the Board cannot consider (in orange).

- **In 9/2021** – An Board Pleanala letter requesting an exceptional circumstances submission.
- **In 2/2021** - under PA ref TA/201918 Section 34 Continuation of Use of Ancillary Plant and Machinery - Quarry – returned by Council due to outstanding Substitute Consent Issues.
- **In 2/2021** - under PA ref. TA/201910 Section 34 Retention Application for Ancillary Manufacturing Plant and Machinery - Quarry – returned by Council due to outstanding Substitute Consent Issues.
- **In 1/2021** – under P.A ref TA/200151 Section 34 Application for further Quarrying at Tromman Quarry – returned by Council due to outstanding Substitute Consent Issues.
- **In 12/2020** – Enactment of Planning and Development and Residential Tenancies Act 2020 providing for 3rd party exceptional circumstances involvement.
- **In 12/2020** - under PA ref. TA/201910 Section 34 Retention Application for Ancillary Manufacturing Plant and Machinery submitted
- **In 12/2020** - under PA ref TA/201918. Section 34 Continuation of Use of Ancillary Plant and Machinery submitted
- **In 7/2020** – Ballysax Case Judgement issued, requiring third party involvement in determining exceptional circumstances.
- **In 3/2020** – Keegan Quarries requested An Board Pleanala to exercise it's duties with respect to Substitute Consent as no stay action had been applied for in a reasonable time frame.
- **In 11/2019** – Eco Advocacy requested 14 day notice period in advance of decision, in order to seek a stay on decision of Substitute Consent Application.
- **In 2/2020** – under P.A ref TA/200151 Section 34 Application for further Quarrying at Tromman Quarry
- **In 9/2019** – ABP-305384 Section 37L Application- Accepted by the Board who when threatened with a legal challenged returned the application in **October 2019**.
- **In 7/2019** - ABP-305049 - Substitute Consent Application – Tromman Quarry
- **In 2017**, under PL17.248115 (PA ref. TA/161419), the Board granted permission for the temporary, three-year (3rd October 2020), retention of a concrete silo structure, with a footprint of 99m² and measuring 28.6m in height, associated with and ancillary to the existing permitted precast concrete facility permitted under PA ref. TA/20408.

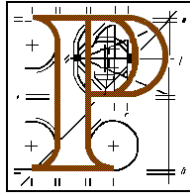
- [In 2017 - Cronin Supreme Court Case reversal of previous judgement in relation to ancillary plant and machinery.](#)
- **In 2016**, s.5 Applications to Meath County Council covering Ancillary Development as covered by enforcement Notice UD15/284.
- **In 2013**, under PA ref. TA/130581, the planning authority granted permission for the extension of the duration of the permission granted under PA ref. PL17.235960 (TA/900976), with permission to expire on the 5th August 2018.
- **In 2013**, under PA ref. TA/1 30400, the planning authority granted permission for the extension of the duration of planning permission granted under PL17.206702 (PA ref. TA/30334), with permission to expire on the 5th August 2018.
- **In 2013**, under PA ref. TA/1 30399, the planning authority granted permission for the extension of the duration of the permission granted under PA ref. 97/1 868, with permission to expire on the 5th August 2018.
- **In 2010**, under PL17.235960 (PA ref. TA/900976), the Board granted permission for Extension of approximately 2.85 hectares to the existing permitted extraction area (to a level of 50mAOD), demolition of the existing administration office and workshop and existing single storey dwelling and garage located in the southern quadrant of the lands and associated accommodation works to include landscaping and boundary treatments, restoration proposals including construction of berms and accessway improvements on a total site area of 4.274 hectares.
- **In 2004**, under PL17.206703 and PA ref. TA/30334, the Board granted permission for the continuance and extension of quarrying (working to a depth of 13mAOD) of limestone, progressive restoration of the eastern bench to the adjoining property boundary, and associated development and works, and the retention of extension at quarrying over an area of 4.88 hectares, storage of overburden material, settlement lagoon and stilling pond, office and workshop area, septic tank and percolation area, modifications to the layout permitted under planning register reference number 97/1868 to include the relocation of the weighbridge, wheelwash, control cabin, fuel tanks, bunds, fencing and ancillary development works and landscaping The extension and entire quarrying operation to be completed within 15 years as per the conditions granted under PA ref. 97/1 868 (5th August 2013).
- **In 2003**, under PA ref. TA/20408, the planning authority granted permission for the erection of a building to manufacture concrete floors (to include batching plant), pipes, blocks, bricks and associated products with site works adjacent to existing block yard previously granted under planning ref.no 002075. **(The proposed development shall cease when the quarry permitted under 97/1868 ceases)**

- **In 2001**, under PA ref. 00/2075, the planning authority granted planning permission for a mobile block making plant, concrete yard and water settlement tank, including temporary offices and storage shed. **(The proposed development shall cease when the quarry permitted under 97/1868 ceases)**
- **In 1998**, under PA ref. 97/1868, the planning authority granted permission (15 years – 5 August 2013) for a quarry on 8.5ha to a level of 62mAOD to include an office and a workshop, a mobile pressing plant, wheel wash, weighbridge and fuel storage unit car and truck parking facility. (This consent was extended by TA/1 30399)

Appendix 3A

PL17.206702 Board Direction and Inspectors Report

An Bord Pleanála



Inspector's Report

Development: Continuance and extension of quarrying of limestone over an area of 9.06 ha including for quarrying of 3 no. lower benches and progressive restoration of the eastern bench to the adjoining property boundary, replacement settlement lagoons, pump house, relocated percolation area, and all ancillary development, works and landscaping. Permission is also sought for retention of the following development and works: extension of quarrying over an area of 4.88 ha to the north, south and east of the area permitted under Reg. Ref. 97/1868; storage of overburden material over an area of 3.44 ha; settlement lagoon and stilling pond; office and workshop area (floor area 364.5 sq.m.); septic tank and percolation area; modifications to the layout permitted under Reg. Ref. 97/1868 to include for the relocation of the weighbridge, wheelwash, control cabin, fuel tanks, bunds, fencing and ancillary development, works and landscaping. The overall retention area comprises of 10.53 ha on an overall site of 15.88ha at Tromman, Rathmoylan, Co. Meath. The application is accompanied by an Environmental Impact Statement.

Planning Application

Planning Authority : Meath County Council
Planning Authority Register Reference : TA/30334
Type of Application : Permission & Retention Permission
Applicant : Keegan Quarries Ltd.
Planning Authority Decision : Grant subject to conditions

Planning Appeal

Appellant : Kilsaran Concrete Ltd.
Type of Appeal : 3rd Party v. Decision to Grant
Observer(s) : None

Date of Site Inspection : 13/07/04

Inspector : Pauline Fitzpatrick

Appendices

1. Photographs
2. Extracts from the Meath County Development Plan, 2001

1.0 SITE LOCATION AND DESCRIPTION

The site which has a stated area of 15.8 hectares is located to the north of the R.156 c. 2km to the north-west of Rathmolyon village and c.6.5 km to the south of Trim. It is c. 1.8km to the south-east of the junction of the R.156 with the R.160. The site is roughly rectangular in shape and is setback from the road save for a narrow projection onto same to allow for access. There is an established quarry on the site. It is not visible from the road due to the rising nature of the land between the road and its southern face. The ancillary buildings associated with the activity including the office/workshop, wheelwash, weighbridge, pumphouse and security hut are located in the southern most section of the site nearest to the access. There are two benches evident in the quarry floor, the lowest along the eastern boundary which is currently being worked while the second (higher) is being used for storage of extracted material. Mobile equipment including jaw crusher, feed hopper and impact crusher in addition to vehicles for excavating, loading and hauling material are on the site. The lower bench is c.25 metres below the level of the adjoining lands to the east. Localised slippage along the eastern boundary would appear to have occurred in the past with subsequent backfilling undertaken. The lands to the north and west of the quarry floor are used for storage of top soil and overburden. The internal site runs along the western boundary. This also provides access to the blockmaking plant which bounds the site to the north and which is in the ownership of the applicants. There is no delineation of the shared boundary. An open drain runs along the north-eastern corner of the site and takes sump water from the existing settlement lagoon to the south of same.

The site is bounded by an existing Readymix Ltd. quarry, block plant and asphalt plant to the west also accessed from the R.156 (c. 200 metres to the west). A derelict dwelling known as Tromman House is to the west with mature trees around same. The lands to the east are in agricultural use with the shared boundary delineated by trees and hedgerows. It is noted that the hedgerow along the south-eastern part of the boundary has been recently planted. There is a single storey dwelling to the east of the site access with the dwelling to the west unoccupied and derelict. The latter most likely served as the gate lodge to Tromman House. There is a further dwelling to the south-west of the site on the opposite side of the Regional Road.

The regional road in the vicinity of the site is governed by a broken white line with the existing site access afforded good sight distances in either direction. The road was noted to be well trafficked with a significant proportion of the vehicles noted to be HGVs associated with quarrying activities.

2.0 PROPOSED DEVELOPMENT

The application was lodged with the planning authority on the **05/09/03** with further information and public notices (detailing the submission of said information) received on **12/01/04**. The application is accompanied by an EIS.

The proposal entails:

Retention, continuance and extension of quarrying of limestone on an overall site of 15.88 hectares:

The approved application area was 8.375 ha. with an approved extraction area of 3.8513 ha. The area to which the application for **permission to retain and continue** refers is 10.53 hectares including –

- the area of extraction 4.88 hectares to the north, south and east of the area permitted.
- Storage of overburden material over an area of 3.44 hectares
- Settlement lagoon and stilling pond
- Modification to permitted layout including office and workshop area (364 sq.m.), septic tank and percolation area, weighbridge, wheelwash, control cabin, fuel tanks, bunds, fencing and other ancillary works.

Permission is being sought for –

- Extraction on 9.0667 hectares including 3 no. lower benches.
- Progressive restoration of eastern bench
- Replacement settlement lagoons
- Pump House
- Relocated Percolation Area
- Ancillary Works

Extent of Proposal

The mineral reserves on site are estimated to be 2.2 million tonnes of limestone. The established rate of extraction is to be maintained at 250,000 tonnes per annum giving an estimated life of the proposed quarry extension of 9 years. Current blasting rates to be continued namely at 2 to 3 week intervals. An estimated 15,000 tonnes is produced by each blast.

It is proposed to excavate a further 3 no. benches at a depth of 15m per bench from the existing quarry floor of 65m OD. The existing floor levels of the quarry are stated to be 65.51m OD for the lower bench and 68.5m OD for the upper bench. The proposed quarry floor level is to be c. 13m OD. The final depth would be 71 metres. The new haul road will be from the northern part of the site. The quarry face will advance westwards.

Overburden material currently stored on the northern part of the site will be used to reinstate c.25 m. standoff to the eastern boundary except where to allow for some

rounding of the quarry crest on restoration. The works are to be undertaken concurrently with the opening of the lower benches on the eastern part of the site.

Water

- As it is proposed to extract from below the level of the identified water table it is anticipated that there will be local lowering of the ground water table particularly along observed fracture zones north and south of the site. In general bedrock around the quarry has a low permeability and therefore the cone of depression around the quarry will be localised. The lowered ground water in the present quarry floor is not significantly affecting the site production well (and by implication domestic well no.1). Based upon the rate of discharge from the quarry sump, the ground water contributing area to the quarry is 700,000 sq.m., greater than the quarry footprint and topographic contributing area. Ground water in-flow to the quarry is from two fractures/fissures with a north to south orientation. The cone of depression created by the quarry will be bound west by a similar cone of depression created by the neighbouring Readymix Ltd. site. The recycling of water discharged from the quarry and/or the neighbouring Readymix Ltd. site via stream A and the northern fracture/fissure would explain the apparent large ground water contributing area for the quarry which contradicts the apparent tight nature of the bedrock adjacent to the quarry.
- The ground flow is predominantly controlled by weathering enhanced fracture/fissures which decrease in size and frequency with depth. Deepening the quarry to 13 m. OD (c. 54 metre below rest water table level) is unlikely to expose further water bearing features below presently dry sections of the quarry face. Owing to the low permeability, the cone of depression will be steep and will remain so with further excavation.
- Based on the precautionary principle an increase in ground water ingress of approx. 25% should be allowed for as the quarry increases in depth. Including this inferred increase in ground water ingress the area of ground water contribution and by inference cone of drawdown would increase to 875,000 sq.m.
- Save for the well on site and that serving the adjacent concrete plant three 3rd party wells fall within the probable cone of drawdown created by the present operations. One well (no. 8) can be demonstrated to be reacting to drawdown in the water table by the quarry operations. This reaction is due to a direct hydraulic connection via a weathered fissure/fracture connecting the well to the quarry.
- The quarry has been in operation for 5 years and the only measurable impact has been to well no.8
- On site and adjacent 3rd party wells will be monitored so as to establish any potential changes in ground water levels and quality. If adversely affected an alternative water supply will be provided.
- An application has been made for a license to discharge trade effluent to waters.
- Following completion of the extraction the central section will fill with water to a surface level of around 63 m. OD

Flora and Fauna

The adjacent site to the west has a breeding population of bats and it is likely that they use the trees in the hedge on the western side. Native species of woody plant will be

used in final landscaping and will have the effect of extending the woodland to the west to the present site.

Air & Climate

- An additional dust monitoring location to be provided on the boundary of the extension.
- Mitigation measures will be taken to reduce the amount of dust generated by the quarry operations including speed bumps to reduce vehicle speed, dampening down of material, spraying of roads etc.

Noise

- It is not anticipated that blasting will result in significant levels of vibration at the sensitive receptors. The extension of the quarry, in effect, moves blasting further away from sensitive receptors and the continuation of amelioration measures will ensure that peak particle velocity and air over pressure are below the recommended standards at the nearest sensitive receptors.
- The construction of screening banks around the site extension area will attenuate noise arising from site operations.
- The most appropriate method to ensure that health and safety requirements are achieved and that mitigation of noise impacts to external sources are minimised is to fit self-adjusting alarms to vehicles and machinery.

Landscape

The visual sensitivity of the area is considered to be low.

Traffic and Transportation

- 1100 tonnes per day based on 20 tonnes per lorry gives an average of 55 truck movements both in and out per day. Employee and visitor traffic is expected to account for 6 car movements in and out per day.
- The majority of HGV's will travel northwards towards Trim. The said route will avoid the urban area of Rathmolyon and Laracor.
- The extension of the quarry will not result in an increase in output. As such there is no substantial difference between the existing traffic generation from the existing quarry and the peak estimated traffic generation for the proposed extension. Therefore there will be no additional impact.
- The entrance is to be improved to allow for 160m sight distances from a 4.5 metre set back. Consent from the adjoining landowner has been attained.

Archaeology

The extension of the quarry should be subject to archaeological conditions.

Note: An objection to the proposal received by the planning authority has been forwarded to the Board and is on file for its information. The issues raised can be summarised as follows:

- Non-compliance with planning permission
- Impact on adjoining land

3.0 TECHNICAL REPORTS

The **Environmental Health Officer** in a report dated **06/10/03** has no objection to the proposal subject to conditions.

The **Department of the Environment, Local Government and Heritage** in letters dated **08/10/03** and **14/10/03** recommends conditions relating to archaeological monitoring and mitigation measures to protect bats, their roosts and foraging areas.

The report from the **Area Engineer** dated **13/10/03** seeks further information on improvement of sight lines at entrance, toilet facilities and details of levels to Malin Head OD. The comments from the Area Engineer as noted in the second Executive Planner's report have not been forwarded to the Board.

The report from **G. Duggan Senior Engineer** dated **30/10/03** recommends a request for further information. The comments from the Environment Section following the further information submission, as referred to in the second Executive Planner's report, although requested, have not been forwarded to the Board. However the Executive Planner's report notes that the said report states that the further information response is considered to be reasonable and acceptable.

The reports from the **Executive Planner** dated **28/10/03** and **01/03/03** refer. The first states that there are no major concerns with the principle of the proposed extension. It is seen as a logical extension to a commercial activity in an area where there is an established use. The applications for retention similarly do not cause concern and it is accepted that the location of many of these pieces of equipment is not critically important in planning terms, provided issues over their visual impact have been assessed. This has been addressed in this instance. Therefore provided the traffic, groundwater and public health issues can be addressed by further information then the planning officer is of the opinion that the application should be granted. A further information request is recommended. The second report following the further information submission states that the amount of hedgerow to be removed along the roadside is considered excessive at 160m and the applicants should be conditioned to simply reduce its height. The intensity of activity on site is not proposed to increase and therefore the entrance granted under P97/1868 should be considered adequate to cater for the traffic levels proposed. Monitoring data to date demonstrates that current water demand is not having a detrimental impact on neighbouring well supplies. Therefore the applicant does not consider it necessary to test the capacity of the site wells. In terms of the cone of depression the analysis and reasoning used by the applicant appears reasonable and is acceptable. In any event it shall be conditioned that monitoring of local wells continues and any adverse impacts remedied. No details are given as to noise levels and frequency of vehicles and machinery emitting a

warning noise. As the intensity of activity on site is not proposed to increase therefore the entrance granted under P97/1868 should be considered adequate to cater for the traffic levels proposed. A grant of permission subject to conditions is recommended.

The reports from the **S.E.E. Road Design Office** dated **03/11/03** and **23/02/04** refer. The latter notes that the details given on drawing 5/03 submitted by way of further information are incorrect as the sightlines are to the running edge of the near carriageway; this will increase the length of hedgerow that requires removal. This can be conditioned.

4.0 PLANNING AUTHORITY'S NOTIFICATION OF DECISION

The planning authority decided to grant permission for the above described development subject to 22 conditions. Of note:

Condition 2: Site restoration requirements and timescale for same

Condition 4: Construction of 25 metre development free buffer zone along the eastern boundary prior to commencement of development/extraction of the area referred to as 9.06 hectares. To be graded and mounded so as to allow for a 3 metre high mound along the eastern boundary.

Condition 6: Lowering of roadside hedgerow to a level of 1 metre for a 20 metre section on each side of the entrance. The removal of 160 metres of hedgerow as proposed is not permitted.

Condition 7: Operation to be completed within 15 years as per the conditions attached to permission P97/1868.

Condition 8: Monitoring requirements for groundwater, surface water, noise, vibration, air overpressure and dust.

Condition 9: Monitoring of ground water supply and quality on site and at adjoining wells as may be determined by the Planning Authority. Developer to make such provision as is necessary to ensure immediate mitigation if same are adversely affected by the development during all stages of development and in the post closure period. In the event of disruptions of water supply, the operations(s) causing the disruption shall be immediately reduced or ceased, as appropriate, until the affected water supply has been restored or replaced.

Condition 11: Dust limits and monitoring

Condition 16: Noise limits

Condition 17: Requirements with respect to blasting

Condition 18: No excavation below 7m OD Malin Head

Condition 19: Archaeological assessment requirements

Condition 20 –22: Cash deposit/bond and financial contributions

5.0 GROUNDS OF APPEAL

The 3rd Party appeal by Kilsaran Concrete Ltd. accompanied by supporting documentation and photographs refers. The issues raised in the submission can be summarised as follows:

- There is no objection to the proposal in principle.
- Given the physical state of the eastern boundary, in particular the area to the south of the existing quarry sump, it is considered that the provisions of condition 4 are not explicit enough and cannot be achieved. If a slope of 1:2 in accordance with the intention of condition 4 is to be provided a buffer zone of approx. 75 metres in width would be required. A revised wording for condition 4 is recommended.
- The current situation is a real and continuing hazard for the health and safety of persons and livestock on the appellant's property.
- The applicant has not complied with the permission on the site and unauthorised development has, and continues to occur.

6.0 APPLICANT'S RESPONSE TO GROUNDS OF APPEAL

The submission by Declan Brassil and Company Ltd. on behalf of the applicant refers. It is accompanied by supporting documentation. The salient points of the response are considered to be as follows:

- It is submitted that the appeal is confined to a single condition and that the Board may confine its consideration of the matter to this single condition.
- The issues relating to enforcement of a previous planning permission are not matters relevant to the Board's consideration of the appeal.
- The appeal is primarily motivated by commercial concerns and is vexatious and should be dismissed.
- All matters which needed to be addressed and regularised were included in the planning application and the EIS.
- The requirements of condition 4 can be achieved in a manner which ensures slope stability and the security of the common boundary without sterilising a significant amount of the mineral resources on the applicant's land. The appellant's proposed amendments would have a significant negative operational and commercial impact on the quarry.
- The appellant's requirements of a 75 metre buffer zone to allow for a slope of 1:2 are in excess of what is required for boundary and slope stability.
- Locally bedrock excavations have previously progressed too far to the east to ensure the stability of the hedge over a few metres length of slope. Elsewhere only minor instability or rockfall might occur, but large scale movements extending to the hedge or beyond are unlikely. Nevertheless it is recommended that a compacted backfill batter of claybound rock is formed to certain design objectives. The proposed backfilling will render the in-situ ground within both the appellant's and applicant's lands quite secure and will comply with the general requirements of condition 4. The volume of the proposed backfilling will comprise 25000 m³ of selected fill materials. Such material is available on site. It would be prudent to undertake the construction works before October.

- The wording of condition 4 should be retained or amended so that the said backfill batter be formed in accordance with the drawings submitted.
- There are no reasons to assume that instability will occur as a consequence of the proposed excavations extending below the existing quarry floor. Excavations to the lower levels can proceed below the toe of the backfill slope A 3m. berm between the toe of the backfill buttress and crest of the deepened excavation is considered prudent so as to avoid the risk of break-back undermining the front of the backfill.

7.0 PLANNING AUTHORITY'S RESPONSE TO GROUNDS OF APPEAL

The submission states that the 25 metre buffer should be maintained and the applicant should make an effort to restore the eastern quarry face to allow for this buffer. With this in mind the planning authority would accept a solution that the Board feels acceptable.

8.0 RESPONSES TO SECTION 131 REQUEST (Applicant's Response to Grounds of Appeal circulated for comment)

8.1 Appellant

- The applicant, by taking rock which they were not entitled to, has effectively sterilised a significant amount of potential mineral resource within the appellant's property.
- The original permission restricted the base of excavation to a level of 62m O.D., the current lower working bench is now at c.54m O.D. With the exception of the upper 3m to 6m of this face over the remaining small area of the original planning approved quarry, all other rock that has and is currently being extracted is not consented material.
- In terms of non-compliance with a previous permission it is specifically because of the long history of non-compliance, not only confined to this site but elsewhere that the amendments to condition 4 are being sought. The appellant is of the opinion that if condition 4 is not tightened up incorporating a specific time frame for compliance including provisions for some form of certification that compliance has occurred, there is every possibility that non-compliance will continue.
- Condition 4 refers to the eastern boundary only and not the entire quarry perimeter as shown on the plan accompanying the applicant's submission.
- The drawings accompanying the applicant's submission do not show the 3 metre high bund at the crest of the slope of the backfill batter.

8.2 Planning Authority

The planning authority has no further comments to add.

9.0 RELEVANT PLANNING HISTORY

97/1868 – permission granted on the site in December 1998 for a quarry on 8.5 hectares to include office and workshop, mobile processing plant, wheel wash, weigh bridge, fuel storage unit and car and truck parking facilities. Condition 2 limited the operation of the quarry to 15 years. Condition 4 prohibited excavation below the level of 62m. O.D.

00/2075 – permission granted for a mobile block making plant, concrete yard and settlement tank including temporary office and storage shed on lands to the north of the appeal site. Condition 1 requires compliance with conditions attached to P97/1868. Condition 5 requires that the activity to cease when the quarry permitted under P97/1868 ceases.

PL17.111632 – permission granted to Readymix Ltd. for the quarrying of limestone over an area of 9.9 ha to the west of the appeal site. An extraction rate of approximately 400,000 tonnes per annum is proposed with reserves estimated at 6 million tonnes. Condition 4 restricts extraction to a level of 54 m OD.

PL17.125619 – permission granted to Readymix Ltd. for a concrete batching plant on the adjoining site to the west.

10.0 DEVELOPMENT PLAN PROVISIONS AND OTHER POLICY DOCUMENT PROVISIONS.

The **Meath County Development Plan 2001** refers.

Section 3.6.16 of the plan addresses the extractive industry and buildings materials production. It is an objective of the planning authority to facilitate the exploitation of the county's natural resources and to exercise control over the types of development taking place in areas containing proven or potential deposits. In such areas only development compatible with mining or quarrying activities will be permitted in areas being or likely to be used for these purposes. It will also be an objective of the planning authority to ensure that extractive industries do not adversely affect the environment or adjoining existing land uses.

The quarry is noted as being operational on the relevant map accompanying the plan.

The **Draft Planning Guidelines Planning Authorities on Quarries and Ancillary Activities** are noted.

11.0 ISSUES AND ASSESSMENT

I note that the agent for the applicant is of the opinion that the appeal is vexatious and should be dismissed however I am of the opinion that the appellant's submission does raise issues that need to be considered by the Board relating to boundary treatment and impact on adjoining property. Thus I would not concur with the applicant in this regard.

As evidenced on day of inspection quarrying is occurring along the central eastern section of the site. From my estimation the quarry floor is c. 25 metres lower than the levels of the adjoining lands to the east which have a stated level of 80.0 (given on figure 3.5b submitted by way of further information) and as such the appellant is correct in estimating the level of the lower bench at c.54m. OD. As asserted by the appellant these works are outside the delineated area and depth for which permission to retain is being sought as given on the drawings accompanying the application and as given in figure 3.4 of the EIS. I note however that the said area is within the 'area of future extraction' as given on figure 3.4 while permission is being sought for a significant increase in the depth of the quarry (to c.71 metres).

While I note and appreciate the appellant's concerns regarding the applicant's non-compliance with a previous permission on the site and the continuing unauthorised works the agent for the applicant is correct in stating that the issues of enforcement are not within the remit of the Board. I note that Section 35 of the Planning and Development Act 2000 allows for a refusal of permission based on past failures to comply with planning permissions/conditions however this is a function for the planning authority and not the Board. I note that the planning authority did not consider that such a course of action to be appropriate in this instance.

From my interpretation of the grounds of appeal the appellant has no objection in principle to the development. Taking into consideration the above opinion that the issue of enforcement is not within the remit of the Board the substantive issue arising in the case would appear to relate to the adequacy of condition 4 attached to the planning authority's notification of decision requiring a 25 metre buffer zone along the eastern boundary. As a consequence of same the Board, if so disposed, could adjudicate on the condition, only, as allowed for by Section 139 of the 2000 Act as suggested by the agent for the applicant. Should the Board decide to take this approach it is my opinion that the conditions attached by the planning authority in its notification of decision to grant permission are reasonable and address all the relevant issues.

Notwithstanding the above course of action and following an examination of the documentation on file and a site inspection I submit that the substantive issue arising in the case relates to the said eastern boundary treatment. The principle of quarrying is established both on the site itself and in the area generally bearing in mind the Readymix Ltd. quarry and associated block making plant directly adjoining the site. Thus it is my opinion that the proposal would be in accordance with the development plan objective which seeks to facilitate the exploitation of the county's natural resources. I am also of the opinion that the environmental issues arising from the proposed development have been adequately identified and assessed in the EIS

accompanying the application and the further information subsequently submitted and that any matters arising could be satisfactorily addressed by way of condition.

The appellant considers that the requirements of condition 4 are not stringent enough and that the applicant by extracting rock “which they were not entitled to” has effectively sterilised a significant amount of potential mineral resource within the appellant’s property in that it would have to retain a significant buffer on its side of the boundary. This would appear to suggest that the applicant proposes to seek to quarry the adjoining lands at some stage. However there is no record of an extant permission on the site for a quarry or indeed evidence that a planning application has been submitted or that permission for same would be forthcoming. Thus I would submit that the existing and proposed development on the appeal site does not prejudice the current agricultural use of the lands and that assertions as to the impact of the proposal on any future use is purely speculative. While I note their concerns regarding notification of blasting operations etc. in terms of health and safety I consider that to date this was a matter for enforcement by the planning authority. In terms of the current proposal for continuation and extension of the facility I consider that the said issue can be satisfactorily addressed by way of condition.

As evidenced on day of inspection the site has been quarried to a depth of c.25 metres (decreasing to a depth of c.10 metres along the northern stretches of the boundary) in close proximity to the eastern boundary with a setback ranging from a maximum of c. 9 metres to points where there the works are right up against the boundary. The said boundary is delineated by a hedgerow of trees and bushes with barbed wire in places while recent planting along the south-eastern stretches of the boundary was noted. As viewed from the appellant’s land an electric fence has been constructed at a setback from the hedgerow. As per the details given on the plans accompanying the previous application for which permission was granted under ref. 97/1868 a setback of 25 metres was to be retained from same. While the hedgerow is in place there is evidence that slippage had occurred at one point with backfill undertaken to stabilise the ground (see photo 8). I note that the report from Geoffrey Walton, Mining Geologists and Geotechnical Engineers, Mine and Quarry Designers which accompanies the applicant’s appeal response, states that although excavation works had previously progressed too far to ensure the stability of the hedge over a few metres length of slope, only minor instability or rockfall might occur elsewhere and that large scale movements extending to the hedge or beyond are unlikely.

The applicant refutes the appellant’s assertion that in order to attain a 1:2 slope a buffer area of 74 metres would be required. The said report from Professor Walton states that the general requirements of condition 4 can be met with a compacted backfill batter of claybound rock with a 3 metre berm between the toe of the backfill buttress and crest of deepened excavation. As measured from Drawing Nos. GW1 and GW2 the buffer (taken from the buttress to the fence line along the boundary) would vary in width from 39 metres along the southern stretches of the boundary to less than 15 metres along the northern stretches. However as noted by the appellant the 3 metre high bund at the crest of the slope recommended by Professor Walton has not been shown on the accompanying drawings. The provision of same will inevitably require a strip of ground greater than the 3 metres proposed in the remedial works and thus a backfill buttress would be required to support same. The appellant has delineated what it considers to be the said requirements which would increase the

base width of the backfill (as measured to the shared boundary) by up to 5 metres. Concurrently Professor Walton also considers that a further 3 metre berm between the toe of the backfill buttress and crest of the proposed deepened excavation is considered prudent to avoid the risk of break-back undermining the front of the backfill. As above this 3 metre setback has not been delineated on the plans.

While the appellant has queried the use of a number of phrases in the said report and submitted what it considers to be the final boundary treatment requirements, it has not actually contested the viability of the said proposal. Thus on the balance of evidence before the Board I consider that the proposed remedial works are reasonable to ensure ground stability but would suggest that the wording of condition 4, which makes specific reference to a 25 metre wide development free buffer zone, would not satisfactorily address or cover the recommendations of the said report and thus would need to be altered accordingly. In addition I recommend that the applicant be required to submit revised drawings with the recommended 3 metre high screening bund and the necessary backfill buttress to support same clearly delineated, within a specified period of time should permission be granted. I consider that the appellant's request for a specific time period for the said works to be carried out is entirely reasonable and indeed note that Professor Walton in his report states that it is "prudent to undertake the construction works before October 2004". In view of such a recommendation I recommend that a time restriction of 4 months be attached within which such works are to be carried out. A report certifying compliance with the necessary works by a suitably qualified person should also be sought as suggested by the appellant.

12.0 RECOMMENDATION

REASONS AND CONSIDERATIONS

Having regard to the existing quarry on the site, to the provisions of the current Development Plan for the area in relation to facilitating the exploitation of the County Meath's natural resources and to the pattern of development in the area, it is considered that the subject to compliance with conditions the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health or give rise to a serious risk of pollution and would be acceptable in terms of traffic safety and convenience. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out in accordance with the plans and particulars lodged with the application as amended by the revised plans and particulars received by the planning authority on the 12th day of January, 2004, except as may be otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. There shall be no excavation below a level of 7 metres OD.

Reason: In the interest of clarity

3. The proposed remediation works along the eastern site boundary as delineated in the plans and particulars received by An Bord Pleanala on the 30th day of April 2004 shall be carried out within four months from the date of this order. Revised plans delineating the proposed 3 metre high bund at the crest of the slope and the necessary backfill buttress to support same in addition to the proposed 3 metre berm between the toe of the backfill buttress and crest of the proposed deepened excavation shall be submitted to the planning authority for written agreement prior to commencement of development. A report from a suitably qualified person certifying that the works carried out comply with the stated plans and particulars shall be submitted to the planning authority at the end of said the four month period.

Reason: In the interest of amenities of adjoining property

4. (a) In dry weather conditions all roads within the site and the working face shall be sprayed with water at least three times a day, in accordance with the requirements of the planning authority. A wetting agent shall be included in the spray at a ratio specified by the manufacturer.

(b) All vehicles other than private cars exiting the site shall first pass through a wheel-wash facility of suitable design and fit for that purpose.

(c) Vehicles used for transport of material from the site shall be equipped so as to prevent spillage and dust blow.

(c) The developer shall clean any spillage on the public roads as the need arises or when requested to do so by the planning authority.

(d) Overburden stockpiles on site and awaiting use in landscaping shall be covered with topsoil and seeded.

(e) All topsoil shall be stripped and stored separately from overburden.

Reason: In the interests of the amenities of the area and in the interest of public health.

5. The development shall be constructed and operated in such a manner that there will be no emission of pollution from smoke, dust, grit, gravel particles, odours or noxious gases as would give rise to injury to public health, amenity, vegetation or livestock.

Reason: To protect the amenities of the area.

6. The deposits of dust generated by the development shall not exceed 130 milligrammes per square metre per day measured at the site boundaries.

Reason: In the interests of residential amenities and public health.

7. The operation of the quarry and associated machinery shall be confined to 0800 hours to 1800 hours, Monday to Friday and 0800 hours to 1400 hours on Saturdays. There shall be no quarry operations or associated activities on Sundays or public holidays. Truck loading activities can be undertaken between 0700 hours and 0800 hours Monday to Saturday.

Reason: To protect the residential amenities of the area.

8. (a) The proposed development shall be completed within a period of 9 years from the date of this decision.

(b) The site shall be fully restored in accordance with the details provided in the EIS, submitted to the planning authority on 5th day of September 2004 as amended by the plans and particulars received by the planning authority on the 12th day of January 2004

(c) All buildings and wheelwash facilities shall be removed from the site. The restoration shall be completed within 2 years of where, in the opinion of the planning authority, the quarry ceases to be used for the purposes of extraction of limestone.

Reason: In the interests of orderly development, environmental control and public safety.

9. A landscaping scheme providing for hard and soft landscaping proposals, including details of improvements to boundaries, the provision of fencing and a schedule of tree, shrub and ground planting around the perimeter of the site and screening mounds including a timescale for implementation, shall be submitted to the planning authority for agreement within four months from the date of this order.

Reason: In the interest of visual amenity

10. The roadside hedgerow shall be lowered to a level of 1 metre for a 20 metre section each side of the entrance and shall be maintained at such a height. The removal of the hedgerow as detailed in the drawing no. No.5/03 received by the planning authority on the 12th day of January 2004 is not permitted.

Reason: In the interest of traffic safety

11. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

Reason: In the interests of public health and to ensure a proper standard of development.

12. (a) The developer shall monitor ground water supply and quality on the site of the subject development and on any adjoining lands for wells as may be determined by the planning authority .

(b) The developer shall make such provision as is necessary to ensure the immediate mitigation of impacts to water supply sources and water quality which are adversely affected by the development during all stages of development and in the post closure period, with the full cost of such measures being borne by the developer. In the event of disruptions of water supply the operation (s) causing the disruption shall be immediately reduced or ceased, as appropriate, until the affected water supply has been restored or replaced.

Reason: To ensure the maintenance of continuous adequate potable water supply, in the interest of public health.

13. The noise levels generated during the operation of the quarry shall not exceed 50 dB(A) LAeq T when measured at any noise sensitive dwelling. When measuring the specific noise, the time (T) shall be any 15 minute period during which the sound emission from the quarry is at its maximum level.

Reason: In the interests of residential amenity and public health.

14. (a) Vibration levels from the blasting shall not exceed a peak particle velocity of 12mm/sec PVV, and air over-pressure values shall not exceed 125 dB (Lin) max peak when measured at any noise sensitive house within the surrounding area.

(b) Not less than 24 hours advance warning of each blast shall be given in writing to any house and landowner within 500m of the quarry.

(c) A standard fixed time for blasting shall be agreed by the planning authority and shall have due regard to the frequency and timing of blasting operations on the adjoining Keegan Quarry Ltd, site. Blasting shall be confined to 1100 to 1800 hours, Monday to Friday inclusive.

(d) A siren shall be sounded 5 minutes prior to each blast.

Reason: In the interests of safety and amenity.

15. The proposed septic tank effluent disposal system shall be in accordance with the standards set out in the document entitled S.R.6:1991 “Septic Tank Systems, Recommendations for Domestic Effluent Treatment and disposal from a Single Dwelling House”, published by Eolas in 1991.

Reason: In the interest of public health.

16. The developer shall monitor and record groundwater, surface water flow, noise, dust deposits levels, ground vibration and air over-pressure at monitoring stations, the location of which shall be agreed with the planning authority. All recorded data shall be submitted to the planning authority on a monthly basis.

Reason: To provide for the monitoring of all effluent, emissions, discharges, noise and vibration caused by the development.

17. The developer shall facilitate the planning authority in preserving, recording or otherwise protecting archaeological materials or features which may exist within it. In this regard, the developer shall -

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works,

(b) provide satisfactory arrangements for the recording and removal of any archaeological material which may be considered appropriate to remove.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation of any remains which may exist within the site.

18. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48(10)(a) and (b) of the Act shall apply as respects an appeal to An Bord Pleanála in relation to the application of the scheme.

Reason: It is considered reasonable that a contribution be made in accordance with a Development Contribution Scheme made for the area of the proposed development under section 48 of the Planning and Development Act, 2000.

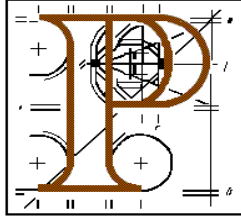
19. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, other security to secure the provision and satisfactory reinstatement of the site in accordance with the restoration plan received by the planning authority on the 5th day of September, 2003 as amended by the plans and details received by the planning authority on the 12th day of January, 2004 coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be agreed between the planning authority and the developer or, in default of agreement, shall be determined by An Bord Pleanála.

Reason: To ensure the satisfactory completion of the development.

Pauline Fitzpatrick
Inspectorate

July, 2004

An Bord Pleanála



Board Direction

Ref: 206702

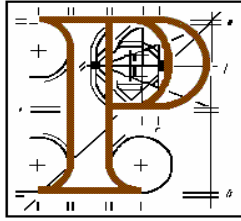
The submissions on this file and the Inspector's report were considered at a Board meeting held on 4th August 2004.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, subject to the amendments shown in manuscript on the attached copy of the Inspector's draft reasons, considerations and conditions.

Board Member _____ Date 4th August 2004
Rosalind Nixon

Appendix 3B

PL17.235960 Board Direction and Inspectors Report



Board Direction

Ref: 17.235960

The submissions on this file and the Inspector's report were considered at a Board meeting held on 30th July 2010. The Board decided to grant permission in accordance with the following reasons, considerations and conditions.

REASONS AND CONSIDERATIONS

Having regard to the established use of the overall landholding as a quarry, the planning history of these lands including the time limit applied to the main quarry development, the mitigation measures proposed in the Environmental Impact Statement, the policies of the current Meath County Development Plan and the provisions of the Quarries and Ancillary Activities Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2004, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be prejudicial to public health, would be acceptable in terms of traffic safety and convenience, would not seriously injure the amenities of the area or of property in the vicinity and would not create an undue risk of environmental pollution. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board took into account the considerable extent and significant depth of quarry development already permitted in the immediate vicinity, on both the applicant's lands and the adjoining lands of Cemex (ROI) Ltd. The Board concluded that, having regard to the comparatively modest area of the proposed quarry extension, allied to the limited depth of excavation now proposed, there would likely be only a very limited additional impact on the groundwater regime and that the information submitted in this regard is adequate

In relation to visual amenity, the Board agreed with the Inspector that, as proposed, the quarry extension would have an unacceptable impact. However, the Board considered that the development would be acceptable, if reduced in extent to allow for a 60m wide buffer zone along the frontage with the regional road. Such buffer zone would also enhance public safety and aid dust suppression.

CONDITIONS

1. The development shall be carried out in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars received by the planning authority on the 4th day of December, 2009, and the further particulars received by An Bord Pleanála on the 3rd March, 2010, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

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

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

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

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

4. Development on foot of this permission shall cease before the 5th day of August 2013.

Reason: In the interest of orderly development, having regard to the time limit set for the main quarry development by virtue of previous planning permissions Reg. Ref. 97/1868 and Reg. Ref. TA/20334 (An Bord Pleanála reference PL 17.206702).

5. The site shall be restored in accordance with the details provided in the Environmental Impact Statement, submitted to the planning authority on the 22nd day of June, 2009 as amended to provide for the reduced area of extraction required by Condition No.2 above.

Reason: In the interest of orderly development, environmental control and public safety.

6. Groundwater monitoring shall be carried out at the site. Within three months of the date of this order, the developer shall submit for the written agreement of the planning authority details of a comprehensive monitoring programme.

Reason: In the interest of environmental protection and residential amenity.

7. The developer shall make such provisions as are necessary to ensure immediate mitigation/replacement of any water supplies that may be adversely affected during all stages of the development, with the full cost of all such measures to be borne by the developer. In the event of disruption to local water supply, all operations causing such disruption shall be reduced/ceased immediately, as appropriate, until the water supply affected has been restored or replaced.

Reason: To ensure the maintenance of a continuous adequate potable water supply in the interest of residential amenity, public health and agricultural land use.

8. Before development commences on foot of this permission, details of the capping of the existing on-site water supply well shall be submitted to the planning authority for written agreement.

Reason: To ensure that no pathway is left for ingress of pollutants to the aquifer.

9. Before development commences on foot of this permission, details for removal of the existing on-site septic tank shall be submitted to the planning authority for written agreement.

Reason: In the interest of public health.

10. In dry weather conditions all roads within the site and the working face shall be sprayed with water at least three times a day, in accordance with the requirements of the planning authority. A wetting agent shall be included in the spray at a ratio specified by the manufacturer.

- (2) All vehicles other than private cars exiting the site shall first pass through a wheel-wash facility of suitable design and fit for that purpose.

- (3) Vehicles used for transport of material from the site shall be equipped so as to prevent spillage and dust blow.

- (4) The developer shall clean any spillage on the public roads as the need arises or when requested to do so by the planning authority.

- (5) Overburden stockpiles on site and awaiting use in landscaping shall be covered with topsoil and seeded.

- (6) All topsoil shall be stripped and stored separately from overburden.

Reason: In the interest of the amenities of the area and of public health.

11. The deposits of dust generated by the development shall not exceed 130 milligrammes per square metre per day measured at the site boundaries.

Reason: In the interest of residential amenities and public health.

12. The operation of the quarry and associated machinery shall be confined to 0700 hours to 1800 hours, Monday to Friday and 0700 hours to 1400 hours on Saturdays. There shall be no quarry operations or associated activities on Sundays or public holidays.

Reason: To protect the residential amenities of the area.

13. The noise levels generated during the operation of the quarry shall not exceed 50 dB(A) LAeq T when measured at any noise sensitive location. When measuring the specific noise, the time (T) shall be any 15 minute period during which the sound emission from the quarry is at its maximum level.

Reason: In the interest of residential amenity and public health.

14. (1) Vibration levels from the blasting shall not exceed a peak particle velocity of 12mm/sec PPV, and air over-pressure values shall not exceed 125 dB (Lin) max peak, when measured at any noise sensitive location within the surrounding area.

- (2) Not less than 24 hours advance warning of each blast shall be given in writing to any house and landowner within 500 metres of the quarry.
- (3) A standard fixed time for blasting shall be agreed by the planning authority. Blasting shall be confined to 1100 to 1800 hours, Monday to Friday inclusive.
- (4) A siren shall be sounded five minutes prior to each blast.

Reason: In the interest of safety and amenity.

15. The developer shall monitor and record groundwater, surface water flow, noise, dust deposits levels, ground vibration and air over-pressure at monitoring stations, the location of which shall be agreed with the planning authority. All recorded data shall be submitted to the planning authority on a monthly basis.

Reason: To provide for the monitoring of all effluent, emissions, discharges, noise and vibration caused by the development.

16. The developer shall facilitate the planning authority in preserving, recording or otherwise protecting archaeological materials or features which may exist within the site. In this regard, the developer shall -

- (a) notify the planning authority in writing at least four weeks prior to the commencement of stripping of topsoil from the site,
- (b) employ a suitably-qualified archaeologist who shall monitor all site clearance and other excavation works,
- (c) provide satisfactory arrangements for the recording and removal of any archaeological material which may be considered appropriate to remove.

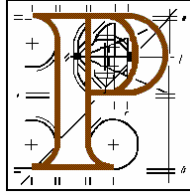
Reason: In order to conserve the archaeological heritage of the site and to secure the preservation of any remains which may exist within the site.

17. Standard section 48 contribution.

18. Quarry restoration bond.

Board Member: _____ Date: 30th July 2010
Karl Kent

An Bord Pleanála



Inspector's Report

Development: Extension of 2.85 ha to existing extraction area, demolition of administration office, workshop, house and garage and associated accommodation works at Trammon, Rathmolyon, Co Meath

Planning Application

Planning Authority: Meath County Council
Planning Authority Ref.: TA/900976
Applicant: Keegan Quarries Limited
Type of Application: Permission
Planning Authority Decision: Grant with Conditions

Planning Appeal

Appellant: Meath Environmental Protection Alliance
An Taisce
Type of Appeal: 3rd vs. Grant
Observers: Suzanne Brady & Frank Long
Niamh Regan & Others
Date of Site Inspection: 20 April 2010
Inspector: Juliet Ryan

1 THE SITE

- 1.1 The site, with a stated area of 4.3ha is located in the townland of Tromman, County Meath, some two miles west of Rathmolyon Village and some four miles south of Trim.
- 1.2 The site is located on the Regional Road 156 (which extends west from Dunboyne to meet the N4 National Primary Road), and comprises the southeastern lands associated with the existing operational Keegan Quarry, and abutting lands to the east comprising a detached bungalow and associated garage with large green field to the rear. As such, the site is characterised by land already disturbed by quarrying activities (site offices, parking area, site entrance, screening berms) and by land that has been disturbed to a significantly lesser extent (i.e. construction of dwelling).
- 1.3 The existing limestone quarry is accessed from the R156 via a splayed entrance of c.10 metre width. The access road rises gradually to an internal surface parking area with an administration building to the east and the quarry working area in front to the north. A concrete batching plant and various other associated activities are located towards the northern end (rear) of the existing quarry. That part of the existing quarry within the subject site comprises lands around the entrance and southeast of the existing working area.
- 1.4 The road frontage of the subject site extends for some 340 metres, approximately, and is characterised by a high hedgerow behind which is the screening berm associated with the existing quarry (a grassed area which rises to a high grass mound). East of this is the entrance and driveway to the bungalow. No part of the existing quarry working area is visible from the R156.
- 1.5 The communal boundary between the bungalow lands and the existing quarry lands on site is defined by a low growing hedge adjacent to which is a significant cluster of mature trees. Two further dwellings are situated proximate to the site on the southern side of the R156. Both are in the ownership of the First Party.
- 1.6 The character of the area is rural, albeit subject to a certain extent of one-off housing development. An existing working quarry (Cemex Quarry) abuts the existing quarry to the west, with an access to that Quarry located some 200 metres, approximately, west of the subject site.

2 THE PROPOSED DEVELOPMENT

- 2.1 The proposal comprises the lateral extension of quarrying activities by 2.85 ha in a southeasterly direction (some 1.33 million tonnes of

limestone over a period of up to ten years). No excavation is proposed below the water table - the depth of excavation will be 50mAOD.

- 2.2 Extraction will take place in tandem with the existing operation, to extract a maximum of 250,000 tonnes per annum. Some 2 no. benches are proposed.
- 2.3 The existing quarry administration building (accommodating office and workshop uses - 392 sq m) is to be demolished, as is the existing bungalow and garage towards the southeast of the site (c.113 sq m). Site offices will be relocated to Trim, resulting in a reduction in current staffing numbers at the Tromman quarry from 8 no. to 2 no. persons.
- 2.4 The existing on-site water supply is to be capped, and the existing on site septic tank is to be decommissioned and replaced by a leased chemical toilet.
- 2.5 No new structures or plant are proposed as part of the development.
- 2.6 Access is proposed via the existing access from the R156, which will be upgraded to achieve 160m sightlines in both directions.
- 2.7 The development will take place in three main stages as follows:
 1. Demolition of existing structures; stripping of site; screening berms and landscape planting (c. 3 months)
 2. Extraction, with aggregate supplied to existing plant facilities (c. 6 years)
 3. Decommissioning and restoration (c. 3 months)
- 2.8 The Application Cover Letter requests that some 10 no. years be permitted for the proposed development to allow for fluctuations in demand for aggregate.
- 2.9 Blasting is predicted to occur approximately twice monthly.
- 2.10 Consequent to operation ceasing and reinstatement, water will rise above the lowest quarry level on site (to an expected level of c.62m AOD). It is proposed to leave this lagoon to develop as a natural water feature.

3.0 ENVIRONMENTAL IMPACT STATEMENT

The Applicants submitted an EIS, prepared by Declan Brassil & Company Limited, with the planning application. A separate Non

Technical Summary (NTS) document is provided. The EIS uses a grouped format, which addressed the following:

- Introduction
- Description of Site & Planning History
- Project Description
- Characteristic of the Production Processes
- Human Beings
- Flora & Fauna
- Archaeology & Cultural Heritage
- Soils & Geology
- Groundwater & Surface Water
- Air & Climate
- Noise & Vibration
- Landscape & Visual
- Traffic & Transportation*
- Material Assets
- Interactions
- Schedule of Environmental Commitments

[* an updated version of the Traffic & Transportation Chapter 12 was submitted as Additional Information]

The adequacy of this EIS is assessed in Section 16.1 below.

4 THE DEVELOPMENT PLAN

- 4.1 The statutory development plan in respect of the subject site in accordance with Pt II Chpt 1 S.(9)&(10) of the *Planning and Development Act, 2000* is the Meath County Development Plan 2007-2013
- 4.2 The subject site is located in an area not accorded a particular development objective in the Development Plan.
- 4.3 Policies RD POL 11 - 17 seek to balance the requirements of the extractive industry and wider environmental and amenity considerations, along with protecting locations of good aggregate resources from inappropriate development. In particular, RD POL 11 has a stated objective to facilitate the exploitation of the County's natural resources whilst ensuring that such industries are managed such that they would not unduly impact on the visual or environmental quality of the area.
- 4.4 Policy RD POL 14 requires the recouping of costs with regard to road maintenance, and RD POL 17 consists of a policy that aggregate processing and concrete production does not impact significantly in a number of areas, including sensitive landscapes.

- 4.5 The Knightsbrook River is located adjacent to the northern boundary of the existing quarry. This is a tributary of the River Boyne, which is a cSAC and salmonid river. The area of the proposed SAC is located approximately 1km downstream (northwest) of the subject site.
- 4.6 The site is situated in Landscape Character Area 6 - Central Lowlands per the Development Plan. The Plan acknowledges that these areas have experienced considerable development, and that further development should be carried out sensitively in order to prevent degradation of these landscapes. The lowlands around Rathmolyon are considered nationally important and sensitive.

5 STRATEGIC GUIDELINES

5.1 Quarries and Ancillary Activities, Guidelines for Planning Authorities (DoEHLG 2004)

These guidelines recognise the important contribution that construction aggregates make to the Irish economy. The Guidelines acknowledge that aggregates can only be worked where they are found, and that they have a low value to weight ratio, thus meaning that transportation over long distances is not viable.

The Guidelines recommend a number of mitigation measures in respect of noise, fumes, vibrations, and dust, such as:

- Water Spraying
- Wheelwashing
- Landscaped mounds at peripheral and storage areas
- Mounds around site boundary to provide acoustic (& visual) screening
- Soft ground / vegetation to absorb sounds
- House conveyor belts / screening equipment
- Low gradient in internal haul roads
- Professional control of drilling and blasting

Section 4.6 of the Guidelines states:

“In assessing the application, the planning authority, apart from having regard to the relevant provisions of the development plan and any conservation designations, needs to determine whether any likely significant adverse impacts on the environment can be adequately controlled or mitigated, either as proposed by the developer or by means of planning conditions. Otherwise, planning permission should be refused.”

5.2 EPA Guidelines On Environmental Management In The Extractive Industry (2006)

These Guidelines recognise that quarry developments, by their nature, will have effects on the ecology of a site and necessitate the removal of habitats. However, the Guidelines also acknowledge that restoration schemes can often enhance the diversity of a site and its surrounding area.

The Guidelines note that groundwater can be impacted by quarries of a certain depth. In this regard, they recommend that the hydrogeological regime surrounding the site be examined, and the site's depth and location be devised to ensure that no significant adverse impacts will occur.

The Guidelines set out a number of management procedures to minimise the generation of dust.

The Guidelines advocate that an Environmental Management System (EMS) be adopted by developers. Appendix C of the Guidelines sets out the recommended contents of same.

6 PLANNING HISTORY

Year	Reference	Summary Description
1998	(97/1868)	Permission granted for quarry and associated works on 8.5 ha
2001	(00/2075)	Permission granted for mobile block making plant and associated works
2003	TA/20408	Permission granted for structure for manufacturing of concrete floors and associated works
2004	PL17.206702 (TA/30334)	Permission granted for continuance and extension of quarrying of limestone over area of 9.06 hectares, retention of extension of quarrying over an area of 4.88 hectares.
2009	PL17.226884 (TA/60629)	Board overturned Planning Authority decision and refused permission for Extension of Existing Quarry, Demolition of 2 no. Dwellings and Existing Site Offices, Construction of Pre-Cast Concrete and Concrete Block Making Plants and All Associated Site Facilities and Works (see below)

The Board's 2009 decision to refuse permission cited two reasons:

1. *Having regard to the location of this site on the opposite side of the R156 road to existing quarry activities in the area, the low-lying nature of the site and the presence of both an archaeological site and a gas transmission pipeline on the site on the southern side of this road, it is considered that the proposed development of a quarry and large concrete production facility along with associated entrance and offices on this side of the road would be visually obtrusive, would seriously injure the amenities of this open rural area and of property in the vicinity, and would constitute a disorderly approach to the expansion of the overall quarry resource at this location. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

2. *The proposed development involves the extraction of material below the existing watertable, which will involve the extraction of groundwater to provide for a dry extraction working area. On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the overall water management system, as proposed, is adequate and at a level of detail to draw satisfactory conclusions in relation to the proper and satisfactory management of the volume of groundwater that will be pumped from the quarry void(s). Furthermore, the Board is not satisfied that there would be no adverse impact on groundwater resources (including the supply to nearby wells) and on surface water resources in the area. The proposed development would, therefore, be prejudicial to public health, would pose an unacceptable risk of environmental pollution and would be contrary to the proper planning and sustainable development of the area.*

In addition to the above, it is noted that adjacent (west) to the existing quarry is a second quarry operated by Cemex Ltd. In January 2009 the Board granted planning permission, subject to 10 no. conditions, for the vertical extension of the existing quarry by deepening some 16.1 ha of its working area to a level of 24 metres AOD, yielding some 800,000 tonnes of material per annum (PL 17.227088, appended).

7 PLANNING AUTHORITY DECISION

7.1 Pre-Planning Consultation

On file documentation indicates that a meeting took place on 25th February 2009 between the First Party's Planning Consultant and a member of the Economic Development and Innovation section of the Planning Authority. Discussion was had in respect of two sites (one of which was the subject site). Issues discussed largely related to addressing An Bord Pleanála's reasons for refusal of the previous application. The Planning Authority state that they did not consider this to be a formal pre-planning consultation, and that no minutes were taken. The Applicants were advised to undertake formal pre-planning discussions with the Planning Department.

7.2 Submissions / Objections

A large number of Third Party submissions were made to the Planning Authority in objection to the proposal for reasons that are generally reflected by the issues raised by the Appellants and in Observations on the subject Appeal.

7.3 Statutory Consultees

On file documentation indicates that the Planning Authority circulated the application documentation to the following statutory consultees for comment:

- EPA
- National Parks & Wildlife Services, DoEHLG
- ERFB

Responding submissions were received from the following:

7.3.1 An Taisce

An Taisce's submission may be summarised as follows:

- Requests that S.35 of PDA, 2000 be invoked given alleged ongoing lack of compliance with extant permissions
- Reasons in ABP's refusal of previous proposal relating to water management system must be resolved
- Substandard landscaped buffer area proposed

7.3.2 ERFB

The ERFB's submission may be summarised as follows:

- Refers to previous issues (no details given) with regard to Discharge Licence associated with current operation and requests that applicant address treatment of wastewater as a result of any increased activity.
- Notes discrepancies in EIS and requests clarification be sought in respect of potential impact to the Knightsbrook River.
- Expresses concerns regarding levels of Ammoniacal Nitrogen in borehole samples, and requests that updated samples be sought.
- Requests that references to surface water quality figures be updated to reflect 2005 EPA Quality Ratings
- Requests confirmation that groundwater dewatering would be unlikely and that any diversion of waters will not have a significant impact on local surface waters

7.3.3 EPA

The EPA'S submission advises that the Agency does not consider that an IPPC Licence under the Environmental Protection Agency Acts 1992-2007, nor a Waste Licence under the Waste Management Acts 1996-2008 are required for the proposed activity.

7.4 Additional Information

The Planning Authority issued a Request for Additional Information, seeking details / modifications, which may be summarised as follows:

- Details of existing water supply and usage
- Details of existing waste water treatment and projected additional waste water to be generated
- Assessment of cumulative impacts on groundwater levels in private wells in vicinity of development
- Mitigation measures in respect of levels of sediment in discharged water during heavy rain

- Surface and ground water sampling details
- Details of new lagoon system and volumes of water that will be directed and discharged from lagoon system
- Details of capacity of receiving drain & confirmation that discharge will cease during periods of flood risk
- Revised air and noise monitoring proposals
- Additional traffic counts and analysis in respect of traffic impact
- Invited to amend errors in submitted EIS in reference to Knightsbrook River

7.4.1 Applicant's Response

In response to the Council's requests, the Applicant's submissions / modifications may be summarised as follows:

- Report in respect of water supply and usage
- Septic tank will be replaced by leased chemical toilet
- Confirms that proposed development and permitted adjacent development at Cemex quarry will not have cumulative impact on groundwater
- Water will be discharged into current lagoon system, which is designed for 1:100 year storm event and will be fitted with a cut off for use in heavy weather events
- Surface water quality monitoring results (September 2009)
- Ground water quality monitoring results (from 2004 onwards)
- Confirms that no new lagoon system is proposed (error in EIS)
- Proposed development will maintain existing discharge limits set by Discharge Licence (1,400 cubic metres per day)
- Discharge point will be closed during heavy rain or at Council's request
- Revised dust and noise monitoring programmes submitted

- Updated version of EIS Chapter 12 “Traffic & Transportation” submitted
- Confirm peak hour flow of 9 no. trucks per hour
- Corrections to EIS sections 2.1.4 and 8.4 arising from comments by ERFB

7.4.2 Internal Reports

Consequent to the receipt of further information, the Infrastructure Water Services Report and the Environmental Report had no objections subject to conditions. Similarly, the Road Design Office was satisfied with the response, and recommended a financial levy for road strengthening.

7.5 Planning Authority Decision

The Planning Authority decided to grant permission subject to 25 no. conditions, of which the following are noted:

- Cndtn 2** Limits extraction rate to 250,000 tonnes per annum
- Cndtn 8** Requires submission of surface water monitoring regime and programme prior to commencement of development
- Cndtn 9** Requires submission of ground water monitoring regime and programme prior to commencement of development
- Cndtn 21** Requires submission of costed restoration plan for written agreement of Planning Authority
- Cndtn 23** Requires annual financial contribution to Planning Authority towards cost incurred by Planning Authority in monitoring development
- Cndtn 24** S.48 Financial contribution for roads and infrastructure
- Cndtn 25** S.48 Financial contribution for social infrastructure

[It is noted that none of the conditions refers to the duration of the permission.]

8 GROUNDS OF THIRD PARTY APPEALS

8.1 Meath Environmental Protection Alliance

The Meath Environmental Protection Alliance's appeal contains some 20 no. appendices, largely comprising maps / copy documents supporting the various grounds of appeal. The latter may be summarised as follows:

- Adverse impact on hydrogeology and well water quality
- Proposed removal of two mature coppices of trees will exacerbate adverse impact on landscape of existing quarry
- Further development in the area is environmentally unsustainable due to dust, air and light pollution
- Proposed development would be severely visually obtrusive and go against Development Plan policy RDPOL11 to exercise control over developments so that they do not unduly impinge on the visual or environmental amenity of the area.
- Proposed development is contrary to Planning Authority's sustainable development policy
- Proposal will extend lifetime of quarry to total of 21 no. years. Contrary to Development Plan policy that generally limits permissions to a duration of 5 no. years. Locals want to see operations cease and the landscape restored.
- Notes lack of responses from NPWS, Trim Area Engineer, Heritage Officer
- Requests S.145 compensation
- Permission should not be granted if financial conditions attached to extant permissions have not been complied with
- EIS fails to consider alternatives to a satisfactory level, particularly more appropriate locations with Walsourtian limestone reserves
- Demolition of habitable dwelling is unsustainable and wasteful
- In the event that Board does permit lateral extension, depth should be maintained at minimum of 60m AOD

- Extension beyond existing coppices of tress is totally opposed, and the separation distance from the road established by the adjacent Cemex quarry should be maintained
- Notes that 2003 permission provides for extraction to level of 7m AOD
- Outlines various sections of EIS which are erroneous
- Cumulative impact of subject proposal with existing Cemex quarry and Dixon quarry in Tobertynan has been largely ignored
- Cumulation with other quarries in area will have unacceptable adverse impact on residential amenity
- Trammon River is a candidate SAC and protection is proposed less than 1km downstream from the site. Planner was incorrect in stating that there are no existing or proposed SACs in the vicinity of the site.
- Archaeological monitoring should have been undertaken given degree of archaeology recently discovered at southern side of R156 opposite. Potential archaeological feature is evident in Plate 6.3 of EIS.
- Semi circular rings of trees are important part of landscape and should not be removed. Further, they formed an important part of the restoration plans submitted with the original application
- EIS underestimates visual catchment and extent of adverse visual impact
- Restoration plans of original parent permission should be adhered to. Subject proposal is contrary to these.
- Restoration fund required by Condition No. 22 is totally inadequate
- Lack of current progressive restoration at existing quarry
- Adverse impact on adjacent high quality agricultural land
- Misleading to overemphasise economic importance of quarrying given current economic climate
- Adverse health impacts arising from dust and pollution, especially on local Kill Primary School

- Question figures in Traffic assessment which are at odds with locals' experience and traffic counts undertaken by the Appellant in 2007
- Failure of operator to comply with conditions of extant permissions (append documentation including copy of 2003 Enforcement Notice)
- Excessive concentration of quarries in the area (within 9km of Rathmolyon)
- Devaluation of property
- Proposal appears to be first phase of larger plan to quarry on southern side of road
- Unacceptable level of noise vibrations
- In event that permission is granted, request that operator erect CCTV that can be reviewed by local resident to ensure that operations do not occur outside conditioned hours.
- In event that permission is granted, condition should be attached requiring regular powerwashing of roads
- Self policing of environmental impacts is unworkable and unacceptable
- Reinstatement of existing quarry lands should be priority in interest of orderly development

The Appeal also contains a separate Hydrogeological Assessment of the proposed quarry extension prepared by Colin O'Reilly, Hydrological & Environmental Engineer. The main points arising from this report may be summarised as follows:

- Structural fault separating Lucan Formation and Waulsortian Limestone runs adjacent to site and has significant hydrogeological implications, which have not been addressed adequately
- Lack of information with regard to underlying geology of subject site
- Further explanation is required to support contention that remaining lifespan of existing quarry is 3 years, and that there is a need for the subject extension

- Lack of adequate baseline information in respect of aquifer characteristics underlying site
- Once excavation occurs, the underlying aquifer will become extremely vulnerable to contamination
- Lack of consistent data regarding groundwater contours and flow directions within 1km of site
- An adequate well survey has not been performed
- Groundwater levels have been declining steadily in immediate area arising from quarrying activities
- Inadequate and contradictory supporting data in respect of anticipated cone of depression
- Further investigation is required in regard to increased water discharge and its implications for surface water quality and flood risk in the receiving stream
- Groundwater sampling results indicate excessive amount of ammonium, indicating that groundwater is being polluted from quarrying (blasting using ammonium nitrate explosive)
- Due to volume and nature of discharge, proposal will contravene RDPOL 17 of Development Plan in respect of significant impacts to SAC
- Negative impacts to quality of receiving waters arising from proposal would prevent the aims of the Water Framework Directive from being achieved
- Stripping of highest quality soil for purposes of proposal is inappropriate

[The Third Party raises procedural issues regarding a submission in response to the Additional Information that was deemed invalid by the Planning Authority. A copy of this invalidated submission is included in the appeal submission.]

8.2 An Taisce

The grounds of the Third Party Appeal by An Taisce may be summarised as follows:

- Alleges ongoing lack of compliance with extant planning permissions at subject site and requests that S.35 of PDA be invoked
- Concern at lack of responses from National Parks and Wildlife, Trim Area Engineer, and Heritage Officer to Planning Authority's Referrals
- Refers to Board's refusal of planning permission for previous application and, specifically to reason in respect of hydrogeology
- Requests Board to ascertain whether financial contribution conditions of extant permission have been complied with
- More appropriate alternative sites exist
- Demolition of recently constructed habitable dwelling is unsustainable
- Expansion of quarry is unsustainable, and development in proximity to R156 would pose serious traffic hazard
- Site is proximate to proposed SAC river
- Given evidence of significant archaeology in vicinity of site, desktop analysis in EIS is deemed unsatisfactory
- Oppose removal of mature trees, which formed part of the original reinstatement plans
- Expansion towards R156 leaves totally inadequate buffer area
- Minimum 60m separation from road should be required
- The two groups of chestnut trees to the northwest of the existing dwelling on site mark the extent of buffer area required from the road
- Restoration fund of €65,000 per Condition 20 is wholly inadequate
- Requests breakdown of numbers and nationalities of staff on site
- EIS underestimates extent of housing in vicinity of subject site
- Similar separation distance from R156 as that maintained by adjacent Cemex quarry should be maintained

9 PLANNING AUTHORITY RESPONSE TO APPEAL

In a brief response, the Planning Authority refers the Board to the original Planning Officer's Report, which it considers to address all relevant matters. It requests that the Board uphold its decision to grant permission.

10 OBSERVERS

Some two observations were submitted to the Board, by Niamh Regan and Others, and by Suzanne Brady and Frank Long. The issues raised by Observers may be summarised as follows:

- Cumulative adverse impact arising from concentration of quarries in Rathmolyon area
- Adverse impact on local water quality and supply
- Adverse impacts to properties arising from blasting
- Demand for aggregates can be met by existing quarries given current economic climate and move towards more sustainable building methods
- Concerned with regard to future expansion on southern side of R156
- Adverse traffic impact arising from constant truck movements
- Damage to local roads arising from constant truck movements
- Hazardous for blasting to occur so close to the R156
- Adverse impact to farming potential of adjacent lands
- Requests that independent hydrologist assesses cumulative impact of quarrying in area on groundwater supplies
- Time for restoration to commence
- Adverse impact to residential amenity arising from extensive night-time lighting in quarry
- Removal of mature trees unacceptable
- Adverse impact on farming activities
- Land should be used for farming rather than quarrying

- Lack of consistent well-water monitoring
- Adverse visual impact
- Increased noise and dust impacts

11 THIRD PARTY RESPONSES TO APPEALS

11.1 An Taisce

In a brief response, An Taisce states that it concurs with the grounds of appeal of the Meath Environmental Protection Alliance.

11.2 Meath Environmental Protection Alliance

This response may be summarised as follows:

- Note similarities between two appeals
- Note retention of mature trees and separation distance from road as key issues common to both appeals
- Scale of extension inappropriate
- Agents for developer have recently carried out well monitoring following period of unusually heavy rain. This will generate unreliable and misleading results
- Proposal represents unsustainable development

12 FIRST PARTY RESPONSE TO APPEALS

The First Party Response to both Third Party Appeals includes five appendices as follows:

1. Environmental Management System Report (Byrne Environmental)
2. Report in respect of Landscape and Visual Matters (Mullin Design Associates)
3. Report in respect of Hydrogeology (Minerex Environmental Ltd)
4. Report in respect of Archaeology (Arch-Tech Ltd)
5. Report in respect of Dust, Noise, & Vibration impacts (Byrne Environmental)

[It is noted that the Hydrogeology report refers to five appendices (A - E). The Board has received three appendices to this report (A-C)].

The main issues arising from the First Party Response submission may be summarised as follows:

- Board's reasons for refusal of previous proposal have been addressed comprehensively in subject proposal
- Extraction is not proposed below the water table
- Extensive on-going groundwater monitoring has taken place
- Refusal of permission under S.35 is not a material consideration for the Board
- Refutes allegations of non-compliance with extant permissions
- Lack of responses by certain statutory consultees does not undermine Planning Authority's decision. Refers Board to Article 28(5) of PDR 2001
- Circumstances of subject site and adjacent Cemex quarry are materially different, so adherence to identical separation distance from road is inappropriate
- Blasting shall be designed and monitored to ensure no risk to public safety
- Appropriate consideration of alternatives in accordance with EIA Directive and EPA Guidelines has been undertaken
- Clarifies staffing levels (and rejects as irrelevant to planning An Taisce's request for a breakdown of nationalities of employees)
- Applicant has given due consideration to economic downturn and has had regard to updated strategic documents including the Draft Regional Planning Guidelines for the Greater Dublin Area 2010-2022
- Reiterates findings of EIS that there will be no negative traffic impact
- Dwelling to be demolished is unoccupied and not subject to any protected status
- All trees within hedgerows along the northern and eastern boundaries will be retained

- Trees to be removed are non-native and will be replaced by approximately 9,700 sq m of native woodland planting
- Proposals have been designed by experienced Geologist in accordance with current quarry design guidance and regulations (appended)
- 60m separation distance from road suggested by An Taisce is arbitrary
- On average 35m separation distance achieved between extraction area and road. Narrowest point is 10m.
- Conditioned restoration fund set by Meath County Council is considered more than adequate given nature and extent of restoration required
- Visual envelope will be restricted and screening measures are focussed on south facing slope
- Refutes allegations of misleading figures and mapping
- Temporary spoil heap referred to by Appellant is not part of subject proposal
- Quarry void will flood following cessation of activities and topsoil will be added to benches to facilitate planting
- EIS has had full regard to Development Plan's Landscape Characterisation
- Survey of 11 no. private wells in area undertaken in February 2010
- Water levels in two of the monitored wells appear to show that they are affected by dewatering at the existing quarry. Remaining monitored wells do not appear to be affected by quarrying activities.
- Revised cumulative cone of depression estimated to be 900m wide (north-south) x 1,800 long (west -east)
- Groundwater monitoring undertaken in February 2010 shows levels remain below appropriate legislative and guidance limits save for phosphate levels which exceed EPA interim guideline values for groundwater. This is likely due to agricultural land uses in vicinity

- All surface water results remain below appropriate legislative and guidance limits
- No increase in on-site water usage proposed
- Two settlement lagoons located along the eastern boundary of the site
- A monitoring regime and programme to include groundwater levels and water quality, has been conditioned to be undertaken and reported to the Planning Authority
- Observed water levels indicate that mapped fault is either further east than previously thought or is not hydrogeologically significant
- Baseline geological and hydrogeological information has been presented
- Groundwater level monitoring device and barometric level monitoring device were installed in BH8 in February 2010
- No further dewatering is proposed in subject development
- Surface water sampling indicates that existing quarry is not significantly degrading water quality in northern stream or Trammon River
- Subject site is not constrained by environmental designation pertaining to the cSAC
- Identified landscape features are probably mid 19th century and should be surveyed and recorded
- Quarterly dust deposition monitoring surveys demonstrate excellent compliance with existing limit value
- Proposed development will not require lighting outside operational hours
- No adverse impact to Kill / Rathmolyon School
- All blast events are independently monitored and to date have complied with imposed limit values
- Advance written warning to all properties within 1.5km radius not considered necessary, but Applicant amenable to undertaking same in the interest of being a good neighbour.

Notes that adjacent Cemex quarry should be subject to similar requirement.

- Routine quarterly noise reports submitted to Meath County Council. To date, all surveys have shown compliance with imposed noise limit values
- National, regional, and local plans / policies support the proposed development
- Proposal is in accordance with principles of sustainable development
- Quarry in the local area is an established activity for over 10 no. years. Dwellings constructed within last decade would be fully aware of established quarrying activities
- Long eared bat was found to the west of the subject site, and will not be impacted by the proposed development
- Loss of agricultural land is not a material consideration given that extension is proposed on lands characterised by established quarrying operations
- Proposal will not cause a devaluation of property values given character and context of site and plans for restoration
- Grounds of both appeals are unfounded and should be dismissed

13 THIRD PARTY RESPONSES TO FIRST PARTY

13.1 Meath Environmental Protection Alliance

The Meath Environmental Protection Alliance's S.131 Response, which includes, *inter alia*, a separate report in respect of hydrogeology, may be summarised as follows:

- Notes absence of comment by First Party in respect of compliance with previous financial contribution conditions; appearance of indentation for tunnel on plans; alleged blast misfire
- Proposal is larger than original 1997 quarry application and proposed extraction below level of that application

- No ongoing monitoring of wells has taken place. Small number of local wells were monitored in February 2010 following heavy rain
- 1km radius is inadequate extent for well monitoring
- Reiterate concerns regarding non-compliance with extant permissions
- Reiterate arguments in respect of need for adequate set-back distance from road and support An Taisce's call for 60m buffer area
- Reiterate objections to demolition of dwelling
- Reiterate concerns regarding lack of adequate consideration of alternatives
- Defends methodology of locals' traffic survey and appends full copy of same
- Reiterates objections regarding removal of trees
- Proposed density of tree planting is unrealistic
- Reiterate concerns regarding inadequacy of conditioned restoration fund
- Reiterates reservations regarding visual impact; destruction of habitat; lack of regard for European Landscape Convention; lack of availability of final archaeological report; adverse impact of artificial lighting
- Dust on local road arises largely from HGV traffic generated by quarries
- Confirm that dust and noise impacts do affect local school
- Numerous properties have suffered structural damage from blast events
- Residents have relied upon fact that quarry would have max. 15 year life-span and would be restored in accordance with original reinstatement plans
- Operators of three local stud farms are supportive of appeal
- Meath County Council's record in respect of development control of quarrying is poor

- Excavation to depth of 7mOD (in context of current operation and proposed development) is unsustainable and unmanageable
- Reiterates concerns in regard to adequacy of baseline information
- Lifespan of existing and proposed quarrying will be significantly greater than that indicated by applicant
- Current soil vulnerability likely attributable to quarrying activities
- Lack of certainty of on site groundwater level given influence of existing quarrying and associated dewatering
- Ongoing permitted quarrying will increase cone of depression and water discharge rates and must be considered in combination with subject proposal in terms of flow rates, capacity of receiving streams, and flood risk
- Geophysical survey should be carried out
- 8 no. private wells were monitored (not 11 no. as claimed by 1st Party)
- Extent and impact of decreases in groundwater levels on private wells has not been addressed adequately
- Reiterate that major issues remain hydrogeology, environmental impact, and damage to personal property
- Further monitoring boreholes required to establish extent of drawdown of cone of depression
- Water sampling methodology (Hach field testing kits) unsuitable given significance of proposal
- Groundwater quality analysis is insufficient
- Applicant fails to address hydrochemical impacts arising from transfer of waters from stream to groundwater and ultimately back to stream
- Surface water sampling and analysis is inadequate
- Lack of design details presented in respect of settlement lagoon system

- Deficiency in information relating to cone of depression and impact to private wells; water discharge; ground and surface water quality; and assimilative capacity of receiving waters

Supporting documentation is appended to this Response, including, *inter alia*, traffic survey conducted by locals in 2007; photo evidence supporting grounds of appeal; observations in respect of hydrogeology prepared by Colin O'Reilly, Hydrogeologist.

13.2 An Taisce

In a brief S. 131 response, An Taisce reiterates its concerns regarding ongoing non-compliance of existing quarry operations. The submission states that no reasonable quarrying extension can be accommodated on site and that the end life of the existing quarrying operation is a huge problem. This submission also notes a national collapse in demand for quarry material.

14 PLANNING AUTHORITY RESPONSE TO FIRST PARTY

The Planning Authority reiterates its reference to the original Planning Officer's Report, which it considers to address all relevant matters. It requests that the Board uphold its decision to grant permission.

15 RESPONSE TO FIRST PARTY BY OBSERVERS

A response was received by Suzanne Brady and Frank Long, which largely echoes the responses received by the Appellants. Additional points not raised by the Appellants may be summarised as follows:

- Lack of availability of monitoring reports indicates that references to same constitute rhetoric
- Responses should have been pursued from Regional Fisheries Board and Waterways Ireland
- Lack of resources in Planning Authority to carry out adequate compliance checks and undertake enforcement
- First Party traffic counts appear to underestimate truck movements
- No reference to whether existing dwelling on site (to be demolished) is habitat for bats (appends Heritage Council publication in this regard)

- Appends photos illustrating impact of quarrying activities on local area

16 ASSESSMENT

In my opinion, the key issues to be addressed in the instant case may be summarised as follows:

- Adequacy of EIS
- Principle of Proposal
- Groundwater Dewatering & Impact on Wells
- Water Management & Impact on Receiving Waters
- Landscape & Visual Impact
- Traffic
- Archaeology
- Impact on Residential Amenity
- Other Issues

16.1 Adequacy of EIS

Further to the outline summary of the EIS contents in Section 2.1 above, I would make the following observations:

16.1.1 Section 3.5 outlines a consideration of alternatives; specifically, alternative design options and alternative sites. Whilst no alternative processes appear to have been considered, I consider this to be acceptable given the nature of the proposed development and the processing methods already established at the existing quarry. I am satisfied that appropriate consideration of alternatives in accordance with the EIA Directive and the EPA Guidelines has been undertaken.

16.1.2 As noted above, the Roads Department of the Planning Authority were dissatisfied with the level of detail presented in the original Traffic Chapter 12 of the EIS. A revised Chapter was submitted at Additional Information stage, including, *inter alia*, updated traffic counts. I consider this to be satisfactory.

16.1.3 With respect to ground and surface water, significant additional information was requested from the Planning Authority. I would consider this reflective of a certain lack of up to date monitoring data and a robust consideration of the cumulative impact of dewatering in the EIS. I would also comment that the presentation of certain analytical results (e.g. Tables 8.2 and 8.4) lack clarity. Having said this, I note that significant further monitoring and analysis has been carried out by the First Party subsequent to the EIS.

- 16.1.4 I would have concerns as to the lack of detail presented in respect of bats in Chapter 5 Flora & Fauna given the acknowledged existence of bats in the adjacent Cemex quarry and given that S.5.3 of this chapter notes that bats have been heard in trees nearby. I consider this to be a shortcoming, and note that no robust consideration of the occurrence of or impact to bats on site is contained in this chapter (S.5.5.2 merely notes that bats on the adjoining site are not likely to be impacted).
- 16.1.5 Chapter 15 of the EIS outlines a Schedule of Environmental Commitments - i.e. a collection of the various mitigation measures recommended in the various chapters of the EIS. This is good practice, and a welcome consolidation of advised amelioration.
- 16.1.6 Notwithstanding certain shortcomings outlined above, I consider that regard has been had to an appropriate range of environmental topics that would typically be addressed in this type of project. The overall adequacy of the EIS can be assessed by reference to the statutory requirements as set out in Part X of PDA 2000 and Schedule 6 of the Planning and Development Regulations 2001. In this regard, the EIS is, in my opinion, essentially compliant, as it covers the various elements stipulated to be addressed in Schedule 6.

16.2 Principle of Proposal

- 16.2.1 The subject proposal comprises the lateral extension of an existing quarry operation. The total quarry area, if the subject proposal is granted, would amount to 4.2ha. The subject site is not subject to any protected status nor does it contain any protected structures / features. As such, there are no specific policy objectives that would contest the principle of quarrying at the subject site. I note, however, that the principle of a certain land use being acceptable does not override the need to comply with the details of proper planning and sustainable development, including the provisions of the statutory Development Plan.
- 16.2.2 Development Plan policy RD POL 11 has a stated objective to facilitate the exploitation of the County's natural resources whilst ensuring that such industries are managed so that they do not unduly impact on the visual or environmental quality of the area. Accordingly, whilst the principle of quarrying as an activity is supported, I consider RD POL 11 puts an onus on the applicant to demonstrate that the nature and extent of the operation will not cause unacceptable adverse visual or environmental impacts. The latter therefore becomes an essential element in the assessment of the acceptability or otherwise of the subject proposal. In contrast to this, however, I note that the Planning Guidelines in respect of quarries and ancillary activities state that aggregates are a finite resource, and must be used sustainably. As such, a judgement must

be made in respect of the proposed development as to whether any envisaged impacts can be mitigated to such an extent as to warrant a grant of permission given that extraction can only take place where resources are located. This will be considered further below.

16.2.3 The Appellants object to the demolition of a habitable dwelling as part of the subject proposal. Whilst I would agree that there should generally be a presumption against such demolition, I note that the dwelling is owned by the quarry operator and that it is located at some 100 metres, approximately, separation distance from the existing working area. As such, its current residential amenity is compromised by its position relative to the extraction area. Having regard to this, and given that the existing bungalow is not accorded any protected status in the Development Plan, I would consider that, having regard to the resource nature of the proposal that is tied to its specific location, the demolition of the dwelling would be acceptable in the instant case were the proposal to be deemed acceptable in all other respects.

16.3 Groundwater Dewatering & Impact on Wells

16.3.1 A significant degree of information is contained on file in respect of potential / predicted dewatering and impact on the local water regime arising from the proposed development. First Party information in this regard is contained in Chapter 8 of the EIS and supplemented by the Minerex Report submitted at Additional Information stage and the Minerex Report submitted as part of the First Party Response to the appeals. Meath Environmental Protection Alliance (MEPA) append a Hydrogeological Assessment (prepared by Colin O'Reilly, Hydrologist and Environmental Engineer) to their Appeal, and a second Hydrogeology Report as part of their S.131 response to the First Party. Various arguments and counterarguments are presented in these reports, but the main points of contention relate to the cumulative impact of the subject proposal and the extant permission to extract to a depth of 7m AOD; lack of consistent data regarding the underlying aquifer and groundwater regime in the vicinity of site; inadequate local well monitoring; and inadequate information in respect of the predicted cone of depression.

16.3.2 The First Party states that no dewatering or excavation below the water table is proposed. However, such an assurance is only as reliable as the baseline data in respect of the actual current water table. The Board is referred to Figure 8.3 of the EIS. The historical water table at the overall lands is stated to have been c.65m AOD. The current water table level in the existing quarry sump is stated to be c.35m AOD. Third Party concerns in respect of a lack of adequate baseline information in the original EIS are reasonably made, in my opinion, and I note that significant Additional Information in this regard was sought by the Planning Authority. As part of the

Additional Information submission, the First Party submitted updated groundwater level monitoring data. In addition, further monitoring was undertaken in February 2010 in the preparation of a Response to the Third Party Appeals. Furthermore, I note that quarterly groundwater level monitoring is required as part of the parent permission. Whilst results in this regard do not appear to pre-date 2006 (cf S.3.6.2 of First Party Response), I am satisfied that the information presented is supportive of certain conclusions. However, I note that only four wells have been monitored in this regard, which I consider to be insufficient to present an accurate picture over time of impacts of the existing operation on the underlying water regime. Accordingly, I would be concerned as to the adequacy of baseline data in respect of the current status of the water table.

16.3.3 Furthermore, I would agree with Third Party concerns having regard to the estimated underlying groundwater level on site. The First Party submit that this is 50.2mAOD. However, with reference to Appendix C of the Minerex Report contained in the First Party Response to the Appeals, it would appear that the water table level at the subject site fluctuates between c.38m AOD and c.53m AOD. I would also note that there appears to be significant variation in monitored water levels, particularly at BH4. Whilst the First Party would appear correct in stating that proposed excavation to 50mAOD would not extend materially below the water table in this direction, I am not satisfied that adequate consideration has been given to fluctuations in the on-site water level arising from the current operation and its permitted extraction to a level of 7mAOD, which involves significant extraction below the water table.

16.3.4 The subject proposal is to take place concurrently with the permitted development. As noted above, the existing floor of the operational quarry is at 35m AOD per S.8.19 of the EIS. I would also note that S.7.8 of the EIS states that the lower bench of the current operation displays cavities and weathering features synonymous with Karstification. In my opinion, this raises issues with regard to the exact nature and extent of groundwater flows. Having regard to this, I am not satisfied that adequate information has been presented regarding the cumulative impact on the groundwater regime of the area of the proposed development operating in tandem with the extant permission.

16.3.5 As noted above, the First Party carried out monitoring of local private wells within 1 km radius of the subject site in February 2010. Whilst this is to be welcomed, I note that of the 11 no. wells stated to be monitored, access was not possible in 3 no. cases, meaning that some 8 no. wells were monitored fully. Monitored groundwater levels at two of the nearest wells to the subject site indicate that they are affected by dewatering in the existing quarry. The First Party contends that the remaining wells do not show signs of being affected by current extraction. Whilst I have no reason to question this data, I

would agree with Third Parties that a greater sample over a wider area would be more informative (the First Party notes that some 25 no. wells are located within 1km of the site). I would also question the value of such information given that it represents a snapshot in time rather than a contextualised inventory of monitoring results over a defined period. [The Board is advised that a groundwater level monitoring device and a barometric level monitoring device were installed in BH8 as part of the February 2010 on-site analysis. Whilst I would agree with the First Party that these will provide valuable information in the future, it is unfortunate that such data has not been available to inform the subject assessment.]

16.3.6 I would also comment that while Section 2.1.2 of the Minerex Report accompanying the First Party Response outlines impact on groundwater levels and cumulative impact of the current and proposed Keegan operation in combination with the adjacent Cemex quarry, there is no visual illustration of the cumulative cone of depression. A total cumulative cone of depression of 1,620,000 sq m is estimated based on groundwater levels monitored in February 2010. However, for the reasons outlined above, I would not find this estimate wholly reliable. In addition, an illustration of same would have been useful.

16.3.7 Whilst I accept that the First Party has provided a significant degree of additional information and analysis in respect of the proposed development and the underlying groundwater regime, and whilst I acknowledge that regard has been had to the cumulative impact of the current operation and the proposed development, I am not satisfied that either has been assessed in a sufficiently comprehensive manner. In particular, the concurrency of the two developments and the complexities that arise from this in respect of potential dewatering and impacts on the underlying water regime has not been addressed to an appropriate degree.

16.4 Water Management & Impact on Receiving Waters

16.4.1 Diversions of groundwaters arising from the proposed development have the potential to impact on surface waters in the vicinity. The operator currently holds a discharge licence for the existing quarry, which limits discharge to 1,400 cubic metres per day. It is proposed to discharge water arising from the subject proposal into the northern stream at the same point as the existing operation, and to remain within the licensed daily discharge limit. In the event that the daily discharge rate is likely to be exceeded, the discharge valve will be closed, and controlled discharge of waters will commence once the waters have settled.

16.4.2 The proposed development is to link in with the water management system of the existing development, insofar as it will drain into the

existing settlement lagoons towards the eastern boundary of the existing quarry lands. Existing lagoons are designed for a 1:100 year storm event. The Planning Authority were satisfied, at Additional Information stage, that in the event that the storage capacity of the lagoon is exceeded that attenuation of water within the central pit would be acceptable. At the permitted discharge limit rate, water attenuated in this regard would take some 10 days to discharge.

16.4.3 Section 8.2.1 of the EIS states that the proposed development will result in water run-off entering the existing quarry area at a rate of 32 cubic metres per day, equating to some 2% of the volume of quarry discharge measured in 2009. As such, its impact is considered to be negligible. MEPA, however, consider that the lowering of the quarry floor (to a permitted 7m AOD) will increase the cone of depression and generate more groundwater flow into the quarry. Given the observed degree of cavitation in the current lowest bench, the Third Party submits that the extent of groundwater inflows may be greater than anticipated. I consider this to be a reasonable concern, particularly in terms of the volume of water to be discharged and the capacity of the receiving stream. In this regard, I note that no study of the assimilative capacity of the receiving waters was carried out.

16.4.4 Having regard to the above, if the First Party's estimations are correct, I would consider the proposed water management regime to be acceptable and should not pose any threat in terms of flooding. However, I remain concerned regarding the lack of certainty with respect to the cumulative impact of the permitted and proposed development on the underlying water regime, and the likely volume of water requiring discharge from the quarry sump. Whilst the First Party contends that this will be negligible, I do not consider that the information as presented establishes this to a satisfactory degree. In the absence of more robust information in this regard, it is not possible to draw satisfactory conclusions concerning the adequacy of the existing water management system to cater for the proposed development in concurrence with the permitted development. Similarly, there is a lack of detailed information by which to judge the impact of the proposal on the capacity of the receiving waters.

16.4.5 With regard to water quality, the First Party submits that water sampling results to date indicate that the receiving waters (the northern stream) have not been polluted by the current operation insofar as levels of ammoniacal nitrogen, COD, nitrate, oils etc, orthophosphate, sulphate and total suspended solids are within acceptable limits. Nitrates were found to increase in a downstream direction, but this may or may not be attributable to the current quarrying. No evidence of significant degrading of the water quality of the northern stream was found.

16.4.6 Among the items requested for additional information by the Sanitary Services Report were proposals and mitigation measures for ensuring

that heavy rainfall events do not result in elevated levels of sediment above 25mg/l being discharged from the development site. This arose based on Table 8.2 of the EIS, which found 128mg/l of suspended solids in the quarry discharge water (the maximum limits for same in surface water is 25mg/l). In their Additional Information Response, the First Party provided updated surface water quality results (cf Section 5.2 of Minerex Additional Information Report), indicating that surface water quality from the site varies between Q values 3 - 4, and is in line with the EPA published water quality results for the Boyne. MEPA state that the water sampling methodology used in February 2010 (Hach field testing kits) is unsuitable given the significance of the proposal. Whilst I would agree that laboratory certified results would be more appropriate, on balance, I accept that the First Party has acknowledged the indicative nature of the field test results, and taken together with other water quality results presented, I am satisfied that there is no evidence of significant environmental impact to the quality of the receiving waters arising from the existing development, and that appropriate operation and mitigation measures will ensure that no unacceptable adverse impacts to receiving waters will arise from the subject proposal.

16.5 Landscape & Visual Impact

16.5.1 The site is situated in Landscape Character Area 6 - Central Lowlands per the Development Plan. The Plan acknowledges that these areas have experienced considerable development, and that further development should be carried out sensitively in order to prevent degradation of these landscapes. The lowlands around Rathmolyon are considered nationally important and sensitive.

16.5.2 Adverse landscape and visual impact is a central concern of Third Parties. The First Party maintains that loss of agricultural land is not a material consideration given that the extension is proposed on lands characterised by established quarrying operations. I do not consider this to be wholly accurate, however, given that a significant part of the subject site comprises land associated with the bungalow on site. In particular, land to the rear of the bungalow appears to be high quality undisturbed grazing land.

16.5.3 In this regard, I would consider that part of the subject site that is currently developed (i.e. parking and office area) to be least sensitive given that it is already disturbed. Similarly, the area immediately surrounding the dwelling to be demolished is already disturbed and therefore of limited sensitivity. However, I consider the large undeveloped area to the rear (north) of the existing dwelling to constitute a high quality and undisturbed landscape, particularly given that it is visually separated from the existing quarry by the mature trees to its west (east of the existing quarry area). I

would be concerned that extension of excavation into this land (including removal of the existing mature trees) would eliminate the established visual extent of quarrying activities and set a precedent for further expansion eastward and northward into the nationally important and sensitive lowlands surrounding Rathmolyon. Whilst I accept that quarrying can only take place where aggregates occur, I have significant concerns with regard to landscape and visual impact of the lateral expansion of quarrying activities at the subject site.

16.5.4 Following from the above, I have particular concerns with regard to the southward expansion of the extraction area towards the R156. At present, land south of the existing office building and parking area constitutes a buffer between the quarrying activity and the adjacent road. The separation distance between the existing extraction area and the road comprises c. 80 metres at its narrowest point, with at least some c.35 metres of this comprising grassland and screening berm. Contrastingly, the separation distance between the proposed extraction area and the road will comprise c. 15 metres at its narrowest point, and will comprise only woodland screen planting (there will be no berm / grass at this point). On the whole, the proposed extraction area will be generally c. 42 metres from the road. This proposed separation area will comprise c.8-10 metres of grassland and c. 30 metres of woodland screen planting (the Board is referred to drawing no. MDA09.112.101). It is unfortunate that the First Party has not provided a Landscape Section drawing illustrating the proposed screening and extraction area relative to the road. Notwithstanding this, I consider that the proposed extraction area will be located unacceptably close to the R156, and that the proposed development (including the proposed screening) would be visually incongruous in this location. In this regard I would tend to agree with Third Parties and consider that no further southward expansion towards the R156 of the existing working area is appropriate.

16.5.5 Section 3.5 of the *Quarries and Ancillary Facilities Guidelines* advocates that existing trees and hedgerows be preserved to the greatest possible extent, and that buffer zones can be provided around protected habitats or species. Further, the guidelines advocate that, where possible, existing landscape features (e.g. hills and trees) be used to screen new development. The First Party submits that the existing trees on site are non-native, and will be replaced by 9,700 sq m of native planting. Whilst this point is reasonably made, I am not satisfied that such mitigation measures are adequate recompense for the elimination of existing landscape features. In forming this opinion, I am mindful that the existing trees are associated with the Trammon Estate, and as such have historical and cultural significance. I further note that it is possible that they may be a habitat for bats (though this has not been established definitively - see Section 16.1.4 above). Further, I consider the removal of mature trees combined with an unacceptably close

proximity of the working area to the adjacent road would have a significant cumulative adverse landscape and visual impact.

16.6 Traffic

16.6.1 A revised, updated EIS Traffic Section was submitted at Additional Information stage arising from the Road Design's concerns regarding a lack of sufficient detail to assess the application. This concluded that there would be a reduction in the amount of traffic generated by the proposal given that current extraction rates (250,000 tonne yearly) would not be exceeded, and given that the existing staff and administration activities will be relocated to Trim. I am satisfied that no adverse impact will be generated by the proposal in respect of traffic volume and would accept that there will be no increase in truck movements at the site entrance.

16.6.2 It is to be welcomed that sightlines at the entrance are to be improved (from 80m and 110m to 160m in both directions) by cutting vegetation in the vicinity of the site entrance. This will improve safety.

16.6.3 Arising from the above, I am satisfied that no unacceptable adverse impact will occur in terms of traffic.

16.7 Archaeology

16.7.1 The closest known archaeology to the subject site is Recorded Monument MH042-015, which is located some 260 metres east of the eastern site boundary. Section 6.8 of the EIS concludes that there would be very little visual interaction between the proposed development and this monument, provided that intervening hedgerows were retained. By reference to Plate 6.6 of the EIS and to the existing intervening hedgerow between the subject site and the monument, I am satisfied that no unacceptable adverse impact will occur in this regard.

16.7.2 Third Party concerns in respect of archaeology are reasonably made, particularly having regard to the findings of archaeological testing carried out in respect of the previous proposal (and the significant archaeological finds on land to the south of the R156) and having regard to the potential for further archaeology to be uncovered on site. Section 6.9.3 of the EIS recognises a moderate potential for as yet unrecognised archaeological remains at the subject site given the recent finds in the vicinity. In this regard, it recommends additional geophysical investigation of undisturbed land on site prior to the commencement of development. The Board is referred to Section 15.2.7 of the EIS, whereby the First Party proposes to carry out such surveying under licence from the DoEHLG prior to development. I

consider this appropriate. I further note that Condition 5 of the Planning Authority's decision requires the development to be operated in accordance with the application documentation (including the EIS). I am therefore satisfied that no unacceptable adverse impact in terms of archaeology will arise from the proposed development.

16.8 Impact on Residential Amenity

16.8.1 It is contended by Third Parties that the extension of quarrying activities on the site will intensify dust, vibration and noise related impacts associated with existing operations. These are reasonable concerns, particularly given that the proposal is to take place concurrently with the existing quarrying activity. Whilst no net increase is proposed to the extraction rate, operation over a greater area has the potential to intensify certain adverse impacts.

16.8.2 Blasting is predicted to occur approximately every 10 no. working days. In terms of noise sensitive receptors, the nearest dwelling to the subject site that is not owned by the Third Party is some 120 metres from the eastern site boundary. It is referred to as N3 in Section 10.3.2 of the EIS. Table 10.3 of the EIS predicts that the maximum short duration noise level at dwelling N3 arising from the proposal will be 50 dB (within 55dB daytime noise limit). Unfortunately, this property does not appear to have been monitored for noise associated with the current quarrying activity. However, by reference to Table 10.1 of the EIS, property N2 (in the ownership of the First Party and located a similar distance from the existing working area as property N3) was found to be in significant compliance with the conditioned 55 dB limit, albeit reaching / exceeding same on some occasions. Given that the proposed working area will be closer to the nearest Third Party dwelling (N3) than the existing operation, I would have concerns in respect of potential noise impact, given that the current operation appears to be operating close to the conditioned noise limits. Furthermore, the Noise Chapter of the EIS does not appear to address the cumulative impacts of blasting associated with the proposed development and blasting associated with the extant operation. Given that both developments are to operate concurrently, I consider there are significant noise implications that have not been assessed.

16.8.3 In respect of dust, Section 9.2.1 of the EIS attributes the current operation's significant attenuation of same to the natural topographical screening of the site and surrounding lands; the extended distance of the site from the closest receptors; and to on-site infrastructure. It is noteworthy that the former two factors are to be subject to significant change per the subject proposal (i.e. topographical screening will be altered significantly, particularly adjacent to the R156, and separation distances to the nearest

sensitive properties will be reduced). However, I note that by reference to Table 9.3 of the EIS that current dust deposition measurements indicate compliance with a guideline value of 350mg/sq m/day, save for one instance. Having regard to this, and to the generally modest levels of dust generated by the existing operation, there would appear to be room for further dust generating activities without unacceptable adverse impacts occurring. However, I note that the relatively limited depth of the proposed working area combined with its proximity to the adjacent road and nearest third party dwelling (latter will be c. 140m from proposed working area) will significantly reduce its dust attenuation abilities as compared with the current operation.

16.8.4 Following from the above, were the proposal acceptable in all other respects, I would not consider adverse dust impact to be a reasonable ground for refusal. However, in combination with other factors, I consider it raises questions with regard to the acceptability of the proposed development in general, and its potential for significant adverse impact to residential amenity in particular.

16.8.5 The expected lifespan of the proposed development is between 5 to 10 years, depending on the rate of extraction. The First Party submits that the remaining lifespan of the existing quarry is c.3 no. years. MEPA question this, and submit that further explanation is required in order to support the contention that an extension is needed. The Guidelines state that the purpose of setting a finite period for extraction (i.e. in excess of 5 years) is not to prevent extraction from occurring after this date, but to enable a review of changing circumstances and environmental standards etc (S.4.9). As such, I do not consider that there should be any presumption against the principle of extending the lifetime of quarrying activities, particularly given their important resource function and their location-tied nature. Notwithstanding this, Third Party concerns with regard to adverse impacts arising from ongoing quarrying in the area are reasonably made.

16.8.6 The Planner's report states that '*It has been clearly stated in the application that no intensification of extraction is to occur from that previously permitted.*' The report succeeds to recommend that this matter be included as a condition of planning permission, and is covered by Condition 2. Whilst I would agree that the rate of extraction proposed will not exceed 250,000 tonnes per annum, the fact that both the existing and proposed activities are to operate concurrently means that there will be a cumulative intensification of quarrying activity. This does not appear to have been addressed to a satisfactory degree in the Planning Authority's assessment, particularly having regard to residential amenity.

16.9 Other Issues

- 16.9.1 The Third Party Appellants have raised a number of concerns with regard to failures thus far in respect of self-policing and alleged unauthorised development. Whilst I appreciate these concerns regarding the applicant's non-compliance with extant permissions, I note that issues of enforcement are not within the remit of the Board. The Planning legislation (S.35 PDA, 2000) allows for a refusal of permission based on past failures to comply with planning permissions/conditions. I consider this, however, to be a matter for the Planning Authority and not the Board. In this regard, I note that the former did not consider such a course of action to be appropriate in the instant case.
- 16.9.2 With respect to lack of responses to referrals from the Planning Authority (both internally and from Statutory Consultees), I am in agreement with the First Party insofar as Article 28(5) of PDR, 2001 provides for the determination of the application without further notice in the event that a submission on foot of notice has not been received within a 5 week period. By reference to the subject file, I am satisfied that the Planning Authority circulated it to appropriate bodies / personnel and that it has been determined in accordance with the provisions of the Act and the Regulations.
- 16.9.3 In respect of requests for S.145 compensation, I can see no reasonable grounds for the direction of payment of compensation in the instant case.
- 16.9.4 I note that Condition No. 23 requires the payment of an annual contribution of 800 Euro towards costs incurred by the Planning Authority in the monitoring of the development. This is reasoned on grounds of the proper planning and sustainable development of the area. The First Party has not appealed this condition. On balance, I do not consider it reasonable that a contribution be made in respect of monitoring of the proposal, given that this would normally come under the building control, compliance, and enforcement operations of a Planning Authority. Moreover, such monitoring is not provided for by the adopted scheme; nor would it come within the meaning of S.48(2)(c) of the Act, insofar as it would not comprise public infrastructure or facilities works undertaken by the Planning Authority that would facilitate the proposed development. Accordingly, I would recommend that this condition be omitted in the event that the Board is so minded to grant permission.

17 CONCLUSION AND RECOMMENDATION

17.1 Conclusion

I have had regard to all other matters raised in the instant case, but do not consider them to be so material to the consideration of the merits of this proposal as to warrant a different conclusion from that set out below.

17.2 Recommendation

I have read the submissions on file and visited the site and surrounding area. Having due regard to the provisions of the Development Plan; strategic policy documents; the nature of the site and the context of the surrounding environment; together with all other issues arising, I recommend that the development be refused planning permission for the following reasons:

REASONS AND CONSIDERATIONS

1. Having regard to the proposed lateral extension of quarrying activities into land that currently acts as a buffer for the existing quarrying activity, and having regard to the proposed proximity of quarrying activities to the Regional R156 road, it is considered that the proposed development would be visually obtrusive, would adversely affect the landscape character of the area and of property in the vicinity and would therefore be contrary to Development Plan policy RD POL 11, which seeks that quarrying activity does not unduly impact on the visual or environmental quality of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. It is proposed that the development will operate concurrently with existing quarrying activities. Having regard to the this, the Board is not satisfied that adequate information has been presented to enable satisfactory conclusions to be drawn in relation to the cumulative impact on the groundwater regime of the area of the proposed development operating in tandem with the extant permission, particularly having regard to potential dewatering, to the proper and satisfactory management of the volume of groundwater that will be pumped from the quarry void(s), and to the capacity of the receiving waters. The proposed development would therefore give rise to a

potential dewatering of local wells and would be prejudicial to public health and be contrary to the proper planning and sustainable development of the area.

Juliet Ryan
Inspector

30 June 2010

Appendix 4

Applications returned under s.34-12 Correspondence

Comhairle Chontae na Mí

Teach Buvinda, Bóthar Átha Cliath, An Uaimh,
Contae na Mí, C15 Y291

Fón: 046 – 9097000/Fax: 046 – 9097001

R-phost: customerservice@meathcoco.ie

Web: www.meath.ie

Uimhir Chláraithe: 00172770



Meath County Council

Buvinda House, Dublin Road, Navan,
Co. Meath, C15 Y291

Tel: 046 – 9097000/Fax: 046 – 9097001

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Web: www.meath.ie

Registration No.: 00172770

22nd January 2021

Mr. Andrew Scurfield,
Quarryplan Ltd,
10 Saintfield Road,
Crossgar,
Co. Down, BT30 9HY

Email: andy@quarryplan.co.uk

Re: Planning Application at Trammon Rathmolyon – TA200151
Your Client: Keegan Quarries

Dear Mr. Scurfield,

I refer to the planning application TA200151 lodged with Meath County Council on 13th February 2020 which was then subject to a Further Information Request.

Having regard to the following:

- all documentation (plans and particulars) submitted with the application on the 13/02/2020,
- further information received on 16/10/2020,
- recognition and acknowledgement of the fact that the Applicant has a current application for Substitute Consent pending with An Bord Pleanála (PL17 .305049);

It is the considered view of the Planning Authority that it has no option but to refuse to consider this application under the terms of Section 34 (12) of the Planning & Development Acts, 2000 to 2020.

I attach for your information the planning assessment made in determining this opinion and the Guide to Fees Payable to the Board. Arrangements will now be made to return the entire application along with the application fee.

Your sincerely,

Seán Clarke
Senior Executive Officer

NOTE

1. Any appeal against a decision of a Planning Authority under Section 34 of the Planning and Development Act, of 2000-2020 may be made to An Bord Pleanála. Any person may appeal **WITHIN FOUR WEEKS** beginning on the date of this letter.
2. Appeals should be addressed to An Bord Pleanála, 64 Marlborough Street, Dublin 1. An appeal by the applicant should be accompanied by this letter.

Meath County Council



Planning Report

To:	Padraig Maguire, Senior Planner
From:	Billy Joe Padden, A / Senior Executive Planner
Date:	21/01/21
File Number:	TA/200151
Applicant:	Keegan Quarries Ltd
Development Address:	Trammon, Rathmolyon
Application Type:	Permission
Development Description:	the development will consist of The proposed further development of the existing 21.64Ha quarry site, to include the extraction of limestone from an area of 14.3Ha, comprising 12.4Ha of existing void and a lateral extension of 1.9Ha under an existing overburden stockpile, using conventional drilling and blasting techniques and mineral reduction using mobile crushing and screening to a depth of 13mAOD and the restoration and rehabilitation of the whole quarry site. The application is accompanied by an Environmental Impact Assessment Report and a Natura Impact Statement
Date of Site Inspection:	21/03/20
Date Decision Due:	23/01/21

This report should be read in conjunction with the initial Planner's Report dated 08/04/2020.

1.0 Application Details

This application reference TA/200151 was lodged with the Planning Authority on the 13/02/2020, a request for further information was subsequently made by the Planning Authority on 29/04/2020. A response from the applicant was submitted on 16/10/2020. The further information was deemed significant and the revised notices were received on the 20/11/20. One further submission was received on the 04/01/21, The content of this submission is summarised below.

2.0 Submissions

16 submissions were received during the initial display period, a list of the more pertinent issues are included below:

- There are unauthorised developments on site.
- There is no current planning permission on site, therefore the application cannot be considered
- It is noted that an application under Section 37L of the P&D Act to the Board could not be determined, this application should also not be considered.
- Restoration should have commenced by now
- The site notice should have been in yellow
- History of unauthorised development on site, poor history of compliance on site
- The application must be declined under section 35 of the Planning and Development Act.
- Concerns that local heritage is not being protected
- The development has and will continue to result in nuisance particularly in relation to:
 - Dust,
 - Blasting
 - Vibration
 - Noise
 - Traffic
- The proposed development will be a threat to local wells and drinking water
- The development is contrary to the Aarhus Convention
- Meath County Council cannot be considered impartial as it advised An Bord Pleanala to grant permission for all unauthorised development

1 further submission was received during the display of significant further information a list of the more pertinent issues are included below:

- No legal jurisdiction to grant planning permission as there is no current planning permission for the quarry operation and many of the structures on site are unauthorised.
- Section 34(12) of the P&D Act require consideration where it relates to EIA and the retention of unauthorised development.
- Unauthorised development on site
- There are financial irregularities relating to the developments on site due to unauthorised development and failure to pay contributions.

- Notes invalid application to the Board under Section 37L
- Notes two further submissions lodged in December in relation to the site.
- This development cannot claim the exceptionality test as it relates to unauthorised development.
- Applicants claim that they are at a current impasse is nonsense when you consider the history of unauthorised development, misleading applications, Section 5 determinations, enforcement proceedings
- There is no legislative void and the Applicant cannot claim exceptional circumstances.
- The Applicant's approach is considered to be project splitting
- The submission provides a synopsis of enforcement proceedings on site

3.0 Detail of Further Information Request

1. The Applicant is requested to submit a detailed report which outlines the planning status of the quarry having regard to the current planning status of the whole site. Specifically, the Applicant shall address the following:
 - a. Details of any recent An Bord Pleanala decisions and their implications for the whole site, including any measures required to comply with any Board decision.
 - b. The Applicant's opinion as to how the Planning Authority can determine this Application considering the current unauthorised status of the site and any decisions made by An Bord Pleanala in relation to the site.
 - c. Details of all elements of the site that have planning permission (if any) or have had planning permission that has expired. This shall include structures and specific details in relation to the quarry activities including extraction depths and extraction areas. Specific details are required as to the extent / area and depth of works that have taken place since the expiration of previous planning permissions e.g. basis of substitute consent application (relating specifically to quarrying)
2. The proposed development in its current format is not considered valid or appropriate. The Applicant is requested to submit a revised development description and phasing strategy which significantly reduces the lifespan of the proposed development as a 37 year period is considered excessive in terms of appropriate monitoring of the impacts of the development on groundwater, surface water, traffic impact and residential amenity.
3. The existing overburden mound on site is considered to represent a visually obtrusive and unacceptable man made feature in the local landscape. It is considered that its proposed removal as part of Phase 3 of the development is totally unacceptable. The Applicant shall submit proposals for the removal / substantial reduction in height of said mound as part of the first phase of development.
4. The Planning Authority has concerns in relation to how the proposed development will impact on the existing aquifer, the Applicant shall address the following:
 - a. The Applicant shall demonstrate how the proposed quarry will not negatively impact on the existing aquifer.

- b. Considering the scale of the proposed quarry the Planning Authority considers the depth of the onsite boreholes inadequate to fully determine the impact of the proposed quarry on the existing aquifer and to quantify the increase in groundwater discharge from site. All boreholes shall be deepened to at least 15m below the lowest proposed pit restoration ground level of 13m AOD.
 - c. The Applicant shall provide a map indicating the location of all dwellings within a 550m radius of the proposed quarry and indicating their source of domestic water. This shall include a schedule of neighbouring wells and a programme for monitoring these wells for the duration of extraction activities at the quarry.
 - d. The Applicant shall submit details of remedial actions which they will undertake in the event that quarry activities impact existing wells in the locality.
5. The Applicant is requested to submit the following information in relation to transportation.
 - a. The Applicant is requested to submit an updated Traffic and Transport Assessment in accordance with the NRA/TII Traffic and Transport Assessment Guidelines 2014. The TTA should include the following:
 - i. Traffic counts on the R156, R160, R161 and R159 should be included in the assessment with a breakdown of the percentage of HGV's.
 - ii. Distribution of HGV to the public roads.
 - iii. Haul routes.
 - b. The Applicant shall submit details of all works required to achieve the required sightlines at the proposed access.
 - c. The Applicant shall be requested to pay a special levy as a contribution towards the costs to complete the upgrading and strengthening works of the haul routes required to facilitate the proposed development. The amount will be based on the anticipated traffic volumes and will be calculated on receipt of a Traffic and Transport Assessment. (item a above).
6. The Applicant is requested to submit the following in relation to surface water discharge and quality:
 - a. It is noted that the application estimates the development will increase the rate of water ingress to the quarry to 2750 m³/day, approximately doubling the current water ingress rate, and will therefore result in an increased rate of discharge from the quarry to surface waters. However, it is noted the application does not propose any increase in the provision of settlement lagoons beyond the existing configuration.

All discharges to surface waters from quarry de-watering and all surface water runoff from paved areas and roads on the site which is to be discharged to surface waters should be treated in settlement lagoons which provide adequate retention time (e.g. 24 hrs retention time) at maximum discharge rate, prior to discharge.

The Applicant is requested to provide proposals to address this issue, including details on design, dimensions and location of appropriate settlement lagoons, and

demonstrate that the proposals are adequate to ensure treatment of the discharge at the increased discharge rate of 2750 m³/day.

You are referred to EPA publication "Environmental Management Guidelines - Environmental Management in the Extractive Industry (Non-Scheduled Minerals)" (EPA, 2006), in particular Appendix D Guidelines for Settlement Lagoons, noting also that increasing the volume and retention time of settlement lagoons by increasing their depth does not increase settlement performance.

- b. Section 6 of the Natura Impact Statement, Mitigation states: "All surface runoff within the site is collected and processed through settlement tanks prior to controlled discharge via the consented discharge point."

The Applicant is requested to provide clarification on whether all surface runoff from the site, such as roads and paved areas at the northern end of the site and around lime powder storage sheds and concrete batch plant, are directed through settlement lagoons prior to discharge from the site.

- c. The Applicant is requested to clarify whether it is intended that a hydrocarbon interceptor is to be installed on the discharge to surface waters, as this is referenced in the NIS.

NIS Section 6 Mitigation, page 27 states: "The existing water treatment approaches employed by the quarry including a hydrocarbon interceptor, three-stage settlement tanks and a discharge volume limit. The discharge into a ditch in the northeast corner is covered by Trade Effluent Discharge Licence Ref. 04/2 (see EMS)."

- d. It is noted that EPA water quality monitoring data for the surface waterbody downstream of the site (R.Knightsbrook, Station 07K020400, Br nr Laracor Crossroads) which is quoted in the NIS is out of date as it relates to 2010-2015 status assigned on the basis of survey in 2012. This site has been surveyed by EPA in 2018 which showed a decline in quality from Good Status (Q value 4 in 2012) to Moderate Status (Q value 3-4 in 2018). 2018 EPA survey also notes siltation at the survey site. You are requested to revise the NIS to take account of the most recent EPA water quality biological survey results and status assigned to the downstream surface waterbody.

7. Sixteen third party submissions have been received in respect of the proposed development. You are invited to address the technical issues raised with reference to the following:

- a. Planning status
- b. Impacts on groundwater levels and quality
- c. Impact on wells in the area

- d. Restoration proposals
 - e. Impact on local properties due to blasting.
 - f. Impact of noise and dust
 - g. Impact of traffic
8. If any submission resulting from the above request alters your original proposal requiring the submission of additional data which the Planning Authority on receipt of the submission consider to be significant, you may be required to publish a notice in an approved newspaper in accordance with S.34(8) of the Planning and Development Acts 2000-2019. You should not submit public and/or publish notices until such time as the Planning Authority issues you with a notification to submit such notices pursuant to the Planning & Development Acts 2000- 2019

3.1 Response to Further Information

The response received from the Applicant in relation to item 1 referred to an attempt to regularise the unauthorised development by way of a substitute consent application to An Bord Pleanala (PL17 .305049). The Applicant contends that this application has been deferred by the board by a legislative vacuum arising from a recent Supreme Court decision. The Applicant went on to argue, that notwithstanding the legal position, the application could be considered citing:

- a) the period for which the unauthorised development was unauthorised being similar to the period the majority of quarries in Ireland were unauthorised for whilst navigating the Substitute Consent and associated 37L process.
- b) the planning applicant had no alternative regarding the above referred to legislative vacuum
- c) the site benefitted for three previous Environmental Impact Assessments
- d) the extraction referred to benefitted from 3 previous Environmental Impact Assessments
- e) c) the loss of employment in the local area.

The remaining items of the further information request did not warrant further assessment as a recommendation on the application can be made in light of the response of the Applicant under point 1.

4.0 Conclusion

Having regard to the above and the following information that includes:

- all documentation (plans and particulars) submitted with the application on the 13/02/2020;
- further information received on 16/10/2020, (in response to a further information request made by the Planning Authority on the 29/04/2020);
- recognition and acknowledgement of the fact that the Applicant has a current application for Substitute Consent pending with An Bord Pleanala (PL17 .305049)

It is the considered view of the Planning Authority that it has no option but to refuse to consider this application under the terms of Section 34 (12) of the Planning & Development Acts, 2000 to 2020.

5.0 Recommendation

The Planning Authority in exercising its powers under the Planning & Development Acts, 2000 to 2020, specifically Section 34(12) and recognising that the Applicant has an Application for Substitute Consent pending with An Bord Pleanála (PL17 .305049), the Planning Authority therefore refuses to consider Planning Application reference TA/200151 for the following reason:

The application consists of:

“the proposed further development of the existing 21.64Ha quarry site, to include the extraction of limestone from an area of 14.3Ha, comprising 12.4Ha of existing void and a lateral extension of 1.9Ha under an existing overburden stockpile, using conventional drilling and blasting techniques and mineral reduction using mobile crushing and screening to a depth of 13mAOD and the restoration and rehabilitation of the whole quarry site. The application is accompanied by an Environmental Impact Assessment Report and a Natura Impact Statement”

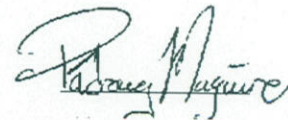
The existing void for which further development, including extraction, is proposed, is an unauthorised development as detailed by the Applicant in the documentation submitted and is development of the type, which would, if an Application for permission for same had been made prior to the commencement of the development have required:-

- (a) An Environmental Impact Assessment.

The unauthorised development would have required a Mandatory Environmental Impact Assessment in line with Part 2 of Schedule 5 of the Planning and Development Regulations 2001-2020. Therefore, I believe the Planning Authority has no option but to refuse to consider this application by virtue of Section 34(12) and I recommend that the application and fee be returned to the applicant.



Billy Joe Padden
A / Senior Executive Planner



Padraig Maguire
Senior Planner
22 January 2021

Comhairle Chontae na Mí

Teach Buvinda, Bóthar Átha Cliath, An Uaimh,
Contae na Mí, C15 Y291

Fón: 046 – 9097000/Fax: 046 – 9097001

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Web: www.meath.ie

Uimhir Chláraithe: 00172770



Meath County Council

Buvinda House, Dublin Road, Navan,
Co. Meath, C15 Y291

Tel: 046 – 9097000/Fax: 046 – 9097001

E-mail: customerservice@meathcoco.ie

Web: www.meath.ie

Registration No.: 00172770

12th February 2021

Mr. Chris Tinsley,
Quarryplan Ltd,
10 Saintfield Road,
Crossgar,
Co. Down, BT30 9HY

Email: chris@quarryplan.co.uk

Re: **Planning Application at Trammon Rathmolyon – TA201918**

Your Client: Keegan Quarries

Dear Mr. Tinsley,

I refer to the planning application TA201918 lodged with Meath County Council on 11th December 2020.

Having regard to the following:

- all documentation (plans and particulars) submitted with the application on the 11/12/2020,
- recognition and acknowledgement of the fact that the Applicant has a current application for Substitute Consent pending with An Bord Pleanála (PL17 .305049);
- the recent determination relating to TA200151

It is the considered view of the Planning Authority that it has no option but to refuse to consider this application under the terms of Section 34 (12) of the Planning & Development Acts, 2000 to 2020.

I attach for your information the Guide to Fees Payable to the Board. Arrangements will now be made to return the application fee.

Your sincerely,

Seán Clarke

Senior Executive Officer

NOTE

1. Any appeal against a decision of a Planning Authority under Section 34 of the Planning and Development Act, of 2000-2020 may be made to An Bord Pleanála. Any person may appeal **WITHIN FOUR WEEKS** beginning on the date of this letter.
2. Appeals should be addressed to An Bord Pleanála, 64 Marlborough Street, Dublin 1. An appeal by the applicant should be accompanied by this letter.

Guide to Fees payable to the Board

- a. *Appeal against a decision of a planning authority on a planning application relating to commercial development¹ made by the person by whom the planning application was made, where the application included the retention of development is € 4,500 or € 9,000 if EIS/NIS involved².*
- b. *Appeal against a decision of a planning authority on a planning application relating to commercial development¹, made by the person by whom the planning application was made, other than an appeal mentioned at (a) is € 1,500 or € 3,000 if EIS/NIS involved².*
- c. *Appeal against a decision of a planning authority on a planning application made by the person by whom the planning application was made, where the application included the retention of development, other than an appeal mentioned at (a) or (b) is € 660.*
- d. *Appeal other than an appeal mentioned at (a), (b), (c) or (f)³ is € 220*
- e. *Application for leave to appeal is € 110.*
- f. *Appeal following a grant of leave to appeal € 110.*
- g. *Any first party appeal solely against contribution conditions under section 48 or 49 of the 2000 – 2018 Acts, as amended, attracts a fee of €220 irrespective of the nature of the application*

An appeal will be invalid unless accompanied by the appropriate fee and evidence of payment of submission fee to the Planning Authority.

Submissions or observations to An Bord Pleanála by or on behalf of a person (other than the applicant) as regards an appeal made by another person must be submitted within four weeks of receipt of the appeal by An Bord Pleanála and must be accompanied by a fee of € 50.

Footnote

¹ Commercial development includes 2 or more dwellings. See Board's order determining fees and its appeal guide.

² The higher fee applies where an Environmental Impact Statement (EIS) or Natura Impact statement (NIS) was submitted to the planning authority under section 172(1) and / or 177T of the 2000 – 2019 Planning Act or article 103(1) of the 2001- 2020 Planning Regulations, as amended except where the appeal relates solely to a section 48 / 49 development / supplementary development contribution scheme and/or a special financial contribution. (refer to g above)

³ Applies to:- (i) All third party appeals except where the appeal follows a grant of leave to appeal; (ii) First party normal planning appeals (section 37) not involving commercial or unauthorised development, or an EIS; (iii) All other appeals (non-section 37).

While every care has been taken to ensure the accuracy and completeness of this information, it is the responsibility of any person / body making an appeal to ensure that their appeal is accompanied by the correct fee.

For more information on Appeals you can contact An Bord Pleanála at:

Tel: 01 - 8588100 or LoCall: 1890 275 175

Fax: 01 – 8722684

E-mail: bord@pleanala.ie Web: www.pleanala.ie

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Registration No.: 00172770

Mr. Chris Tinsley,
Quarryplan Ltd,
10 Saintfield Road,
Crossgar,
Co. Down, BT30 9HY

12th February 2021

Email: chris@quarryplan.co.uk

Re: Planning Application at Trammon Rathmolyon – TA201910

Your Client: Keegan Quarries

Dear Mr. Tinsley,

I refer to the planning application TA201910 lodged with Meath County Council on 11th December 2020.

Having regard to the following:

- all documentation (plans and particulars) submitted with the application on the 11/12/2020,
- recognition and acknowledgement of the fact that the Applicant has a current application for Substitute Consent pending with An Bord Pleanála (PL17 .305049);
- the recent determination relating to TA200151

It is the considered view of the Planning Authority that it has no option but to refuse to consider this application under the terms of Section 34 (12) of the Planning & Development Acts, 2000 to 2020.

I attach for your information the Guide to Fees Payable to the Board. Arrangements will now be made to return the application fee.

Your sincerely,

Seán Clarke

Senior Executive Officer

NOTE

1. Any appeal against a decision of a Planning Authority under Section 34 of the Planning and Development Act, of 2000-2020 may be made to An Bord Pleanála. Any person may appeal **WITHIN FOUR WEEKS** beginning on the date of this letter.
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- d. *Appeal other than an appeal mentioned at (a), (b), (c) or (f)³ is € 220*
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Footnote

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³ Applies to:- (i) All third party appeals except where the appeal follows a grant of leave to appeal; (ii) First party normal planning appeals (section 37) not involving commercial or unauthorised development, or an EIS; (iii) All other appeals (non-section 37).

While every care has been taken to ensure the accuracy and completeness of this information, it is the responsibility of any person / body making an appeal to ensure that their appeal is accompanied by the correct fee.

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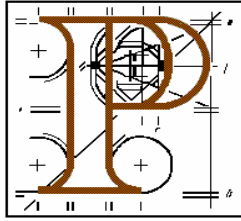
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Appendix 5

SQV17.0217 Board Direction and Inspectors Report



Board Direction

Ref: QV17.QV0217

The submissions on this file and the Inspector's report were considered at a further Board meeting held on 29th July 2014. The Board also considered the file relating to the adjoining quarry operated by Cemex Ireland Limited (QV0182) at this meeting.

The Board decided to **set aside** the planning authority's determination in relation to this quarry under section 261A(2)(a)(ii).

REASONS AND CONSIDERATIONS

In making its decision the Board had regard to:

- (a) Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, as amended,
- (b) the document "Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government (2010),
- (c) the Department of the Environment, Community and Local Government - Section 261A of the Planning and Development Act, 2000 and related provisions, Supplementary Guidelines for Planning Authorities
- (d) the submissions on file, including the report regarding Determination of the Requirement for Appropriate Assessment prepared by Scott Cawley, dated 27th day of July 2012, the report of the Inspector and the Addendum to the Inspector's Report dated 22nd July 2013,
- (e) the scale and nature of operations at this quarry,
- (f) the planning history of the subject lands, extending back to 1998, the detailed environmental information including EIS contained in the applications for permission/appeal under register reference (i) TA/30334 (PL17.206702) and (ii) TA/900976 (PL17.235960) and the fact that the lands have been the subject of environmental impact assessment on two separate occasions by An Bord Pleanála – in 2004 and 2010 - which resulted in the granting of planning permission,

(g) the lack of any particular environmental threat being identified as a consequence of those assessments which included detailed analysis of matters affecting surface and groundwater,

(h) the generally favourable compliance history of the facility with respect to its various grants of planning permission and its discharge licence and the absence of any incidence of surface water pollution arising in receiving waters,

(i) the apparent error made by the planning authority's advisors with respect to the existence of a proximate hydrological link between the receiving waters of the surface and ground-waters discharged from the site and the nearby River Boyne cSAC (no such link exists),

(j) the actual hydrological distance to the River Boyne cSAC which is in excess of 9 kilometres from the site,

(k) the significant overland distance to the Tromman stream from the site (in excess of 400m) and the lack of a hydrological link between them; and

(l) the potential for in combination effects involving the adjoining quarry (planning authority reference QY76; An Bord Pleanála reference PL17.QV0182) operated by Cemex Ireland Limited.

Having evaluated all the available scientific and technical information relating to the subject the Board considered that, by itself, and in combination with other plans or projects, the development on this site after the 26th day of February, 1997 would not have been likely to have had a significant effect on any European Site, in view of the conservation objectives of those sites, and, therefore, that development was not carried out after the 26th day of February, 1997, that would have required an Appropriate Assessment and therefore sets aside the Planning Authority's determination under section 261A(2)(a)(ii) of the Planning and Development Act 2000, as amended.

In deciding not to accept the Inspector's recommendation to confirm the planning authority's determination in respect of section 261A(2)(a)(ii) the Board considered the significant physical separation, hydrologically, between the site and the River Boyne cSAC (in excess of 9 km), the generally favourable compliance record of the site with regard to its discharge licence and lack of any evidence of surface or groundwater pollution occurring as a result of activities at this quarry. In this respect the Board is satisfied that the likelihood of direct impacts on the cSAC as a result of discharges from the site to the northern boundary stream is negligible, which conclusion generally accords with the inspector's analysis.

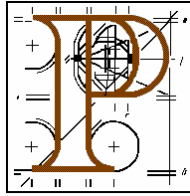
With respect to the inspector's concerns relating to hydrogeology and in particular the potential for affecting the flows in the Tromman stream the Board further considered the data on groundwater and specifically on the likely impact of the (then) proposed future excavation on the local hydrogeological environment, including local watercourses, presented in section 6 of the Environmental Impact Statement submitted with the

application and appeal in respect of PL17.206702, in section 8 of the Environmental Impact Statement submitted with the application and appeal in respect of PL17.235960 and the assessment carried out by the inspector and the Board in granting permission in this case. These data suggest that any influence on regional hydrology, which includes the Tromman stream, due to dewatering of the excavation will be small.

The Board is satisfied on the basis of the available information that (a) the risk of any impacts on the Tromman stream is low and (b) the likelihood of significant effects on the Natura site by this quarry itself or in combination with the adjacent development either directly or indirectly is negligible.

Board Member: _____ Date: 8th August 2014
G.J. Dennison

An Bord Pleanála



Inspector's Report

Review under Section 261A(6)(a) of notification pursuant to Section 261A(3)(a)

DESCRIPTION : Quarry
SITE ADDRESS: Tromman, Rathmoylan, Co. Meath

DETERMINATION

Planning Authority : Meath County Council
Planning Authority Reg. Ref.: QY75
Owner / Operator : John Keegan / Keegan Quarries Ltd.

Planning Authority Determination: Section 261A(3)(a) Notice determining that 2(a)(ii) applies, deciding that permission was granted under the Acts and that there was no requirement to register, and directing the owner / operator to apply for substitute consent in respect of this quarry under Section 177E of the Act of 2000, as amended.

REVIEW :

Review requested by : (1) Kieran Cummins & Associates Planning and Environmental Consultants; (2) Keegan Quarries Ltd.
Type of application : 2no. third party applications for review; 1no. first party application for review

INSPECTOR : John Desmond
Date of inspection: **28/06/13**

SITE DESCRIPTION

The site subject of this application for review is located in mid-south of County Meath, c.1.75km west of Rathmoylan, c.7km south-southwest of Trim and c.9km north of Enfield (all distances are from the centres of the relevant settlement). The quarry landholding is contained wholly within the townland of Tromman. The site accesses onto the R156 along the southern boundary. An unnamed watercourse of c.1.5m width runs east-west along the northern boundary of the landholding, changing course to run northwards c.930m to the west of the site directly adjacent (and possibly just overlapping) the boundary of the River Boyne and River Blackwater cSAC. The stream discharges to Knightsbrook River c.5.5km downstream to the north. The Knightsbrook River discharges to the River Boyne over 10km downstream of the quarry discharge point, where it enters the area covered by the River Boyne and River Blackwater cSAC and the River Boyne and River Blackwater SPA. The Tromman River is located c.1km to the west of the site and is contained within the cSAC. The said river runs south to north, parallel to a stretch of the unnamed stream, however there would appear to be no surface water connection between the two. The quarry is within c.930m of the cSAC at the nearest point and within c.2.2km of the SPA boundary to the northwest. An unnamed watercourse of c.1.5m width runs along the northern boundary of the landholding and discharges to the Tromman River / stream c.1.07km to the west, entering the boundary to the River Boyne and River Blackwater cSAC c.0.96km to the west. The River Boyne and River Blackwater SPA is situated c.2.6km to the north.

The land registry details researched by the planning authority relate to a holding of 20.195ha, however the report of the Council's planning officer only refers to the 8.5ha extraction area. Approximately 3ha of the landholding is in use a concrete products manufacturing facility located to the north of the quarry, however the quarry's water treatment management facility is located within that area along the eastern perimeter. The balance of the landholding is in use as a quarry as defined under section 2 of the Act of 2000, as amended. The main extraction area is stated by the area engineer as 8.5ha, with a surveyed pit floor of 41.5m AOD and a pool of 0.4ha (stated as the exposed ground water table) with a surface level of 40.76m AOD and of unknown depth. The Council engineer gives a height of 78m AOD for the pit height. The site was subject of dewatering at the time of the Council engineer's survey and also at the time of my inspection. The quarry operation discharges effluent to the unnamed stream, as does the concrete manufacturing operations also operated by Keegan Quarries. The discharges would appear to be covered by a single discharge license (ref.04/2). There is a very large overburden storage mound in active use located north of the extraction pit. I estimate its height to be in the region of 95m AOD (this is based on its size relative to the height of the berm to the southwest that had a stated height of 84.1m AOD under application TA/30334 / PL17.206702).

The adjacent landholding to the west comprises a quarry (with ancillary development and associated concrete products manufacturing) of significant scale operated by Cemex and owned by Readymix Ltd. The lands to the north, east and south are predominantly agricultural in nature.

The area is rural in character, with gently rolling agricultural lands divided by traditional field boundary hedgerows and interspersed with one-off housing. The nearest settlements comprise small villages, with Trim the nearest town of size. The nearest residential dwellings are located directly opposite the site to the south of the R156. One c.50m west of the entrance and the other opposite the southeast corner of the quarry landholding and latest proposed extension. There is a significant density of one-off housing development along the R156 within 2km to the west. The local road network is narrow, of poor horizontal and vertical alignment and, like most of the rural road network it is largely without road markings, public lighting, footpaths or hard-shoulder. I count 21no. individual quarries within c.5km diameter of the subject quarry (inclusive of Keegan's Quarry which is not indicated on the Council's on line quarry register map).

RELEVANT PLANNING HISTORY

On subject quarry site:

PL17.235960 / reg.ref.TA/900976: Permission **GRANTED** by the Board (**03/08/10**), upholding the decision of the planning authority, for c.2.85ha extension (limited further by condition no.2 requiring 60m setback from roadside boundary and by condition no.3 prohibiting extraction below 50m OD) to existing permitted extraction area (estimated extraction of c.1.33m tonnes over a period of up to 10 years at a maximum rate of 250,000 tonnes per annum), plus ancillary development. An EIS accompanied the application.

PL17.226884 / reg.ref.TA/60629: Permission **REFUSED** by the Board 16/01/09, overturning the decision of the planning authority to grant permission for an extension to the existing quarry, on grounds of visual impact, serious impact on amenities, disorderly development and potential impacts on groundwater and surface waters including an unacceptable risk of environmental pollution. An EIS accompanied this application.

PL17.206702 / reg.ref.TA/30334: Permission **GRANTED** by the Board (**04/08/04**), upholding the decision of the planning authority, for continuance and extension of quarrying of limestone over an area of 9.06ha including for quarrying of 3no. lower benches and progressive restoration, replacement settlement lagoons, pump house, relocated percolation area and ancillary works. And for **RETENTION** of, inter alia, 4.88ha extension to quarrying to north, south and east of area permitted reg.ref.97/1868, an overburden storage area, settlement lagoon and stilling pond, offices / workshop, septic tank and percolation area, and modifications to layout permitted under reg.ref.97/1868 over 10.53ha area forming part of 15.88ha overall

site. The existing quarry floor level was stated as 65.51m AOD and the proposed quarry finished quarry floor area was 7m AOD (condition no.2 stated '*There shall be no excavation below a level of 7 metres OD*'). An EIS accompanied this application.

Reg.ref.TA/20408: Permission **GRANTED** by the planning authority (**17/07/03**) for the erection of building to manufacture concrete floors, pipes, blocks/bricks and associated products adjacent existing blockyard permitted reg.ref.00/2075. No drawings are on file.

Reg.ref.TA/2075: Permission **GRANTED** by the planning authority (**01/06/01**) for a mobile block making plant, concrete yard and water settlement tank including temporary office and storage shed, also access road from existing quarry.

Reg.ref.97/1868: Permission **GRANTED** by the planning authority (**30/10/98**) for a quarry on 8.5ha to included office, workshop, mobile processing plant, wheel wash, weighbridge, fuel storage unit and car/truck parking. Condition no.2 limited the period of operation to 15 years; condition no.3 prohibited extraction below 62m AOD. An EIS accompanied this application.

Other

Ref.no.04/2: License to Discharge Trade Effluent to Waters (no date other than year 2004) relating to discharge of treated effluent from quarry dewatering operations only. The license specified the effluent treatment to be as follows - to be directed through settlement lagoons of min. 3600m³ capacity and then through Klargester Interceptor type NS 15 Class 1 full retention which accepts a normal floor of 14l/s unless otherwise agreed with the licensing authority; to pass through 30m section of 10-15mm crushed rock berms and discharge through a v-notch weir to the receiving waters. Sets qualitative and quantitative standards for effluent characteristics, limiting total volume to 58m³ per hour or 1400m³ in any one day and setting maximum limit values. Set monitoring regime requirements and recording / log requirements.

Enforcement

UD.11/098: Appears to relate to removal of topsoil and non-compliance with archaeology condition attached to planning permission on this site, presumably condition no.16 of permission PL17.235960 (reg.ref.TA/900976) however the details provided by the planning authority are sparse and do not include the letter of complaint as the planning authority is concerned that the complaints contain details that may identify the complainant. Complaint date 28/04/11. No warning notice or enforcement notice indicated as served.

UD.10/388: Appears to relate only to removal of topsoil, however the details provided by the planning authority are sparse and do not include the letter of complaint as the planning authority is concerned that the complaints contain details that may identify the complainant. Complaint date 14/12/10. No warning notice or

enforcement notice indicated as served.

UD.09/068: Relates to non-compliance with condition no.14 of permission reg.ref.TA/30334 which restricted blasting operations and the resultant vibrations, however the details provided by the planning authority are sparse and do not include the letter of complaint as the planning authority is concerned that the complaints contain details that may identify the complainant. Complaint received 19/03/09. No warning notice or enforcement notice indicated as served.

UD.07162: Relates to non-compliance with condition no.4 of permission reg.ref.97/1868 in terms of breaching of the 62m AOD level and regarding height of spoil deposition. The details provided by do not include the letter of complaint as the planning authority is concerned that the complaints contain details that may identify the complainant. Complaint received 30/05/07. A level survey taken by the Council's engineer on 17/04/03 confirmed that the 62m OD level set by condition no.4 of the said permission had been breached by c.4m. No warning notice or enforcement notice indicated as served.

UD07123: Relates to new layer of excavation on the quarry floor. Date of complaint stated as 01/05/07 although a date of 17/04/07 is referred to in receipt (18/04/07) of complaint by the Council. The matter has been subject of investigation by the Office of the Ombudsman although the outcome of same is not included in the file documents. No warning notice or enforcement notice indicated as served.

UD.07010: Refers alleged non-compliance with conditions nos. 3(2), 9, 16, 17 and 19 of permission PL17.206702 (reg.ref.TA/30334). Letter sent to Keegan Quarries Ltd (on 25/01/07) regarding apparent non-compliance with conditions The letter states "*while dust and noise monitoring results have been received, no report of ground water, surface water flow, ground vibration or over pressure have been received*". Complainant date given as 10/01/07, although correspondence of file dates from / before 13/12/06 and from (or before) 01/11/06 (the latter may relate to 1st party submission in respect of compliance with condition no.16 but this is not clear). No warning notice or enforcement notice indicated as served.

UD.03192: Relates to alleged works carried out not in compliance with permission reg.ref.97/1868 and non-payment of financial contributions. Complaint received 04/07/03. No warning notice or enforcement notice indicated as served.

PLANNING AUTHORITY DETERMINATION & DECISION

DETERMINATION under subsection 261A(2)(a): Meath County Council has determined that - In accordance with Section 261A(2)(a) the subject quarry has:

(i) Carried out development after 26 February 1997, which was not authorised by a permission granted under Part IV of the Act of 1963 prior to

26 February 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.”

Reasons:

Having regard to the relevant available information and identification of risks to the surface water system from ongoing discharge and surface water run-off, potential for likely significant effects from surface water run-off and pollution events (alone and in combination with other quarries in the vicinity) exist on the River Boyne and River Blackwater cSAC and River Boyne and River Blackwater SPA. Therefore all activities post 2003 would have required an Appropriate Assessment in respect of such activities to give rise to impacts on the cSAC.

DECISION under subsection 261A(3)(a): *Meath County Council hereby decides – In accordance with Section 261A(3)(a) the subject quarry:*

(i) Was granted permission in respect of this quarry under Part III of Planning & Development Act 2000-2011, or Part IV of the Local Government (Planning & Development) Act 1963,

and

(ii) There was no requirement to register under Section 261 of the Planning & Development Act 2000-2011,

Reason:

The Planning Authority having been so satisfied from its investigations in respect of this quarry and its inspection of the Planning Register and Register of Quarries pursuant to S261 of the Planning & Development Act 2000-2011.

DIRECTION: Meath County Council directed the owner / operator to apply to An Bord Pleanála for Substitute Consent in respect of the quarry under Section 177E of the Planning and Development Acts 2000-2011.

A note indicates that the application for consent should be accompanied by a remedial EIS or a remedial NIS, or both, in accordance with Part XA of the Acts 2000-2011.

REPORTS & SUBMISSIONS TO THE PLANNING AUTHORITY

Planning Officer’s report (21/08/12)

The report and recommendation of the Council’s planner’s report is consistent with the decision of the planning authority. The main points of the report can be summarised as follows:

Quarry site description – Provides no site area for quarry but indicates that the main extraction area covers c.8.5ha and has yielded 9.5m tonnes of rock excavated by blasting. With an average height of 78.0m AOB excavated to 41.5m AOD. Subject of de-watering with 0.38ha of ground water exposed. Top of ground water table recorded at 40.76m AOD.

Provides an overview of the site's planning history, referring to reg.ref.97/1868, reg.ref.00/2075, reg.ref.TA/20408, reg.ref.TA/30334 (PL17.206702), reg.ref.TA/60629 (PL17.226884) and reg.ref.TA/900976 (PL17.235960) to enforcement files UD/03/192, UD/07/010, UD07/040, UD07/123, UD07/123, UD07/162, UD09/068 and UD10/388.

Summarises the main points of 15no. observations.

Assessment – The quarry was granted permission for retention of quarrying under reg.ref.TA/30334 prior to the ECJ ruling of 2008. Permission granted under reg.ref.TA/900976 (PL17.235960) had not yet commenced at time of writing.

The relevant applications included an EIS and thereafter EIA was carried out.

AA would have been required subsequent to the designation of the River Boyne and River Blackwater cSAC in 2003. There was potential for likely significant affects from surface and ground water impacts on European Sites (River Boyne and River Blackwater cSAC and SPA) advertised or classified at the time of the grants of permission that would have required AA to be carried out.

Works were carried out post 3 July 2008, but the authority cannot determine whether the said works of themselves would have necessitated AA. Development permitted under reg.ref.TA/900976 (PL17.235960) necessitated AA but AA was not carried out however this development has not been commenced and is not relevant under the legislation and no further action is required.

Permission was granted in respect of the quarry and there was no requirement to register under section 261.

Section 3(a) notice warranted.

Referrals / Departmental Reports

Scott Cawley Ecologists – report of 27/07/12 concluded that there was potential for likely significant affects from surface water and ground water impacts on European Sites (cSAC & SPA) which had been advertised or classified at the time of the grant of permission in and therefore AA was required but was not completed. The report indicated that hydrological pathways exist between the quarry and the European Sited, with de-watered groundwater discharged to the adjacent stream to the north which in turn discharges to River Boyne and Blackwater cSAC 0.6km downstream; that the quarry has a discharge license, that Meath County Council monitoring results show exceedences of the maximum limit values for suspended solids in 14 out of 17 sampling occasions over the period of the license from 2004-2011; and that

there are 28 quarries within 5km have potential to act in combination. Depreciated of water quality and potential contamination from silt, hydrocarbons or other toxins could lead to decrease the habitat quality that could result in detrimental impacts upon species of qualifying interest.

Property ownership research – report of Catherine Anderson E. engineer of 17/07/12. Site owned by John Keegan c/o Keegan Quarries. This does not include the far southeast corner of the site.

E. Engineer – report of Mark Farrell 28/06/12. Site inspected 15/02/12. Main extraction area of 8.5ha, to 2no. benches, yielding c.9.5m tonnes limestone rock to depth 41.5m AOD from 78.0m AOD. Exposed water table of 0.3ha extent at 40.76m AOD with depth to same not established. Site is subject of dewatering and pumped to a lagoon and to adjacent stream. Block-making production area of 2.93ha to the north.

Financial Information report (19/04/12) – LA rate paying, quarry / sandpit, land at Tromman, Rathmolyon; 02/07/02; John Keegan Quarries

Submissions / Objections

The submissions made by the following 15no. parties including Ms Patricia Hehir (25/01/12); Mr Nicholas Higgins (25/01/12); Eamon Regan (25/01/12); Michael Higgins (25/01/12); Mr Robert Maguire (25/01/12); Michael Cummins (25/01/12); Ms Kathleen Cummins (25/01/12); Thomas & Sheila Ennis (25/01/12); Mr John Swanton (25/01/12); and Martin Dier of MA&HS (25/01/12) raise the same points and are summarised together as follows:

- Retention of development subject of EIA is debarred arising from ECJ judgement C.215-06.
- Concern regarding permitted extraction area, groundwater issues, compliance with reinstatement obligations, previous retention applications and EIA (implications in light of C.215-06), financial contributions compliance, discharges to watercourses, unauthorised de-watering, archaeological monitoring compliance and unauthorised removal of woodland (section 37 of the Forestry Act 1946 refers).

Malone & Marin Solicitors on behalf of Keegan Quarries Ltd;

The main issues raised in the submission received 25/01/12 can be summarised as follows:

- The quarry owner / operator is entitled to the benefit of natural and constitutional justice in or about the proceedings of a planning authority in making a determination which may adversely affect the rights, including the property rights, of that party.

- The quarry owner / operator reserves the right to make submissions or observations by way of response to any third party submission or observation regarding the subject quarry and will require positive confirmation that all relevant submissions / observations by the company will be taken into account.
- Section 261A of the Act of 2000, as amended, requires the planning authority, in making determinations, to have regard (inter alia) to '*any other relevant information*' and '*all relevant information*'.
- Submissions by the company in reply to third party submissions must be taken into consideration by the planning authority.

Kieran Cummins & Associates 24/01/12

The main points can be summarised as follows:

- TA/30334 (PL17.206702) included retention of developments (including 4.88ha quarry extension) on 10.53ha of the 15.88ha site – in the absence of EIA or AA covering the lands subject of the retention the operations should cease and the lands be reinstated.
- Stockpiles – not covered with topsoil and seeded as required by condition no. 4(5) [of PL17.206702]. The height of the stockpile poses considerable occupational hazard.
- Depth – permitted at 7m AOD when 13m AOD proposed which raises questions of legality; falls foul of current process as it was permitted largely as retention; no mention in the site notices of vertical extension on the depths proposed which was a material issue; a grant of permission of depth of 7m AOD is without foundation and must be revoked, the quarry reinstatement commenced and the quarry wound down.
- Area of extraction – must be examined with regard to the permitted extent.
- Financial contributions compliance questioned.
- Reinstatement plans – there is no evidence of any of the proposed 'progressive reinstatement' having commenced.
- Discharge to watercourse – contamination; authorisation?
- Hazard – steep cliff faces; height of overburden.
- Employment – erroneous consideration.

An Taisce – The National Trust for Ireland (24/01/12 indicated but not date stamped)

The main points of the submission can be summarised as follows:

- Legal onus to address the status of all quarries with regard to compliance with the EIA and Habitats directives and European and Irish court judgements.
- ECJ judgement C.215-06 – retention of development prohibited where EIA applies.

- ECJ judgement C.50-09 – failure of state to fulfil obligations under Article 3 of the EIA Directive.
- Significant habitat impacts arising from any quarrying raises the issue of requirement of Appropriate Assessment under the Habitats Directive.
- Substitute Consent is retention by a different name and does not resolve C.215-06 which ruled that there must be no grant of retrospective permission of development were EIA is required.
- The planning authority will be required to close down any quarry were previous retention applications or unjustified Section 261 Registrations were lodged which would have required EIS to be lodged.
- Section 261 resulted in large scale claims of pre-1963 quarries without proper documentary evidence to support the existence of or the extent of the quarry unit at that time – concern about authenticity of claims.
- Such claims should be investigated and compared to 1970's air-corps photographs.
- Screening for EIA is required for quarries of less than 5ha, with regard to European sites, priority habitats, water courses or archaeological features and cumulative impact.
- Quarries with existing planning consents – where financial contributions are outstanding, this is a material contravention of the planning authorisation and requires that a quarry be refused permission to continue.
- Endemic non-compliance with reinstatement conditions – any quarry not in compliance should be subject to enforcement procedures without delay.
- Breach of permitted extraction area must be assessed.
- Evidence of unauthorised blasting or illegal dewatering should result in immediate closure and enforcement action.
- Volume of existing extractions should be assessed by a site-surveyor and, where the water table has been breached, by a hydrologist.
- Unauthorised disposal of water to watercourses should be assessed due to potential impacts (from high lime content of discharges, for example) such as fish kills, and should result in immediate closure and enforcement action.
- Breach of water table – may result in permanent lake which would leave the aquifer open to contamination and form a serious safety hazard. Needs assessment by hydrologist
- Archaeological monitoring – it is common for applications for extension or continuation to have not monitoring data on previous development.

Peter Sweetman & Associates (20/01/12)

The main points of the submission can be summarised as follows:

- With reference to ECJ judgement in case C2009/50, it is submitted that no EIA, as required under Article 3 of the EIA Directive 85/337/EEC, as amended

by 97/11/EC and 2003/35/EC, has ever been carried out by the Council or on appeal to An Bord Pleanála.

- EIA is therefore required for any of the quarries listed in the Quarry Register 2011 public.xls (pages 1-4, attached to this submission, which includes the subject quarry Qy75) which exceed 25ha (required under Annex I of the Directive), exceed 5ha (required under Irish Regulations implementing Annex II of the Directive).
- Appropriate Assessment is required for all quarries which are likely to have an effect on a habitat under the Habitats Directive 92/43/EC Appropriate Assessment.

GROUNDS OF REVIEW APPLICATION

An Taisce – The National Trust for Ireland (05/09/12)

The main grounds of this review application (which does not specify which subsection review is required under) can be summarised as follows:

- For a developer to be able to submit a retrospective EIA for the development or expansion of a quarry, the developer must be able to demonstrate exceptional circumstances as specified in the ECJ judgement C.215-06 of 03/07/08.
- No exceptional circumstances apply to this quarry and therefore it cannot be granted substitute consent.
- Site is adjacent and was development in tandem with CEMEX ROI [QY76] since 1998.
- Application TA/30334 and PL17.206702 was accompanied by an EIS and included retention of area of 10.53ha within 15.88ha site. Should have been subject of EIA and AA and in absence thereof should be required to cease and the site reinstated. The unauthorised quarrying disregarded its own EIS of 1997. A grant of substitute consent would be retention by a different name.
- Depth – the depth of 7m AOD permitted by the planning authority differs wildly from the established norms and raises serious issues for water security and human health. There was no reference to the proposed depth of the quarry in the site notices, site plans or the EIS non-executive summary in the relevant application, which is totally non-compliant with EU law (states intention to make a full report to the EU on this matter should the Board ignore the submission and grant substitute consent).
- Questions legality of permitting depth to 7m AOD where depth of 13m AOD was proposed. This permission must be revoked and the development wound down and reinstatement commenced.

- Stockpiles – Non-compliance with condition 4(5) of the permission regarding covering with topsoils and seeded. Hazard resulting from same not addressed in the EIS.
- Questions whether financial contributions complied with.
- No evidence that any proposed progressive reinstatement was ever commenced.
- Discharges to watercourse – all discharges from the quarry into the watercourse (authorised and unauthorised) must be examined; exceedences of discharge license MLVs for suspended solids reported by Meath County Council in 14 out 17 occasions; in combination effects arising from 28no. quarries within 5km.
- cSAC/SPA – proximity to tributaries to the River Boyne and River Blackwater SAC. Refers to risks of potential contamination and presence of hydrological pathways between the development site and the European Site as identified by the planning authority in its evaluation.
- Residential – significant impact on residential amenity within 1km.
- Employment implications – erroneous consideration.

John Keegan of Keegan Quarries (10/09/12)

The main grounds of this review application under Section 261A(6)(a)(v) can be summarised as follows:

General

- Application for review made “under protest” and without prejudice to their contention the legislation is unconstitutional.
- All development was and is being carried out in accordance with all legislation and regulations then applicable.
- The permissions (not contested by JR) established rights including property rights.
- Submits that Section 261A is unconstitutional, void and of no effect.
- MCC erred in determining under S261A that John Keegan apply for substitute consent under S177E.
- Disparity in time given to the Local Authority to compile and make its assessment (9 months) and that given to the owner / operator to response (21 days) and the applicant reserves the right to make further submissions in support of its case.

Background

- The quarry material extracted on site is a high quality material and the cornerstone of the business, is an important supply source to many bodies and is essential to the concrete product manufacturing that takes place on the site and at the other two production plants offsite and the concrete and quarrying business employs 50 people directly and 30 indirectly.

Planning history

- EIS submitted with permitted applications P97/1868 (1998), TA/30034 (2003) and TA/900976 (2010). The EIS of 2003 makes clear that it was prepared in accordance with EC(EIA Regulations) 1998 (SI No.349 of 1989) and Planning & Developments Regulations 2001 (SI No.600 of 2001). Section 4.5 'Designations' of the EIS of 2003 dealt with the Habitats Directive.
- P97/1868 (1998), TA/30034 (2003) pre-dated the ECJ ruling of 8th October 2008. The quarry is working within the conditions as set out in these permissions.
- The permission granted in 2010, not yet commenced, is also lawful as it predates the transposing into Irish law in September 2011 the requirement for AA and is a valid and legitimate permission not requiring any further action.

Supplementary Guidelines July 2012

- The guidelines (p.5) clearly support the notion that it would be exceptional to determine that the original planning process was flawed.
- In context of the guidelines, the Board must refrain from making any determination that undermines and unravels the original planning process unless there is clear and overwhelming evidence that the planning process had been fundamentally flawed.
- Contrary to natural justice.
- Onus of proof lies with the local authority seeking to set aside its own previous decision; the standard of proof must be very high and where in doubt it must err on the side of upholding the status quo.
- Referring to the content of section 3.2 AA of the said supplementary guidelines July, the application for permission reg.ref.P97/1868 did not require planning permission as the quarry was not a European Site.
- Referring to pages 6-7 of the said supplementary guidelines, the EIS submitted with permitted application TA/30034 fulfilled all legal requirements in respect of AA having regard to the provision in SI No.86/1994 that environmental impact assessment '*shall be appropriate assessment*'.
- The provision under SI No.86/1994 that EIA shall be AA remained in full force of law until 21 September 2011 and did not collapse on 13 December 2007 when the ECJ ruled that a similar provision in separate regulations (Regulation 17 of the Habitats Regulations) was not correct.
- Regardless, the EIA to TA/30034 (no issue raised by MCC regarding adequacy) did consider all relevant environmental effects, including direct and indirect effects on flora and fauna and therefore appropriate assessment was adequately addressed.
- The said guidelines make clear that for appropriate assessment to have taken place it is not necessary for the term "appropriate assessment" to have been used.

Errors of fact

- If afforded the opportunity, the owner/operator will make detailed submission proving the errors.
- The issues with Mark Farrell's (MCC engineer's) report include (but are not limited to) –
 - The calculation of tonnage of extraction cannot be determined by simply surveying the quarry and was not based on the necessary information (original survey, depth of overburden, clay in fissures);
 - A determination that the excavation has taken place below the water table can only be concluded by a qualified hydrologist.
- The issues with Scott Cawley [Ecologists] report include (but are not limited to) –
 - Reference to the EIS failing to comment on the likelihood of the negative impact on the SAC from the quarry.
 - The EIS was not challenged by the planning authority;
 - Permission was granted based on the EIS;
 - The authority was well aware of the number of quarries in the area at time of making its decision;
 - The quarry is located some considerable distance from the European Site;
 - The EIS hydrology report proves there would be no significant effect on the water table;
 - The constant monitoring on site proves that no damage has occurred over the lifetime of the quarry.
 - Does not refer to any baseline data provided in Keegan Quarries' EIS
 - Does not refer to any monitoring data carried out by Keegan Quarries and Cemex.
 - Groundwater discharge, potential surface water runoff and groundwater contamination were dealt with in great detail in the EIA during the planning application and by monitoring carried out by independent consultants and submitted to MCC on monthly / quarterly / yearly basis as required.
 - With the exception of a technical breach of an extremely onerous discharge license limit, Keegan Quarries has been fully compliant.
 - There is no requirement under S261A for the planning authority to consider whether conditions, limitations or restrictions have been complied with.
 - Refutes the allegations made in Scott Cawley's report.

The planner's report

- No warning notices or enforcement notices received since 2003; and Keegan Quarries rectified all issues raised in that enforcement notice and received no further correspondence.
- Takes issue with reference to details of discharge licence.

- The exceeding of MLV for suspended solids in 14 out of 17 samples result from the imposing of a 1mg/l limit which is well below the industry norm of 30mg/l.
- MCC indicated that this was a typographical error and to submit its samples.
- An independent laboratory was employed to carry out regular testing and the results show the level of suspended solids far below industry norms and very close to 1mg/l MLV despite the MLV being absurd and an error.
- Letters from two independent environmental consultants, Ian Byrne Environmental Consulting Ltd and Geosync Consultants, support that the [suspended solid MLV] in the discharge license is unrealistic and unworkable and not in line with EPA guidelines '*Environmental Management in the Extractive Industry*'. EG of DL/01/04 for Irish Asphalt site at Duleek which set 30mg/l MLV for suspended solids, which is the industry norm.
- Scott Cawley advises that AA is required on the basis of noncompliance with the discharge license, but it is not reasonable that the quarry be required to seek substitute consent due to a technical breach of a discharge license.
- Keegan's Quarries has never received a complaint from MCC about the exceeding of limits of the discharge license.
- There is no evidence to suggest any negative impacts on water quality or negative impact on cSAC.
- Comprehensive and detailed reports of the area's hydrology and the effects the quarry may/may not have are dealt with in great details in 3no. separate EIS reports.
- Detailed water monitoring has been undertaken by Keegan Quarries over the lifetime of the quarry and submitted to MCC and demonstrate that the operations are having no adverse effect on the quality, drawdown or any negative impact in any way on the water table.

Appendices

- Quarterly groundwater level monitoring results from 2008, 2009, 2010, 2011 and 2012.
- Dust deposition monitoring results submitted for 11/10/06 to 08/11/06, 29/09/10 to 29/10/10, 01/02/11 to 28/02/11 and 01/06/12 to 29/06/12.
- Noise monitoring results submitted for April 2008 (2no. X 1 hour surveys showing compliance), May 2009 (non-compliance explained by traffic noise on R156), November 2010 (complied) and September 2011 (non-compliance explained by traffic noise on R156).
- 'Alcontrol' water testing results final reports 27/10/07 and 09/04/08; surface water quality report by Byrne Environmental Consulting Ltd 02/10/09 based on analysis by Alcontrol Geochem Ireland (copy of analysis report not attached); water test report by 'Jones Environmental Laboratory 07/06/10.
- Letter from Geosyntec 05/09/12 – 1mg/l MLV for suspended solids is onerous given the recommended MLV of 35mg/l in current EPA guidelines.

- Letter from Byrne Environmental Consulting Ltd – submits that MCC made an error in MLVs for suspended solids (1mg/l) and BOD (2mg/l) and that they should have been set at 30mg/l and 20mg/l having regard to limits imposed on other discharges at around the same time and having regard to the EPA guidelines on same and having regard to the fact that accredited analytical laboratories would not normally be able to achieve a limit of detection to that level.
- Aerial photographs and maps [note: these are irrelevant as they pertain to another of the Keegan's quarries located at a significant remove from the subject site].

Kieran Cummins (11/09/12)

The main points of the application for review are the same as those raised by An Taisce and are summarised above.

RESPONSES

Owner / operator John Keegan of Keegan Quarries Ltd (31/10/12)

The main points of the response can be summarised as follows:

- Water pollution – repeats submission on unworkable MLV set for suspended solids in the discharge license. The highest level of suspended solids over the last 8 years has been 14mg/l against an industry norm of 30mg/l.
- There is no evidence that the photographs submitted by Mr Cummins relate to Keegan's Quarries operations, with no map of photograph locations attached, no date provided, no identifying [landscape / other] features, no independent laboratory tests of water samples and no evidence of any complaints by Mr Cummins to MCC to investigate alleged water pollution.
- The submission does not in any way substantiate the argument by Mr Cummins that the quarry polluted the river.
- Restoration plan – there has been two separate planning permissions granted since the original permission and restoration plan of 1998.
- Employment – the creation and maintaining of 80 jobs is very important.

Note: the 2no. attachments are copies of documents attached to John Keegan's application for review received 10/09/12.

Kieran Cummins (30/10/12)

Concurs and supports An Taisce's submission. The main points of the response to the submission of Keegan Quarries can be summarised as follows:

- Operators who fall foul of ECJ ruling C215/06 regarding retention permissions (the 2003 permission was used to regularise development on the site) must be subject to closure and enforcement. The planning authority had ignored or overlooked this issue.

- The issue of constitutional rights is unfounded.
- Personal rights are guaranteed under the constitution and are superior to commercial property rights.
- The purpose of S261A is to conduct a retrospective review of procedures.
- The planning authority erred in not also including the previous grants of retrospective planning permission granted in 2004.
- Time limit is an issue for all parties, particularly the voluntary sector.
- It is irrelevant that the quarry is pyrite free and high quality, only compliance with EU law is relevant.
- Issue of employment is irrelevant.
- Flawed process – retrospective permissions are indicator that planning process was fundamentally flawed.
- It is a flagrant breach of natural justice to ignore the covenants made in the original EIS and subject local residents to issues arising from non-compliance.
- EU law is superior to Irish constitution.
- Extraction estimate was reasonably made.
- Water table – it is established from the planning documentation, the EISs and from the 24/7 pumping from the quarry and discharge to the watercourse that the water table has been breached.
- The EIS of 2003 was grossly deficient and misleading and made no reference to the extraordinary level to which it was intended to descend.
- The receiving waters discharge to Tromman River, within the cSAC, a short distance from the quarry.
- Regarding the EIS hydrology reports, a number of wells in the vicinity suffered greatly from water shortages in recent years, presumably resulting from the quarry operations.
- It is right that Scott Cawley did not refer to Keegans Quarries' data and relied on independent data.
- A substantial amount of the water, dust and noise monitoring data is not available from MCC.
- The rectification of the issues raised in the Enforcement Notice [of 2003] was by way of retrospective planning permission, the issue of concern to the EU and where the S261A process derived.
- Requests the Board to uphold the PA's decision and add the issue of retention applications in the past as being contrary to S261A.

An Taisce (31/10/12)

The main points of the response to the submission of Keegan Quarries can be summarised as follows:

- Deficient in addressing the major non-compliance that occurred before 2003 and permission PL17.206702 / reg.ref.TA/303044.

- The Irish quarry industry has ignored limits on area, tonnage and / depth in the knowledge that the issue would be resolved by retention permission.
- The Board's handling of PL17.206702 typifies this approach, with major compliance breaches simply glossed over in a subversion of EIA process.
- The issue of compliance since the retention permission of 2004 has not been adequately addressed by the operator's submission.

Meath County Planning Authority 05/11/12

No further comment.

POLICY DOCUMENTS

Meath County Development Plan 2013-2019 – adopted 17/12/12 and in effect from 22/01/13

Chapter 10 Rural Development

Section 10.12 'Extractive Industry and Building Materials Production: Goal and policies RD POL 21-27.

Chapter 11 Development Management Guidelines and Standards

Section 11.14 Extractive Industry and Building Materials (also 11.14.1 Duration; 11.14.2 Rehabilitation).

Appendix 7 Meath Landscape Character

Landscape Character – LCA 6 Central Lowlands – Landscape Character: High value of; Landscape Sensitivity: Moderate; Landscape Importance: regional importance.

OTHER REFERENCE DOCUMENTS

'Section 261A of the Planning and Development Act, 2000 and related provisions, Guidelines for Planning Authorities' (DoEC&LG, January 2012)

'Section 261A of the Planning and Development Act, 2000 and related provisions, Supplementary Guidelines for Planning Authorities' (DoEC&LG, July 2012)

'Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities' (DoEH&LG, December 2009).

'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development' (DoEH&LG, August 2003).

'Advice Notes On Current Practice (in the preparation of Environmental Impact Statements)' (EPA, September 2003).

'Guidelines on the information to be contained in Environmental Impact Statements', (EPA, March 2002).

'*Quarries and Ancillary Development, Guidelines for Planning Authorities*' (DoEH&LG, 2004).

'*Environmental Management Guidelines: Environmental Management in the Extractive Industry (Non-Scheduled Minerals)*', (EPA, 2006)

'*Guidelines for Inspectors: Quarrying and the Water Environment*', unpublished (February 2013).

ASSESSMENT:

1.0 Introduction

1.1 This assessment relates to applications for a review by the first party and by two third parties, under subsection 261A(6)(a) of the Act of 2000, of a notice issued by the Planning Authority under subsection 261A(3)(a) of the Act of 2000 in respect of a quarry at Tromman, Rathmolyon, County Meath. The parties do not specify which subsection their requests are made and therefore the review must address the determination of the planning authority under subsection (2)(a) and its decisions under subsections (3)(a).

1.2 I have reviewed and taken account of all details and documents submitted by the persons applying for the review, the submissions and/or observations received to the review, and the information furnished by the planning authority including the planning history pertaining to the site. I have also reviewed the available aerial photographs for the area, including the OSI photographs from 26/06/95, 06/05/00, 08/09/05 (or possibly 06/05/04) and 01/06/09 (from myplan.ie) and Google Earth images from 18/04/09, 02/03/10 and 29/04/11.

1.3 The section 3(a) notice states that "*Meath County Council has considered the above quarry as detailed in the attached aerial photograph*". The said photograph shows two adjacent but separate quarries (QY76 and QY75), with no obvious boundary between the two indicated, and with a red line boundary indicating the '*registered quarry boundaries (s261)*' encompassing all of the subject quarry (QY75) and the majority of the adjacent quarry (Qy76) together. Having reviewed both files, including the planner's and engineer's reports and the planning history files, I have attached an aerial photograph demarcating the boundary of the quarry subject of this review application in the interest of clarity.

2.0 Determination under Subsection 261A(2)(a)

2.1 DETERMINATION under subsection 261A(2)(a): Meath County Council has determined that - In accordance with Section 261A(2)(a) the subject quarry has:

- (ii) *Carried out development after 26 February 1997, which was not authorised by a permission granted under Part IV of the Act of 1963 prior to 26 February 1997, which development would have required,*

having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.”

Reasons:

Having regard to the relevant available information and identification of risks to the surface water system from ongoing discharge and surface water run-off, potential for likely significant effects from surface water run-off and pollution events (alone and in combination with other quarries in the vicinity) exist on the River Boyne and River Blackwater cSAC and River Boyne and River Blackwater SPA. Therefore all activities post 2003 would have required an Appropriate Assessment in respect of such activities to give rise to impacts on the cSAC.

In making a determination under subsection 261A(2)(a) the Planning Authority was informed by the assessment reports of its planning officer (21/08/12) and its executive engineer (28/06/12) and by an appropriate assessment screening report prepared by Scott Cawley Consultants (dated 27/07/12), as well as a property research report and financial report conducted on the Council's behalf.

2.2 **Development post 26 February 1997:** S.I. No.94/1997 - European Communities (Natural Habitats) Regulations, 1997 – commencing 26 February 1997, made appropriate assessment a legal requirement in Ireland. As noted above, the site is proximate to two European Sites, the River Boyne and Blackwater cSAC (site ref.002299) and the River Boyne and River Blackwater SPA (site ref.004232) and therefore the issue of appropriate assessment is directly relevant, particularly given the nature and scale of the subject quarry. The date of the advertisement of the relevant cSAC is June 2003 and the date of designation of the relevant SPA is June 2011. Unlike the regulations for EIA (S.I. No. 349/1989 and etc.) which set a threshold for EIA based on the extent of the ‘*area involved in ‘extraction’* (or the ‘*extraction area*’ in later amendments to same), the appropriate assessment regulations did not set threshold levels and therefore the consideration of whether AA is or is not required is not restricted by consideration of the extent of the extraction area.

2.3 **The first issue** to consider is the scale of development that has taken place after 26 February 1997. The entire quarry development has taken place post 26 February 1997. It currently comprises a pit of approximately 8.5ha (as measured by the Council's engineer – this appears to be correct); the pit floor was recorded at 41.5m AOD (and at 40.76m AOD water level in the flooded section) by the Council's engineer on 15/02/12; a stripped area of c.1.4ha to the east; an uncovered overburden storage area of c.2ha to the north (c.1ha grassed berm to west of same); c.1ha area accommodating offices, parking,

etc. There is also a c.3ha concrete products manufacturing area to the north, however although this is associated with the wider development on the site, it is not quarry use. Excluding the said manufacturing area, the quarry site measures c.17ha.

2.4 **The second issue** to consider is whether the subject quarry development was authorised by a grant of permission prior to 26 February 1997, or by a pre-1964 authorisation, prior to the introduction of the requirement for appropriate assessment. The quarry development was not authorised by a grant of permission prior to 26 February 1997, or by a pre-1964 authorisation.

2.5 **The third issue** to consider is whether the quarry development not authorised by a pre-1964 authorisation or grant of planning permission and that has taken place post 26 February 1997 would have required Appropriate Assessment. The relevant European Sites are the River Boyne and River Blackwater cSAC and the River Boyne and River Blackwater SPA. The said cSAC was first advertised in June 2003 and the said SPA was classified in June 2011, from which time they were protected in law and development proposals may have necessitated appropriate assessment to be carried out. The conservation objective for the River Boyne and River Blackwater cSAC is to maintain or restore the favourable conservation condition of the Annex I habitat(s) and / or the Annex II species for which the SAC has been selected (i.e. the qualifying interests), namely:

- *Lampetra fluviatilis* [river lamprey]
- *Salmo salar* (only in fresh water) [Atlantic salmon]
- *Lutra lutra* [otter]
- Alkaline fens

- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*,

Alnion incanae, *Salicion albae*)

The conservation objective for the SPA site is to maintain and restore the Kingfisher (its qualifying interest) to favourable conservation condition.

2.6 The entirety of the quarry development was authorised and commenced after the transposing of the Habitats Directive into Irish law on 26 February 1997. The quarry pit authorised under reg.ref.97/1868 had an extraction area of 3.85ha¹, within a quarry holding of 8.5ha, and was limited to a pit floor level of 62m AOD by condition. The development can be considered completed. The River Boyne and River Blackwater cSAC and the River Boyne and River

¹ Stated by applicant in later application PL17.206702.

Blackwater SPA had not been advertised or classified at the time of making of the decision by the Board on appeal and appropriate assessment was not therefore required.

- 2.7 Permission was granted under PL17.206702 (reg.ref.TA/30334 lodged 05/09/03) for quarrying of limestone over 9.06ha² to a depth of 7m OD³ on 04/08/04, subsequent to the advertising of the cSAC and therefore may have required the carrying out of appropriate assessment. The grant of permission included the retention of, and the continuance of quarrying within the then existing unauthorised lateral and vertical extensions to the extraction pit (c.4.88ha area). The 9.06ha included a proposed 1.5ha extension to the north, northwest and southwest, but excluded an existing c.1ha extracted area to the east / southeast. As the development proposed for retention preceded the advertising of the cSAC (that development shown on site survey July 2003) it would not have required appropriate assessment at the time development was carried out. Only the proposed future development, including the lateral expansion, the continuance of extraction within retained extraction area and the deepening of the extraction pit to the level of 7m AOD may have required the carrying out of appropriate assessment.
- 2.8 The existing extraction pit is stated as 8.5ha and the depth measured at below 40.76m AOD (measured water level) by the Council's Engineer. I measure the pit (from the most recent aerial photograph Google Earth 29/04/11) at closer to 7.5ha. The quarry sump was actively pumped on the day of inspection and discharged to the unnamed watercourse to the north of the landholding via a water treatment system⁴ (the quarry is licensed to discharge up to 1400cu.m of water per day). I noted the following obvious risks of contamination of surface and ground water: the fuel pump (showing evidence of leakage) and fuel tank adjacent the sump were not contained within bunds and stood on a loose surface area; surface water runoff from the concrete production area was directed to the treatment channel and discharge channel; fuel / chemical tanks were stored without bunds and some also on the loose surface; sand stockpiled adjacent treatment channel. Notwithstanding the potential for contamination, the water entering and discharging from the system appear clear and clean on the day of inspection with no visual indicators of pollution and fry evident in the upper most pond, indicative of unpolluted water.
- 2.9 The potential impacts on the cSAC identified by Scott Cawley Ecological Consultants include depreciation of water quality and potential contamination from silt, hydrocarbons and / or other toxins. Scott Cawley and the Council's planner's indicate that discharges from the operations have breached the maximum Emission Limit Value (ELV) for total suspended solids on 14 out of

² Stated by applicant.

³ 13m AOD is indicated on the drawings but 7m OD is stated on page 35 of the EIS August 2003.

⁴ The 30m length of gravel berm required by the Waste Water Discharge License ref.04/2 was not evident.

17 tests (between 2004-2011). The sample monitoring reports submitted by the owner / operation support his position that the breaches were of a technical nature only - the ELV for suspended solids under the discharge license was set at what would appear to be a particularly onerous level of 1mg/l when compared with an ELV of 35mg/l recommended in the EPA's guidelines on 'Environmental Management in the Extractive Industry' (2006). However the selection of monitoring results provided by the applicant raise other concerns as they show significant exceedences of the ELV for Diesel Range Organics (DRO) in 2007 in addition to exceedences DRO, Mineral Oils (MO) and BOD in 2008⁵ and for Hazen colour in 2010. The details on file suggest that monitoring of the discharge may not have taken place in accordance with the requirements of the license⁶, which would increase the risk of contamination of waters.

2.10 Scott Cawley's conclusions on the potential for significant effects on the European site are based on the presence of hydrological pathways (the unnamed stream) discharging to the cSAC 500m downstream. However the Scott Cawley report is incorrect⁷. Having inspected the watercourse, I found it does not discharge to the Tromman River within the cSAC to the west but instead turns 90-degrees to take a northerly course c.960km west of the site to discharge to the Knightsbrook River c.5km downstream. The Knightsbrook River confluences with the Boyne c.10km downstream of the quarry's effluent discharge point. It is implausible that the unnamed watercourse, which is c.1m in with and clogged with vegetation over significant lengths, would be capable of transporting silts and suspended solids downstream 10km to the cSAC in any significant quantity. The stream may be capable of transporting hydrocarbons and / or toxins a greater distance downstream. I do not know whether it is capable of transporting such materials c10km downstream, or that that such pollutants would be likely to be discharged by the development in such quantities to threaten a significant effect on the cSAC, but it would seem unlikely. I have reviewed the surface water quality data available on the EPA Envision maps. The unnamed watercourse is not rated by the EPA. The Knightsbrook River c.1km downstream of the confluence with the unnamed stream is Q4, good status⁸ which would suggest that discharges to the unnamed stream have not have a significant impact on the surface water quality of Knightsbrook River or the River Boyne.

2.11 In my professional opinion, the likelihood of significant effects arising from the subject development, in itself and taken in combination with other projects in the vicinity, in terms of surface water pollution could reasonably have been

⁵ The DRO levels recorded in 2007 are extreme - 144749518ug/l against an ELV of <10 µg/l. DRO of 294ug/l MO of 59µg/l (ELV of <10 µg/l) and BOD of 5mg/l (ELV of 2mg/l) in 2008.

⁶ The discharge is required to be monitored for 13no. parameters every 2 months, which would have entailed 36-48no. samples between 2004-2011.

⁷ The Scott Cawley report appears to be based on incorrect river catchment data on the EPA's website which shows the said stream connected to the Tromman River to the west.

⁸ I do not know the year to which the Q-ratings apply.

ruled out at the time the relevant application due to the length of the hydrological pathway between the development site and the cSAC.

2.12 Although there is no surface water pathway between the development and Tromman Rover within the cSAC to the east, the development may pose a risk to the hydrological balance of the Tromman River through dewatering of the pit to accommodate extraction and the diversion of groundwater to the unnamed stream away from Tromman River⁹. Based on the ground water table level indicated in further information submitted to reg.ref.97/1868 (stated as 73m OD) the current extraction level of below 40.7m AOD (measured by Council engineer 15/02/12) is at least 32m below the water table and therefore requires significant dewatering to accommodate extraction of rock material. The EIS of August 2003 to reg.ref.TA/30334 suggest that true level of the natural water table on this site was between 63m¹⁰ OD to 67m¹¹ OD. The EIS August 2003 (p.55) estimated that up to 1168cu.m would be discharged per day to the unnamed stream to the north of the site (the quarry discharge license permits discharge of 1400cu.m per day but the EIS of 2003 estimated the actual discharge rate at 655cum/d at time when pit floor was at 52m OD). The discharge license for Cemex Quarry limits discharge to 530cu.m per day. Section 6.5 of the EIS of 2003 claimed that evidence from surrounding wells suggested that the resultant ground water hydraulic gradient would be steep. This may suggest a limited or absence of impact on the hydrological balance in Tromman River, however the continual abstraction to the sump may result groundwater flowing towards the quarry rather than towards the river and potentially remove groundwater as a source of recharge. The implications for the cSAC are uncertain.

2.13 It is not possible for me to determine whether the level of abstraction and dewatering on the site, in itself and when taken in combination with that occurring on the adjacent Cemex site, is such as to have a significant effect on the Tromman River (within the cSAC) in view of the site's conservation objectives. The said watercourse is c.640m from the quarry sump and 440m from the pit at the nearest point to the south, although the sump is c.1.3km from the Tromman River within the cSAC to the west. The Cemex pit is within c.540m of the Tromman River within the cSAC. Section 6.6 of the EIS 2003 indicates that data will be collected to establish any impacts on water sources (i.e. wells) within 500m. This would suggest that the zone of drawdown has a realistic potential of extending to 500m at depth, but the effect at or near surface level (where it may impact on surface watercourses) can be expected to be wider. The in combination effect of drawdown associated with the two adjacent quarries can also be expected to be more significant.

⁹ The Tromman River watercourse is not currently monitored by the EPA and its Q-rating values date from 1985/1990 and are not relevant.

¹⁰ Indicated future water surface level to flooded pit post restoration (Fig.9.7).

¹¹ Indicative level on neighbouring Readymix site (p.51).

2.14 Based on the information available, the likelihood of significant effects on the cSAC in view of the site's conservation objectives pertaining to the qualifying interests cannot be excluded, particularly in view of potential in combination effects associated with the adjacent Cemex Quarry. Having regard to the requirements of the Habitats Directive and to the EPA and EC guidance documents on Appropriate Assessment, I am of the opinion that appropriate assessment was required. The question arises as to whether the EIS submitted by the applicant and the EIA carried out by the planning authority and the Board constitute a de facto appropriate assessment having regard to the provisions of the regulations¹² at the time that environmental impact assessment shall be appropriate assessment.

2.15 The EIS of 2003 makes no reference to the proximity of the proposed development to the cSAC of SPA and identifies no potential significant effects, arising from the proposed development alone and/or in combination with other projects, in view of the conservation objectives or the qualifying interests of those sites. The Council's planner's reports to reg.ref.TA/30334 do not refer to cSAC or SPA sites in the vicinity but only repeat the information in the applicant's EIS. The Board's Inspector to PL17.206702 made no reference to the cSAC or SPA sites in the vicinity in her assessment. I am satisfied that the EIS submitted with reg.ref.TA/30334 / PL17.206702 did not adequately address the likelihood of significant effects on the cSAC arising from the proposed development in itself or in combination with other projects, or the development that has been carried out on site to date and that no appropriate assessment was carried out. The determination of the planning authority under section 261A(2)(a) should therefore be confirmed.

2.16 Development after 3 July 2008 -

2.17 As no determination issued by the planning authority concerning development carried out after 8 July 2008, no review can be carried out by the Board in this regard.

¹² SI No.86/1994

3 RECOMMENDATION

- 1 I recommend that the Board, in exercise of the powers conferred on it under section 261A of the Planning and Development Act, 2000, as amended,:

based on the Reasons and Considerations marked (1) set out below, confirm the determination of the Planning Authority in respect of this development made under section 261A(2)(a)(ii) of the Planning and Development Act 2000, as amended, and

based on the Reasons and Consideration marked (2) set out below, confirm the decision of the planning authority in respect of this development made under section 261A(3)(a) of the Planning and Development Act 2000, as amended,

(1) REASONS AND CONSIDERATIONS

Having regard to:

- (a) the documentation on the review file; including the site's planning history, and aerial photography;
- (b) the development's proximity to the River Boyne and River Blackwater candidate Special Area of Conservation and to the potential for the zone of drawdown to impact on site;
- (c) to the qualifying interests of the River Boyne and River Blackwater candidate Special Area of Conservation;
- (d) the scale and nature of the relevant quarry development carried out after June 2003 being the date on which the River Boyne and River Blackwater candidate Special Area of Conservation was advertised;
- (e) the scale and nature of the adjacent quarry to the west;
- (f) the provisions of the Planning and Development Acts, 2000 to 2011, as amended, and in particular Part XAB and section 261A;
- (g) the European Communities (Natural Habitats) Regulations, 1997 and the Planning and Development Regulations, 2001, as amended;
- (h) the Department of the Environment, Heritage and Local Government – Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (2009);
- (i) the Department of the Environment, Community and Local Government - Section 261A of the Planning and Development Act, 2000 and related

provisions, Guidelines for Planning Authorities January 2012 and supplementary Guidelines July 2012;

it is considered that the development carried out after June 2003 required, having regard to the Habitats Directive, an appropriate assessment but that no such appropriate assessment was carried out.

(2) REASONS AND CONSIDERATIONS

Having regard to:

- (a) The planning history of the site, including the planning permissions granted in respect of the subject quarry under planning register numbers PL17.235960 (03/08/10), PL17.206702 (04/08/04) and reg.ref.97/1868 (30/10/98),

It is considered that

- (j) permission was granted in respect of the quarry on the subject site under Part IV of the Local Government (Planning and Development) Act, 1963 and under Part III of the Planning and Development Act, 2000, as amended,
- (k) the requirements in relation to registration under Section 261, as amended, were not applicable.

John Desmond
Planning Inspector
12/08/13

Addendum QV17.0217

Since completing my assessment on the above-named review I have received information regarding the water quality ratings for Tromman River referred to in paragraph 2.21 of my report. It would appear that the Q-values (biological quality ratings) for the said watercourse provided in the publicly accessible EPA envision map system date from 1985 and / or 1990 and that no more recent values are available as the subject watercourse was dropped from the sampling programme as it was not on the Ordnance Survey River Catchment Map. The said Q-values therefore pre-date the carrying out of quarrying on the Keegan's Quarry site and therefore the water quality ratings cannot possibly result from any quarrying that took place subsequently on the said lands. Furthermore, it would not have been possible for EIS to reg.ref.TA/30334 (as referred to in paragraph 2.21 of my assessment) to have referred to up to date Q-value ratings for the Tromman River as they were not then available. However, this does not alter the conclusion to my assessment that the subject EIS did not adequately address the likelihood of significant effects on the cSAC arising from the proposed development in itself or in combination with other projects, including that development proposed for retention, and that no appropriate assessment had been carried out. My recommendations to the Board therefore remain unaltered.

I have attached a copy of my correspondence from John Lucey of the EPA and a copy of the biological quality assessment for 1990.

John Desmond,
Planning Inspector
22/07/13

Appendix 6

2007 144 JR High Court Judgement

Judgment

Title: Michael Cronin (Readymix) Limited -v- An Bord Pleanála

Neutral Citation: [2009] IEHC 553

High Court Record Number: 2007 144 JR

Date of Delivery: 15/12/2009

Court: High Court

Judgment by: Ryan J.

Status: Approved



Neutral Citation Number: [2009] IEHC 553

THE HIGH COURT

2007 144 JR

BETWEEN

MICHAEL CRONIN (READYMIX) LIMITED

APPLICANT

AND

AN BORD PLEANÁLA

RESPONDENT

AND

KERRY COUNTY COUNCIL

AND

THE DEPARTMENT OF THE ENVIRONMENT, HERITAGE AND LOCAL GOVERNMENT

NOTICE PARTIES

JUDGMENT of Mr. Justice Ryan delivered on the 15th day of December, 2009

1. On a reference by a planning authority under section 5(4) of the Planning and Development Act, 2000 An Bord Pleanála may give a decision as to what, in a particular case, is or is not development or exempted development. The applicant in this case is challenging such a decision, in which Kerry County Council was the planning authority and the decision related to the applicant's quarry at Coolcaslagh, Killarney, Co. Kerry. The Board decided that a block making operation at the quarry was development and not exempted development.

2. The background to the reference can be shortly summarised. The applicant operates a quarry at the above address where it produces readymix concrete and concrete blocks. In late 2003 the County Council as planning authority became concerned that the block making activity within the quarry might be unauthorised development. At an inspection on the 16th September, 2003, an official was informed that block-making was being carried out, that there was no new structure and that the only new work that had been done was the replacement and extension of an old yard for making and storing the blocks. That information did not prevent the Council from sending a warning letter on the 29th September, 2003.

3. A submission on behalf of the applicant also did not convince the Council and there was another inspection on the 10th November, 2003 by a planning enforcement official, who recommended that an enforcement notice be issued, which happened on the 21st November, 2003. There followed correspondence between solicitors for the applicant and the planning authority and at least one meeting was held, but no further steps were taken to prevent the use of the quarry for block making.

4. The applicant company was making the case that the block making was exempted development within the meaning of s. 4(1)(h) of the 2000 Act. It also contended that quarrying and concrete production had been going on at the site since before the 1963 Local Government (Planning and Development) Act came into effect and block-making was not different in kind from producing readymix concrete. Some block making was also part of the quarry's history. The matter remained unresolved when the Council sought a decision from the Board.

5. The planning authority asked for the Board's assistance under s. 5 by way of letter of the 4th May, 2006. It is clear from the heading and the contents of the letter that the principal area of concern to the local authority was the block-making facility. But it did mention the information from the operator of the quarry "that the only new work carried out was the replacing of an old concrete yard, the extension of the yard for the making and storage of blocks." The Council enclosed its enforcement file and the letter set out factual information as well as the Council's understanding of the developer's contentions. There was no adequate factual basis for some of the stated information but neither the Inspector nor the Board relied on those facts and so they are irrelevant to the issues in this case.

6. The respondent's inspector reported on the 17th November, 2006, and the Board's decision is dated 13th December, 2006. The conclusions and decision of An Bord Pleanála are based on and follow the Inspector's report, repeating in the decision all but one of ten recommendations made by the inspector. The decision under s. 5(4) of the 2000 Act is that the block-making operation at the applicant's quarry is development and is not exempted development.

7. The applicant makes his challenge by reference to the inspector's report which is the foundation of the adverse

decision made by the Board. There are three issues in the case: -

- (a) Did the Board's Inspector apply s. 4(1)(h) correctly?
- (b) Did the Inspector apply the correct test in deciding that there was a material change of use and/or was the Inspector's approach to this question irrational?
- (c) Did the Inspector fail to distinguish between the concepts of works and use in the 2000 Act in coming to the conclusion that there was a change of use?

8. If any of these questions is answered in the affirmative, the decision was flawed and the applicant is entitled to an order quashing it. As to other minor grounds advanced by the applicant, including an argument as to fair procedures, I do not think that they are of significance.

9. This Court directed that a telescoped hearing be heard in which both the leave and substantive applications are heard. This does not obviate the need for the applicant to meet the criteria in order for leave to be granted, but since all the issues were debated at the hearing, it follows that if the applicant succeeds in its application on the substantive question, consideration of the leave issue is unnecessary.

10. The notice parties took no part in the proceedings. Counsel for the planning authority appeared briefly at the opening of the case to say that his clients associated themselves with the submissions to be made by the respondent and left over the question of an application for costs that might arise at a later stage.

11. I should say at the outset that it is accepted on both sides that the role of this court is and ought to be limited in a case of this kind. If a matter is properly within the field of planning judgment, I should not substitute my own view for that of the respondent even if I felt entitled to come to a different conclusion than the Board did, provided there is a rational basis for the finding. See *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39. On the other hand, it is very much the province of the court to see that the Board and its Inspector have properly applied the law and have properly construed the relevant legislative provisions and have as a result asked the right questions.

12. The first question is whether the Board and the Inspector properly construed and applied s. 4(1)(h) in coming to the conclusion that development took place at the quarry that was not exempted development. The Board's conclusions in this respect appear at para. (d), (e) and (g) of the decision which is as follows: -

- (d) the laying out of a hard surfaced area of 2 acres in extent is development,
- (e) the laying out of a hard surfaced area of 2 acres in extent does not fall within the scope of s. 4(1)(h) of the 2000 Act, not being works for the maintenance, improvement or other alteration to a structure,
- (g) the construction of the yard is development which is not exempted development.

13. It is not disputed that laying out the yard was development. The only question therefore is whether the Inspector applied the right test, asked herself the right question and approached the issue correctly. The Inspector's consideration of this appears on p. 11 of her report as follows: -

"In relation to the enlargement of the yard, which is stated to be about 2 acres in extent, there is no dispute between the parties that the yard has been extended to facilitate drying and storage essential to the production of concrete blocks. The operator's case is that the replacement of the old yard and the extension of the yard are not visible and that an exemption under s. 4(1)(h) of the 2000 Act applies. Section 4(1)(h) relates to the 'maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure . . .'

"I submit that the replacement/repaving and extension and of a concrete yard would not be described as either maintenance or improvement of a structure as neither description would allow for an extension of the area. The term 'alteration' is defined to include plastering or painting, removal of plaster or stucco or the replacement of a door, window or roof that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.

I consider that neither the legal definition or the ordinary dictionary definition of 'alteration' encompass the concept of an extension or enlargement as a defining characteristic but rather relates to more minor changes to a structure. I consider that an extension of the yard has taken place and that this is 'works' and is 'development', but would not be described as 'maintenance, improvement or other alteration of any structure' and does not therefore fall within the exempted development provisions set out in s. 4(1)(h) of the 2000 Act and I reject the operator's arguments in this regard."

14. Mr. Galligan SC for the company contends that the work done to the yard surface was an alteration or an improvement of the structure. Structure includes an excavation and a quarry is an excavation. The work clearly amounted to the alteration or improvement or even maintenance of the structure and it was not an extension. This applies whether the structure, the planning unit, is considered to be the quarry as a whole or the concrete yard surface. The Board was obliged to go on to consider the later part of the exempted development provision in s. 4(1)(h) but it did not do so. This is a matter of statutory interpretation that it is for this Court to decide. If the Inspector and the Board misconstrued s. 4(1)(h), the application must succeed. The respondent agrees this point.

15. The Board submits that s. 4(1)(h) does not apply to extensions. Counsel Ms. Butler S.C. draws attention to the applicant's submission documents to the Board for support for her proposition that the company has accepted that the laying down of the yard was indeed an extension. She also contends that this is a planning matter in which the Inspector and the Board have particular expertise and it is for them and not for the court to decide in contradiction of that expert view unless there are strong grounds for doing so and there are no such grounds in this case. An Bord Pleanála by itself and through its Inspector felt that this was a development consisting of an extension and the applicant also treated it as such. The Board's written submissions express the point as follows: -

Thus a subset of works – those carried out for maintenance, improvement or other alteration of a structure –

are exempted provided they do not materially affect the external appearance of the structure. By implication all other works – which must include any act or operation of construction, excavation, demolition, extension, repair or renewal – are not exempted irrespective of whether they materially affect the external appearance of the structure or not.

At para. E(1), the applicant claims that the Board was incorrect because the exemption under s. 4(1)(h) “extends to any alteration affecting the external appearance of a structure and is, therefore, not confined to alterations of the structure itself”. This sentence is a little difficult to parse, but it appears that the applicant contends that the exemption under s. 4(1)(h) extends to all works that do not affect the external appearance. This is transparently incorrect. The Act specifically includes “extension” as a type of works but then specifically omits that type of works from the type that can gain an exemption under s. 4(1)(h). Accordingly, irrespective of whether extension affects the external appearance, it cannot benefit from s. 4(1)(h). The Act draws a clear distinction between “alteration” and “extension”. It therefore was not open to the Board or its Inspector to subsume the latter within the former. For the same reason, contrary to what is suggested in para. E (3), the extension could not be treated as an “improvement” and avail itself of s. 4(1)(h) as that would again merge two categories of works which the Act has rendered distinct and separate.

At para. E (5), the applicant complains that the Board and its Inspector did not properly consider the issue of materiality of impact on the external appearance of the structure. Again, however, this misses the point. As the types of works engaged in by the applicant did not come within s. 4(1)(h) in the first instance, the question as to materiality of impact did not arise.

16. It follows that the interpretation of s. 4(1)(h) is central to the decision in this case. I was not referred to any authority that would assist in the construction of the provision. It is necessary at this point to set out some of the relevant provisions of the 2000 Act.

17. Section 4(1)(h) defines exempted development as follows:-

“development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;”

“alteration’ includes-

(a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

‘works’ includes any act or operation of construction excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.”

18. The Board’s argument is that what was done here was that the structure was extended, whether the structure is considered to be the quarry itself or the concreted area of the floor of the quarry. There was an extension. Since s. 4(1)(h) covers “maintenance, improvement or any other alteration,” that excludes an extension. The reason it does that is because the definition of “works” includes alteration of a structure as well as extension. Therefore, the argument goes, the fact that there is no reference in s. 4(1)(h) to extension means that it was intended to be excluded so that only alterations that do not constitute extensions or any of the other actions or things in the definition of works, other than alterations, can qualify.

19. I may mention in passing that no argument was advanced as to whether “maintenance, improvement or any other alteration”, is to be construed so that other alteration is *eiusdem generis* with maintenance and improvement. Does the paragraph permit all kinds of alterations or only alterations that are related to maintenance or improvement? I am not sure that this question is material to this case, but it seems to me that it could explain why alteration could be given a particular meaning in s. 4(1)(h) that might not apply elsewhere.

20. I want to simplify s. 4(1)(h) to reduce it to the part that is relevant to this case, whereby it reads: -

“the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which do not materially affect the external appearance of the structure.”

21. If one inserts into this condensed definition the meaning of “works” from s. 2, exempted development then means the following:-

“the carrying out of works (including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal) for the maintenance, improvement or other alteration of any structure, being works which do not materially affect the external appearance of the structure.”

22. I think that this approach makes sense. The word “works” in s. 4(1)(h) has to be given its meaning as set out in s. 2. But the approach suggested by the Board and by the Inspector requires that some of the meanings of “works” must be excluded for no reason that is apparent from s. 4(1)(h). Neither does it make sense from a practical point of view. If we ignore any other alteration and simply consider maintenance or improvement, there are many kinds of construction and extension works that would constitute maintenance or improvement. A person might put on a small extension at the back of his house similar to what his neighbours did and it makes complete sense that that should be considered exempted development. If it were not so, planning authorities would be inundated with applications for very small changes in people’s houses simply because they amounted to extensions. Anything that increases the footprint of the original house is an extension. This would include the slightest porch or outer door at the front and the smallest addition to the building beyond the back wall or indeed the side walls. It seems to me that the proposition contended for by the Inspector and relied on by the Board is untenable. It requires that the word extension be given a special meaning that is independent and exclusive of the terms maintenance, improvement or

other alteration and the result of that is worse than meaningless; it is actually impossible to apply. This analysis treats the concept of an extension as if it were a term of art in a criminal statute or a Tax Act and even then in my opinion it might be illegitimate to construe it in the way the Inspector did.

23. The Board was wrong in its interpretation of s. 4(1)(h), in my view. An extension is not excluded as a matter of definition. An extension can be an improvement or an alteration. Maintenance and supervision (and other alteration) are the purposes for which the work is done in exempted development. The definition of works in s. 2 lists the kind of activities of which any act or operation constitutes works. So, an act of demolition amounts to works; so does an operation of renewal etc. An act or operation of construction or repair may be required for the purpose of maintenance of a structure and that is obviously intended to be exempted development, but it would be excluded if the Board's submissions are correct. By insisting that the work done must be actual maintenance, improvement or other alteration, rather than for [the purpose of] maintenance etc., the Board confuses purpose and act and overlooks "the carrying out of works" in s. 4(1)(h). The paragraph is best understood first by inserting after "works" the words from its definition that are relevant, that is, excluding references to a protected structure, and secondly by splitting it into its constituent phrases as follows. I have emphasised some words for clarity: -

"the carrying out of works (including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal)

for the maintenance, improvement or other alteration of any structure,

being works which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure."

24. The first phrase describes acts, the second purposes and the third effect.

25. It is clear when the paragraph is analysed in this way that work that is exempted development can materially affect the external appearance of the structure provided it does not make it inconsistent with its own character or that of neighbouring structures. This is precisely the point that was decided in *Cairnduff v. O'Connell* [1986] 1 I.R. 73, where the Supreme Court was satisfied (although Griffin J. had some reservation on the point) that the works did materially affect the external appearance of the defendant's house. The Court held that the work was not inconsistent with the character of the house itself or adjoining houses and was therefore exempted development. The balcony and staircase at the back of the defendant's house could well be described as an extension, as well as an alteration or an improvement.

26. I should add perhaps that the word "alteration" does in my view have to be understood in a different sense in s. 4(1)(h) from its general definition in section 2. When it is defined in section 2 as including painting etc., it has a different meaning from s. 4(1)(h) which refers to maintenance, improvement or other alteration. The s. 2 definition describes act or activities, including painting or plastering, which result in a material impact on the external appearance of the building so as to make it inconsistent with the character of the building or with neighbouring structures. Alteration in this sense expressly envisages the material impact that is inconsistent with, for example, the character of the building. By contrast with this, alteration in s. 4(1)(h) expresses purpose. Moreover, the provision excludes work that changes the exterior so as to make it inconsistent. If one does not accept the different functions of the word in s. 2 and s. 4 (1)(h), alteration seems to have more or less opposite and certainly conflicting meanings in these two parts of the Act. Even if that were the case, it seems to me that these provisions and definitions are not intended to express legally watertight and hermetically sealed concepts and the expressions have to be given their reasonable meanings in the particular contexts in which they are used. This approach is consistent with proper principles of statutory interpretation, which look to the overall scheme and the context in which expressions are used.

27. In the result, the Inspector and the Board did not ask the correct question or questions. It was clear that works had been carried out. The fundamental question therefore was not about the nature of the work done but rather about its purpose and effect. Did the work make the structure inconsistent with its character? If it did not, the next question was whether the work was done for the maintenance, improvement or other alteration of the structure. In the circumstances of this case, I think that neighbouring structures did not enter into the question of whether the works made the quarry inconsistent with them.

28. This misunderstanding of s. 4(1)(h) in its statutory context is fatal to the decision made by the Board.

29. I now turn to the second issue that has to be considered. The Board's conclusions on this were: -

"(h) The manufacture of blocks is dependent on the use of a large area of land for drying and storage which gives rise to material planning effects, and

(i) The production of concrete blocks is an intensification of use that consists of a material change of use of the land:"

30. The Inspector's reasoning appears at pp. 11 and 12 of her report. In the following quotation, which is a single paragraph in the original, I have broken the passage into two for ease of discussion.

"Manufacture of concrete blocks

"I propose to now discuss the manufacture of concrete blocks and whether or not this constitutes a material change of use. In relation to the production of blocks instead of 25% of the production of readymix I accept the points made on behalf of the operator in relation to the absence of material planning impacts in terms of the type and quantities of raw materials used and the traffic implications. I agree that the development would not constitute an intensification of use above the production level of the concrete in terms of materials sourced from the site and then processed and exported from the site in relation to noise and dust impacts, I note that the hard surfaced yard is close to a dwelling house and consider that the regular movement of blocks would be likely to give rise to some additional noise and dust related disturbance. In addition, as the operators submissions indicate there are material changes in terms of the land use requirements as the concrete block production relies on the use of an extensive area of land for the purpose of open storage and I consider that in this respect there is a significant change in the nature of the process and an intensification of use of the lands.

"The production of concrete blocks is reliant on the laying out of 2 acres of a 130 acres site, of which only 96

acres is used for excavation, and the use of that land for drying and storage of blocks. There are changes in terms of the surface water flows in the area and the extensive nature of the operation in land use terms compared with the production of readymix with possible resulting impact on geology and hydrogeology. The development of an extensive hard surface area at this location would also militate against the development of a habitat which would potentially be of ecological importance and this is a further consequence in terms of the proper planning and sustainable development of the area. I conclude that the development of a 2 acre hard surfaced area has material planning consequences. The process of production of concrete blocks is therefore materially different to that of production of readymix and constitutes a material change of use."

31. The applicant company challenges the decision of the Board and the conclusions of the Inspector in respect of material change of use on the grounds that the Inspector did not approach the question in a legally appropriate or permissible way and, secondly, that she took into account irrelevant considerations and appeared to have confused or conflated the concepts of works and use in the legislation which is of central importance in this case.

32. The Board's responses are summarised in two paragraphs of its written submissions. As to the decision on intensification of use para. 19 says:

The Board followed the Inspector's recommendation in concluding at (h) that the manufacture of blocks was dependent on the use of a large area of land for drying and storage which gives rise to material planning effects and at (i) that the production of concrete blocks was an intensification of use that consists of a material change of use of the land. It is submitted that the Board's conclusion on this point was amply supported by the material before it, principally the inspector's report.

33. On the complaint that the inspector and the Board failed to distinguish works from use in the interpretation and application of the legislation, para. 22 set out the definition of "use" in s. 2(1) and para. 23 submits:

The Applicant's reliance on this measure is misplaced. The purpose of the exclusion in the definition, as noted by Keane J in *Kildare County Council v. Goode* [1999] 2 I.R. 495 is simply to ensure that planning permission is not required for statutorily exempted works merely by reason of the fact that the carrying out of such works would also be a use. The two categories are not mutually exclusive and the Supreme Court recognised that certain activities - in that case notably quarrying - may be characterised as both. Moreover, there is no authority for the proposition that the materiality of a change of use cannot be assessed by reference to impacts associated with works.

34. The applicant's contention is first that the inspector failed to establish an essential baseline for the planning impacts that result from the original use, for the purpose of comparing those impacts with the results of the present use. The earlier use "A" must first be established before it can be compared with the later use "B" and the proper mode of comparison is not simply to assess the difference in the nature of the operations but to contrast the planning impacts of the two different activities or levels of activity. It seems to me that this is requiring too formal an approach by a planning Inspector. I think it is legitimate to consider the available evidence and to deduce to the extent that is legitimately possible the quantum of change that has taken place and the resulting planning implications. And that is primarily a matter for the planning Inspector and not for the court. Mr. Galligan S.C. for the applicant relies on *Galway County Council v. Lackagh Rock Company* [1985] 1 I.R. 120 but I do not read that case as laying down a rigid rule as to the mode of comparison or as excluding reference to relevant evidence. I reject this ground accordingly.

35. Another objection that the applicant makes in relation to the taking into account of irrelevant considerations has more substance. If the Inspector had stopped about half-way down the paragraph I have quoted above, at the point where I have made a break, I think that this error would have been avoided. Although I believe that the evidence is fairly thin, it is nevertheless in the realm of planning to consider all the matters that the Inspector detailed up to that point in her analysis. Had she reached a conclusion as to material change of use at that point, I do not think that it could be challenged since I have rejected the applicant's main complaint that it failed to establish the original use.

36. The problem is that the Inspector then went on to take into account matters that in my view were irrelevant to the issue or that were speculative or confusing and the combination of these inappropriate conclusions and observations with the earlier, legitimate ones contaminated the process and rendered it invalid. Let me be more specific. The visual impact of the development when viewed from surrounding lands is of questionable relevance in this case to the issue of material change of use; the fact that natural regeneration of the site could have occurred if the area was not surfaced is wholly irrelevant - it may be relevant to other aspects of planning process but I simply cannot see how that matter can affect a decision as to whether there has been a material change of use. The next sentence in the Inspector's reasoning deals with changes in surface water flows with "possible" resulting impacts on geology and hydrogeology. The hard surface "would also militate against the development of a habitat which would potentially be of ecological importance". This includes no more than possible impacts and changes that might potentially be of ecological importance. This is not the language or the thinking that is expected of an expert making an assessment for the purpose of reporting to a statutory body such as the respondent. The Inspector's conclusion could have stood on its own but was fatally undermined and devalued by the inclusion of these irrelevant matters, some of them only on a basis of possible or potential impacts. The Inspector's conclusion on this question as to material change of use must also be invalidated.

37. Turning to the third objection that has to be considered, namely, the proposition that the Inspector has invalidly confused or conflated "works" and "use", I think this complaint is also justified. In the case of an exempted development, the qualifying works can be undertaken because they are excluded from the planning process. It follows that they will often if not always affect the ecology of the land on which the works are carried out. They will do so more or less permanently. If an addition (or extension) is built to the front or the rear of a house, the ground underneath is permanently affected, so are the water flow and the ecology. The same consequences arise where the planning authority gives planning permission. In *Cairnduff v. O'Connell*, Finlay C.J. said with reference to the similar exempted development provision in the 1963 Act:

"The scheme of the statute, however, appears clearly to me to be that work by way of construction or alteration and a change of user are separately dealt with. Therefore, to construe the section as to permit on unbuilt land the carrying out of works which are an exempted development but are for the purpose of adapting that land for a clear change of user and to prohibit the carrying out of works within the same category on a structure would, in my view, be to create a meaningless anomaly."

38. A planning authority will take into account the use to which developed land will be put when it is considering whether or not to give planning permission. There is therefore an overlap of the concepts of works and use when permission is being granted. The same consideration can arise if the development is exempted. Part of the process deals with the works that are actually carried out on the land and then there is the use to which the developed area is put. If an exempted development were put to a use that was wholly inconsistent with the building then the local authority might challenge it because it was a material change of use of the land.

39. That is the situation that arose in *ESAT Digifone v. South Dublin County Council* [2002] 3 I.R. 585. There, the real issue was not the works but the change of use from a business outbuilding to a centre of communications, which was considered a material change of use and was condemned on planning grounds as a result. Kearns J (as he then was) said, at p. 596:

“Insofar as the placing of telecommunications equipment is concerned, I cannot see how, insofar as the same may be described as works, it can be seen as going to either the “maintenance, improvement or other alteration of any structure” so as to qualify for exemption under s. 4(1)(g). It seems to me that the activity associated with the placing and utilisation of the telecommunication equipment falls to be considered more properly as a change of use, whether taken together with the placing of the antennae or by itself.”

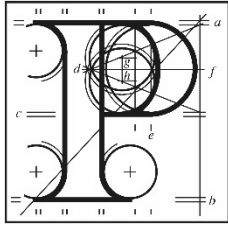
40. Suppose the householder builds a modest extension to his house. If it is consistent with the neighbouring structures that will constitute exempted development, generally speaking. If he uses that as a kitchen or a garage or an extra bedroom that is consistent with the whole structure as extended. However, if a communications company were to load up the extension with sophisticated electronics for the purpose of supplying a major part of a city with a mobile phone service, the situation would be entirely different. It would not be entirely different by reason of the works that were carried out, but because of the radical change to the use of the premises. Applying this thinking to the present situation, it seems to me that the Inspector should have looked at the concreted area and asked the question whether the use of that area of land for storing or resting or drying blocks in connection with block making operations constituted a material change of use in all the circumstances. She did not do that. She addressed herself to the question whether the concreted surface itself amounted to a material change of use and that is where, in my view, she fell into error and did indeed conflate works and use, as submitted by the applicant.

41. My conclusions on these issues mean that the impugned decision by the respondent must be quashed and I propose to order accordingly.

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Appendix 7A

PL17.248115 Board Direction and Inspectors Report



An
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Board Direction

PL17.248115

The submissions on this file and the Inspector's report were considered at a Board meeting held on 21st September 2017.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

Having regard to the location of the structure for retention within an existing quarry site, the pattern of development in the vicinity of the structure, the planning history of the site and the policies in the Meath County Development Plan 2013 -2019, the board considered that the retention of the structure for a period of three years from the date of this order, subject to compliance with the conditions set out below would not seriously injure the residential or visual amenities of the area or property in the vicinity, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The Board accepted and adopted the screening assessment and conclusion carried out in the Inspector's report was satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the River Boyne and River Blackwater Special Area of Conservation (Site Code 002299) or any other European site, in view of the site's Conservation Objectives.

Furthermore, the Board accepted the Inspector's findings in terms of the Environmental Impact Assessment and was satisfied that the proposed development was not likely to have a significant effect on the environment. The proposed development for retention would, therefore be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development for retention shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity

2. The use of the prototype silo shall cease after three years from the date of this order and shall then be removed from site within six months unless otherwise approved by the planning authority or An Bord Pleanála by way of a further grant of planning permission

Reason: To comply with the terms of the planning application lodged.

3. The development shall comply with conditions set out under planning reference numbers P00/2075 and TA/20408, except where conditions hereunder specify.

Reason: In the interest of the proper planning and development of the area.

4. The silo shall only operate between the hours of 0700 hours and 1900 hours Monday to Friday and 0700 hours to 1400 hours on Saturday and not at all on Sundays or Bank Holidays.

Reason: To protect the residential amenity of the area.

5. The noise levels generated by the development shall not exceed 55 dB(A) LAeqT during operations and 45 dB(A) LAeqT at any other time when measured at the nearest occupied house. When measuring the specific noise level the time shall be 1 hour period during which the sound emission is at its maximum level.

Reason: In order to protect the amenities of property in the vicinity.

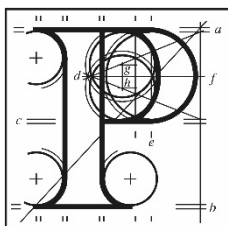
6. The developer shall pay to the planning authority a financial contribution of €360 (three hundred and sixty euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Board Member

Date: 22nd September 2017

Maria FitzGerald



An
Bord
Pleanála

Inspector's Report PL17.248115

Development	Retention of concrete silo structure with a footprint of 99m ² and measuring 28.6 metres in height associated with the existing permitted precast concrete facility.
Location	Trammon, Rathmoylan, Co. Meath.
Planning Authority	Meath County Council.
Planning Authority Reg. Ref.	TA 161419.
Applicant	Keegan Precast Limited.
Type of Application	Retention of Planning Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant
Appellants	(i) An Taisce, (ii) Edo Advocacy.
Observer	Peter Sweetman.
Date of Site Inspection	9 th May, 2017.
Inspector	Paul Caprani.

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1.0 Introduction

- 1.1. PL17.248115 relates to two third party appeals against the decision of Meath County Council to issue notification to grant planning permission for the retention of a 28.6-metre-high silo associated with an existing precast concrete facility within a quarry in Trammon, Rathmoylan, County Meath. The grounds of appeal argue that the cumulative impact arising from all unauthorised works on site have not been adequately assessed in terms of EIA. The proposal could give rise to significant traffic generation and that a significant level of unauthorised works have taken place on site.

2.0 Site Location and Description

- 2.1. The existing quarry run by Keegan Precast Limited is located approximately two kilometres to the north-west of the small village of Rathmoylan in west County Meath. The site is bounded by the R156 which runs along the southern boundary of the site. The existing quarry is large, extending almost a kilometre north from the R156 and at its widest, it is approximately 300 metres in width. The main area of excavation is located in the southern part of the site while the structure for which retention of planning permission is sought is located in the northern part of the site adjacent to a permitted block making facility.
- 2.2. The silo structure for which retention of planning permission is sought is 28.6 metres in height and occupies a rectangular footprint of 9 metres by 9 metres. It accommodates four separate steel funnels at its lower level. Stair access to the top of the silo is located in a separate block adjoining the southern elevation. The silo is ancillary to and associated with the established industrial precast facility for the testing and developing of a prototype concrete silo for export to the UK. The company has designed this prototype precast twin wall concrete silo, which is the subject of the current appeal. The prototype concrete silo erected on site facilitates the on-going testing and monitoring of potential concrete products.
- 2.3. The structure is located directly adjacent to and within the curtilage of the existing precast concrete manufacturing facility.

3.0 Proposed Development

- 3.1. Planning permission is sought for the retention of the concrete silo structure for a three-year period on the subject site.

4.0 Planning Authority Decision

4.1. Planning Decision

- 4.1.1. Meath County Council granted retention of planning permission for the concrete silo on site. Condition No. 2 of the permission states that the silo shall cease after a period of 3 years from the grant of this permission unless otherwise approved by the Planning Authority.

4.2. Documentation Submitted with the Planning Application

- 4.2.1. The application was accompanied by a planning report prepared by Declan Brassil and Company which outlines the development and planning policy context as it relates to the development. The potential impacts arising from the proposed development are also assessed in the covering letter. A screening assessment was also carried out in respect of Appropriate Assessment where it was concluded that no significant effects are likely to arise either alone or in combination with other plans and projects on Natura 2000 sites in the vicinity.
- 4.2.2. A number of letters of objection were submitted the contents of which have been read and noted.
- 4.2.3. The planner's report sets out details of the extensive planning history associated with the site and sets out national and local planning policy. The large number of submissions on file objection to the proposed development are also set out. The report states that the silo while 28.6 metres, high is proposed for a temporary duration and is over 800 metres from the public road and for this reason it is considered acceptable. The report notes that there are no details in relation to noise generated by the silo. However, this issue can be dealt with by imposing appropriate conditions. The nearest recorded monument is located 900 metres to the south of the site and it is not considered that the proposal will have any impact on the

heritage of the area. It is therefore concluded that the proposed development is acceptable and it was recommended that planning permission be granted.

- 4.2.4. In its decision dated 6th February, 2017 Meath County Council granted retention of planning permission for the silo structure subject to 8 conditions.

5.0 Planning History

- 5.1. The extensive planning history associated with the site is set out in detail in the local authority's planner's report contained on file. Details of a number of decisions are also contained in a pouch to the rear of the file and are briefly summarised below.

Under TA/S5/1655 Meath County Council determined under the provisions of Section 5 that a lime drying and batching plant incorporating storage bays and a storage hopper and an enclosure over the plant for the purposes of dust control constituted development which was not exempted development and an exemption certificate was refused on this basis.

Under TA/S5/1656 a declaration was sought under Section 5 as to whether or not an ESB substation installed for the purposes of supplying power to the precast concrete facility constituted development which required planning permission. Again Meath County Council in its decision dated 13th January, 2017 issued a declaration that the works undertaken constituted development requiring planning permission.

Under Reg. Ref. TA/S5/1623; Meath County Council under the provisions of Section 5 issued a declaration that works including an ESB substation and lime drying and batching facility and an enclosure over the plant for the purposes of dust control constituted development which requirement planning permission.

Under Reg. Ref. 00/2075 Meath County Council granted planning permission for a mobile block making plant concrete yard and water settlement tank including temporary offices and storage shed at the subject site. The decision was dated the 6th July, 2001.

Under Reg. Ref. 97/1868 Meath County Council granted planning permission for a quarry on 8.5 hectares of land together with a workshop, a mobile pressing plant, wheel wash, weighbridge and fuel storage unit together with truck parking subject to 20 conditions. This decision was dated 7th December, 1998.

Under TA/20408 planning permission was granted to Keegan Quarries for the erection of a building to manufacture concrete floors, pipes, blocks, bricks and associated products. Permission was granted on the 9th day of June, 2003.

Under PL17 206702, An Bord Pleanála upheld the decision of Meath Co. Council and granted planning permission for the continuance of, and extension to the quarrying activity on the subject site. The extension amounted to 4.88 ha and an EIA accompanied the application.

Under TA/130400 Meath County Council granted an extension of duration of planning permission for the continuance and extension of quarrying of limestone and associated works and it is stated that this permission will expire on the 5th day of August, 2018.

Under TA/130401 Meath County Council refused permission for the extension of duration of planning permission TA/900976 which involved the extension of 2.85 hectares to the existing extraction area, the demolition of administration office, workshop, house, garage and associated accommodation works. The decision was dated 24th July, 2013.

Under TA/130581 Meath County Council granted an extension of duration of planning permission under Ref. No. TA/900976 for the extension of 2.85 hectares to an existing extraction area, demolition of administration office, workshop, house and garage and associated accommodation works. This decision was appealed but the Board upheld the decision to grant permission under PL17. 235960.

6.0 Grounds of Appeal

6.1. Appeal by An Taisce

- 6.1.1. This appeal argues that the proposed development raises significant legal issues regarding cumulative environmental impact and integrated environmental impacts assessment for the intensification of an EIA threshold development. It is stated that the application in this instance constitutes further piecemeal development or project splitting for an EIA threshold development. The application forms part of a significant intensification of activity on site. The application also has impact on the time period and compliance conditions of the existing permission including the cessation of the

quarry operation and site reinstatement. This application is being lodged in parallel with another application which seeks to provide a tunnel under the R156 in order to accommodate development to the south of this road.

- 6.1.2. The reports on behalf of Meath County Council do not assess and address the legal and compliance status of existing development on site. No compliance information has been provided by the applicant's consultants on the overall quarrying and processing on site. The entire compliance status of the site needs to be addressed. Reference is made to the height of a significant amount of material displaced on site. It is suggested that past failures to comply was not invoked in the case of the current application on the grounds of continued intensification and unauthorised development. It is also suggested that an unauthorised steel structure of a very significant scale was commenced in 2017 without the benefit of planning permission.
- 6.1.3. It is also stated that the traffic generation impact arising from the proposed development has not been adequately assessed. A full assessment is required. The proposal is contrary to a number of policy statements in the Meath Development Plan including the impact of quarrying industries on the visual amenities of the area and the need to minimise adverse impacts on the road network.

6.2. **Appeal by Eco Advocacy**

- 6.2.1. This appeal raises similar concerns in relation to unauthorised development on site and reference is made to a large steel "factory type structure" which was commenced in January, 2017.
- 6.2.2. Significant noise continues to emanate from the site causing much nuisance. It is noted that the latest enforcement notice gives the developer some 8 weeks within which to comply with planning requirements rather than seeking immediate cessation of works. It is suggested that enforcement is very poor at the subject plant. It is suggested that there is a significant amount of unauthorised development on the site including the presence of a concrete batching plant. Reference is also made to the two parallel consents sought at this site. The other relates to a tunnel under the R156 to facilitate development to the south of the road.
- 6.2.3. It is contended that dividing some many developments into separate applications constitutes project splitting and frustrates the need for EIA. It is submitted that the

scale of the unauthorised development is sufficient of itself to warrant EIA. It appears that no permission has been obtained to import sand and gravel for concrete production. It is suggested that the total site area is 37 hectares and this in itself triggers an EIA requirement.

- 6.2.4. Reference is made to a number of conditions attached and it is considered that the amount of financial contribution that the applicant is required to pay is derisory. The grounds of appeal go on to take issue with some of the statements contained in the planner's report including the contention that the proposal has not resulted in any increase in traffic movements to and from the site and that the height of the structure is considered acceptable.
- 6.2.5. The Board is referred to the submission originally made to Meath County Council in respect of this application which details the various unauthorised development which is taking place on site.

7.0 Appeal Response

7.1. Response on behalf of the Applicant

- 7.1.1. A submission was received from Declan Brassil Company Limited.
- 7.1.2. The first party of the response sets out the background to and description of the development for which retention of planning permission is currently being sought. It is stated that the silo is ancillary to and associated with the established industrial precast facility and facilitates the design, testing and development of a prototype concrete silo for export to the UK. The prototype concrete silo erected on site facilitates the on-going testing and monitoring of potential products. The prototype concrete silo will be produced primarily for export to the UK markets. The on-going operation of the precast plant together with the quarry continues to secure rural based employment in the area. Reference is made to the planning policy context and how the proposal complies and supports many of the policy statements contained in the National Spatial Strategy and the Meath County Development Plan.
- 7.1.3. In respect of the issues raised grounds of appeal, it is noted that a significant issue raised in the grounds of appeal relate to enforcement matters on the precast manufacturing site and the adjoining quarry site. It is submitted that these matters

are primarily matters for consideration by the Planning Authority as the enforcement authority under the Planning and Development Acts and are of limited, if any relevance to the Board's determination of this appeal. Accordingly, the response is confined to matters raised in the appeal documents which relate to the impact of the development to be retained under the current application.

- 7.1.4. With regard to visual impact it is stated that the silo structure is situated adjacent to and within the curtilage of an established industrial precast factory building. The topography, boundary hedgerows and tree cover effectively screen the silo from the public road in the vicinity of the quarry. It is stated that the silo is effectively screened from surrounding residential dwellings due to the undulating landscape.
- 7.1.5. The site is located in an area designated in the development plan as being 'moderately sensitive' with a medium capacity to absorb larger scale development such as large agricultural buildings. It is considered therefore that the character and capacity of the landscape to absorb development of this nature will result in a temporary development and shall not have a significant adverse impact on the visual amenities of the area.
- 7.1.6. With regard to traffic and transport issues it is stated that the applicant has confirmed that no material is or will be imported into the site as a result of the operation of the silo. The adjoining block plant will process and store materials extracted from the quarry and this reduces the need to import such materials which will give rise to associated traffic movements. Furthermore, the volume of traffic associated with exporting manufacture concrete products is significantly less than if the material was sold off-site as limestone aggregate. Accordingly, the silo facilitates a reduction of traffic movements associated with the established associated activities.
- 7.1.7. With regard to EIA, it was respectfully submitted that the development proposed to be retained does not come within any of the listed categories or classes set out in the 2001 Regulations as they relate to EIA. The storage facility does not give rise to any increase in the permitted output of the established precast and concrete block manufacturing facilities. Accordingly, an EIA is not mandatory or necessary in this instance.

7.2. **Planning Authority's Response to Grounds of Appeal**

- 7.2.1. The response on behalf of the Planning Authority sets out the issues raised in the grounds of appeal and states that it determined that the application lodged was valid and the proposed development was considered to be consistent with the policies and objectives contained in the Meath County Development Plan. Meath County Council are currently taking enforcement action against unauthorised structures on site. The Planning Authority would respectfully refer the Board to the planner's report for the application dated 2nd February, 2017. The Board is therefore respectfully requested to uphold the decision of the Planning Authority.

8.0 **Further Submissions**

- 8.1. A further submission was received from **Eco Advocacy** which specifically commented on the grounds of appeal submitted by An Taisce. This further submission fully supports and endorses the issues raised by An Taisce in its grounds of appeal.
- 8.2. A further submission from **An Taisce** specifically comments on the other third party submission received by Eco Advocacy. It states that the concerns raised in this appeal raise major enforcement compliance issues which need to be addressed as a preliminary matter.

8.3. **Observation**

An observation was submitted by Peter Sweetman and Associates and is summarised below:

- The Planning Authority has failed to screen this development for the requirement of an EIA.
- The Planning Authority failed to consider compliance with conditions of permissions granted.
- The Planning Authority failed to consider this development in conjunction with TA161345.

- The Planning Authority failed to consider the validity of the registration under Section 251A.
- No EIA was carried out on previous applications relating to the site namely TA/30334 and PL17.206702.
- The Planning Authority failed to consider whether it was legal to grant retention.
- The Planning Authority failed to consider other unauthorised development on the site.

9.0 Planning Policy Context

9.1. The site is governed by the policies and provisions contained in the Meath County Development Plan 2013 – 2019. Section 10.12 specifically relates to the extractive industry. It notes that *“Meath contains a variety of natural resources such as building material products in the form of sand, gravel, storm reserves including high purity limestone and shale used in cement and magnesium manufacture and base metal deposits. The potential of these resources to underpin construction output and provide employment and economic growth in the local and regional economy is recognised as is the need to exploit these in an environmentally sound and sustainable manner”*.

9.2. Policies identified within the County Development Plan with regard to the extractive industry and building materials production are as follows:

- To ensure that the project associated with the extractive industry carry out screening for appropriate assessment in accordance with Article 6(3) of the EEC Habitats Directive where required.
- To facilitate the exploitation of the county’s natural resources and to exercise control over the types of development taking place in areas containing proven or potential deposits whilst also ensuring that such industries are carried out in a manner which would not unduly impinge on the visual amenity or environmental quality of the area.
- To ensure that the extractive industry minimises adverse impacts on the road network in the area and that the full cost of road improvements, including during

operations and at a time of closure which are necessary to facilitate extractive industries are borne by the industry itself.

- To ensure that the extraction of minerals and aggregates minimise the detracting from visual quality of the landscape and do not adversely affect the environment or adjoining existing land uses.
- To ensure that all existing workings shall be rehabilitated to suitable land uses and that all future extraction activities will allow for that rehabilitation of pits and proper land use management. The use of landfilling with inert material is the preferred method. Each planning application will be considered on a case by case basis and where relevant will be dealt with under the relevant Regional Waste Management Plan.
- To ensure that development for aggregates/mineral extraction processing and associated concrete production does not significantly impact on the following areas.
 - Existing and proposed Special Areas of Conservation.
 - Special Protection Areas.
 - Proposed Natural Heritage Areas.
 - Other areas of importance for the conservation of flora and fauna.
 - Areas of Significant Archaeological Potential.
 - In the vicinity of a Record Monument.
 - Sensitive Landscapes.
 - World Heritage Sites.

10.0 Planning Assessment

I have read the entire contents of the file, visited the site in question and have had particular regard to the issues raised in the grounds of appeal. I consider the following issues to be pertinent to determining the current application and appeal before the Board.

- Issues of Enforcement and Non-Compliance with Previous Permissions.
- EIA Requirement.
- Visual Impact.
- Traffic Impact.
- Nature of Financial Conditions Attached.

10.1. Issues of Enforcement and Non-Compliance with Previous Permissions

The planning history associated with the site and the contention that significant issues in respect of unauthorised development and non-compliance with conditions is a major theme of both third party appeals. It is clear that there have been enforcement issues in respect of works undertaken on the site in question. Meath County Council have acknowledged that there have been on-going enforcement issues associated with the site. However, it is clear that the Council do not consider these enforcement issues to be so significant as to warrant a refusal of planning permission for the current application before the Council. I consider that any issues in relation to unauthorised developments and enforcement proceedings are on-going and are a matter between the Planning Authority as the enforcement authority, and the applicant. It appears that the applicant in applying for retention of planning permission for the current development before the Board, is engaging in efforts to regularise any unauthorised activity on site. I consider the application before the Board should be adjudicated on its merits and I do not consider it appropriate to refuse planning permission for the retention of the proposed silo for a temporary three-year period should be refused specifically on grounds relating to failure to comply with the planning code in respect of other works carried out on site. The current application before the Board should be evaluated on its merits and in accordance with the proper planning and sustainable development of the area.

10.2. EIA Requirement

The submission from An Taisce and the observation received from Mr. Peter Sweetman argues that the cumulative impact arising from the various works undertaken on site should be subject to EIA. The Board will be aware that the applicant received planning permission for a quarry under 97/1868. This parent

application was the subject of subsequent applications for extension of durations of planning permissions in respect of the parent application. These applications were assessed by the Planning Authority and granted planning permission. The Board will note that the two appeal files attached were subject to EIA, and the Board granted permission in both instances. The current application before the Board specifically relates to the retention of a silo 28.6 metres in height occupying a footprint of approximately 100 square metres. It forms part of a larger established precast concrete manufacturing facility which has the benefit of planning permission. The proposed development for which retention of planning permission is currently sought is modest in size and scale, and as pointed out in the applicant's response to the grounds of appeal would not fall under any of the categories for which an EIA would be required. I therefore do not consider that an EIA for the application currently before the Board is either justified or warranted in this instance.

10.3. **Visual Impact**

The structure for which retention of planning permission is sought is large at 28.6 metres in height. However, it is set amongst existing buildings associated with the precast concrete facility and is therefore nestled within an industrial type setting - albeit in a rural area. Furthermore, the structure is located to the rear of the quarry and approximately 800 metres from the R156 Regional Route. Having visited the site, I noted that the structure is not visible from any vantage point along the R156 in the vicinity of the site. In fact, the Board will note that the structure is only barely visible from within the confines of the parking area and reception office of the quarry. The structure is located within a quarry floor and the intervening topography surrounding the site screens the structure from views of the wider area.

Finally, in relation to the issue of visual amenity the structure in question is located within an existing precast concrete facility which has the benefit of planning permission and surrounded by a quarry. In my view the character of the area therefore has been significantly altered from a greenfield site in a rural area and this makes the building for which retention is sought more acceptable in my view. In addition, the Board will note that the permission sought under the current application relates to a three-year period only. This suggests that the structure will not be a permanent structure in the landscape over the long term.

10.4. Traffic Impact

With regard to the traffic impact the applicant in response to the grounds of appeal states that the silo currently stores materials extracted from the adjoining quarry for use in the associated precast and adjoining block plant. It does not utilise or store any imported materials. The applicant has confirmed that no material is or will be imported into the site as a result of the operation of the silo. The current application therefore before the Board will not generate traffic to and from the site and as such will have a negligible traffic impact on the surrounding road. In fact, the applicant's response to the grounds of appeal points out that if the silo was not constructed on site aggregate from the quarry would be required to be exported off site in order to be processed. Therefore, having the silo in situ on site results in a decrease in traffic generation. I am therefore satisfied that the proposed development will not give rise to any significant impact in terms of traffic. Traffic volumes on the R156 are currently very modest.

10.5. Nature of Financial Conditions Attached

Section 10 of the local authority planner's report notes that the structure has a site area of 99 square metres which will be charged at an industrial/manufacturing rate of €11 per square metre. However, as the structure relates to a temporary permission only the development will be charged at a rate of 33% of the normal rate. I have assessed the Development Contribution Scheme and I consider that the contribution has been levied in accordance with the above scheme. I specifically note Section 7.1.1 which relates to temporary permissions and it states that temporary permissions shall be levied at a rate equivalent to 33% of the development contribution normally attributed to a permanent development of that class and scale. I am therefore satisfied that the development contribution has been levied appropriately.

11.0 Appropriate Assessment

11.1. Appropriate Assessment

The closest Natura 2000 site is the River Boyne and River Blackwater SAC which is located approximately 1.1 kilometres from the subject site. The applicant submitted

an appropriate assessment report with the application. The qualifying interests associated with the River Boyne and River Blackwater SAC include:

- Alkali Fens.
- Alluvial Forests and the qualifying species include:
 - River Lamprey.
 - Salmon.
 - Otter.

There are no connected pathways between the subject site and the River Boyne and Blackwater and as such there is no potential for any adverse impacts to occur on either the species or the habitats associated with the Natura 2000 site. Due to the separation distances involved, and the fact that there is no hydrological link between the structure, which is the subject of the current application and the nearest Natura 2000 site, I consider that having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposed development will be likely to have a significant effect individually or in combination with other plans or projects on a European site.

12.0 Conclusions and Recommendations

Arising from my assessment above I consider that An Bord Pleanála should uphold the decision of Meath County Council in this instance and grant retention of planning permission for a three-year period for the concrete silo structure.

13.0 Reasons and Considerations

It is considered that the retention of the structure for a period of three years from the date of this order, subject to conditions set out below would not seriously injure the amenities of the area or property in the vicinity, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

14.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The use of the prototype silo shall cease after three years from the date of this order unless otherwise approved by the planning authority or An Bord Pleanála by way of a further grant of planning permission

Reason: To comply with the terms of the planning application lodged.

3. The development shall comply with conditions set out under planning reference numbers P00/2075 and TA/20408 except where conditions hereunder specify.

Reason: In the interest of the proper planning and development of the area.

4. The silo shall only operate between the hours of 0700 hours and 1900 hours Monday to Friday and 0700 hours to 1400 hours on Saturday and not at all on Sundays or Bank Holidays.

Reason: To protect the residential amenity of the area.

5. The noise levels generated by the operation of the development shall not exceed 55 dB(A) L_{AeqT} when measured at the nearest occupied house. When measuring the specific noise level the time shall be 1 hour period during which the sound emission is at its maximum level.

Reason: In order to protect the amenities of property in the vicinity.

6. The developer shall pay to the planning authority a financial contribution of €360 (three hundred and sixty euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

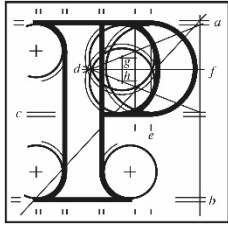
Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Paul Caprani,
Senior Planning Inspector

25th May, 2017.

Appendix 7B

PL17.249285 Board Direction and Inspectors Report



The submissions on this file and the Inspector's report were considered at a Board meeting held on 20.06.2018.

The Board decided to refuse permission, generally in accordance with the Inspector's recommendation, for the following reasons and considerations.

Reasons and Considerations

1. The proposed development is dependent on the operation of the existing quarry to the north of the R156 and will facilitate the expansion of the existing pre-cast concrete manufacturing facility, also to the north of the R156. Planning permission for the quarry, the existing block yard and existing pre-cast concrete manufacturing facility, expires on the 5th August 2018. In the absence of a development strategy for these adjacent lands and a valid planning permission for the on-going operation of the quarry, it is considered, that the proposed development located on the opposite side of the R156 to existing quarry activity in the area, on low-lying land, would represent a piecemeal and disorderly approach to the development of the site and to the expansion of the overall quarrying activities. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the location of this site on the opposite side of the R156 road to existing quarry activities, it is considered that, taken in conjunction with existing quarry activities in the area, the proposed development would seriously injure the amenities of the area and of property in the vicinity by the

encroachment of an industrial type activity into an open rural area with associated changes to the landscape and increase in the overall footprint of the quarrying activity. The proposed development would, as such, constitute a disorderly approach to the expansion of the overall quarry resource at this location. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Request for Expenses

The request for expenses submitted by the third party appellant in this case, namely Eco Advocacy, was also considered at the Board Meeting.

The Board gave consideration to the circumstances of the subject planning application and appeal, and the eventual outcome.

The Board decided, not to direct the payment of expenses under section 145 of the P&D Act, for the following reasons and considerations.

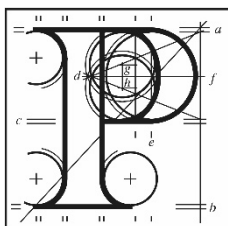
Reasons and Considerations

Having regard to the nature of this planning application and appeal, the issues arising, the grounds contained in the claimant's application for expenses, the Board considered that it would not be appropriate to direct the payment of compensation for expenses occasioned in relation to this appeal.

Board Member

Date: 21.06.2018

Terry Prendergast



An
Bord
Pleanála

Inspector's Report 17.249285

Development

Relocation of concrete block yard, from established and permitted quarry, precast concrete manufacturing plant and block manufacturing facility on the northern side of the R156, to the southern side of the R156, and the development of an ancillary mixing/batching plant and associated works.

Location

Tromman, Rathmolyon, Co. Meath

Planning Authority

Meath County Council.

Planning Authority Reg. Ref.

TA/161345

Applicant(s)

Keegan Quarries Ltd

Type of Application

Permission.

Planning Authority Decision

To grant with conditions.

Type of Appeal

Third party.

Appellant(s)

1. Eamon Regan.
2. Eco Advocacy.

Observer(s)

1. N. Higgins.
2. T. & E. Ennis.
3. J. Swanton & Others.
4. J. & M. Regan.
5. An Taisce.
6. Eco Advocacy.

Date of Site Inspection

14th February 2018

Inspector

D. M. MacGabhann

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1.0 Site Location and Description

- 1.1. The 3.74ha appeal site is situated c.2km to the west of Rathmolyon village in the townland of Tromman, Co. Meath. It includes land to the south of the R156 and a smaller area to the north of the regional road.
- 1.2. To the south of the R156 the appeal site comprises part of a large, open, flat agricultural field, which falls gently towards a small watercourse (Tromman Stream) that runs along the southern edge of the agricultural field. The field is bounded by mature hedgerows and to the south, these have been augmented by recent planting (see photographs). A gas pipeline runs across the agricultural field to the south east of the appeal site (see submission from Gas Networks Ireland (25th January 2017). Residential properties (two no.) lie to the north west and north east of the agricultural field, both in the ownership of the applicant.
- 1.3. To the north of the R156 the appeal site forms a small part of an existing quarry development and comprises the landscaping belt alongside the public road, overburden storage and part of the internal access road.
- 1.4. Access to the quarry (north of the R156) is directly from the regional road to the north east of the appeal site. The existing quarry comprises offices and parking to the south of the site and a large working quarry to the north of the offices. Access to the quarry is via an internal access road to the west of the void. To the north of the working area is a concrete block yard and two large buildings used for the manufacture of pre-cast concrete (see attachments). Both have concrete batching plants associated with them, one to the south east of the block yard and one to the southwest of the buildings used for the manufacture of pre-cast concrete products.
- 1.5. To the west of the appeal site is an adjoining quarry, owned by Kilsaran. Scattered residential development lies along the regional road, to the west and east of the site and along the public road to the south east of the site. Kill National School lies c.700m to the south east of the site.

2.0 Proposed Development

- 2.1.1. The proposed development, as modified by way of further information, submitted 28th July 2017 (with revised site notices in August 2017), comprises:

- The relocation of the permitted concrete block yard from its existing site on the northern side of the R156, to the southern side of the R156,
- The development of an ancillary mixing/batching plant, and
- Associated development, works and landscaping.

2.1.2. To the south of the R156 structures include:

- A concrete hardstanding block yard of c.7,300sqm.
- An aggregate hopper loading ramp and aggregate hopper (4.5m in height).
- Aggregate storage and mixing shed (c.12m in height).
- Batch tower (c.12m in height).
- Storage silos (10.5m in height)
- Two no. belt conveyors.
- Settlement tanks.

2.1.3. The development will be cut into the existing agricultural field, by up to 4m on the northern side of the block yard. A 2m high retaining wall will be constructed along the western, southern and part of the eastern perimeter of the site and a landscaped bund will be created to the north, east and south of it (see Overall Site Layout Plan and Proposed Site Sections, drawing nos. 16119-PL-001 and 003).

2.1.4. An access road from the north of the block yard will connect the site to the quarry to the north of the R156 via a new tunnel (6m internal height) under the regional road. To the north of the regional road the development, therefore, comprises a new road, cut into the rising topography, to connect the development to the quarry to the north of the R156.

2.1.5. Surface water will be directed to three treatment lagoons to the west of the site. To the south of the lagoons is an attenuation tank for stormwater. Water from the settlement lagoons will be used in the manufacture of blocks and any excess water will be pumped to the northern quarry site for treatment as per existing arrangements.

2.1.6. In their response to the request for further information (28th July 2017), the applicant states that permission is sought for a period of c.10 years. On decommissioning, the

earth berms and associated planting will be retained. Existing ground profiles will be reinstated.

2.1.7. The application for the proposed development is accompanied by plans and drawings in respect of the development (revised in July 2017) and the following reports:

- Planning Report (December 2016).
- Engineering Services Report (December 2016) and Justification Test - Flood Risk (July 2017).
- Archaeological Impact Assessment (December 2016 and July 2017).
- Appropriate Assessment Screening Report (December and July 2017).
- Noise Impact Assessment (July 2017).
- Landscape and Visual Impact Assessment (July 2017).

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 29th August 2017, the planning authority decided to grant permission for the development subject to 16 conditions. A number of these are standard conditions, the remainder refer to the following:

- No. 2 – Limits the permission to a period of 10 years.
- No. 3 – Requires implementation of all mitigation measures.
- No. 4 – Controls hours of work (8am to 8pm Monday to Friday; 8am to 2pm Saturdays).
- No. 6 – Requires the development to be operated in accordance with an Environmental Management System (i.e. to be submitted to and agreed with the planning authority and to include noise management, dust suppression etc.).
- No. 7 – Controls noise (55 dB(A) 8am to 8pm, 45 dB(A) all other times at noise sensitive receptors).

- No. 8 – Controls dust (less than or equal to 350mg/m²/day averaged over a continuous 30-day period).
- No. 9 – Requires archaeological monitoring.
- No. 10 – Requires the applicant to provide all landowners within 500m of the development with appropriate contact details for the developer (e.g. in the event of an incident).
- No. 11 – Governs development near the gas pipeline.
- No. 12 – Requires the site to be restored in accordance with the details submitted.
- Nos. 13 to 15 – Require payment of financial contributions (c.€2,000 in total).
- No. 16 – Requires payment of a cash deposit or bond in respect of security for the restoration of the site.

3.2. Planning Authority Reports

Planning Reports

- 3.2.1. There are two planning reports in respect of the development. The first report (6th February 2017) summarises the planning history of the appeal site (including enforcement action), the adjoining quarry and of the adjacent Kilsaran quarry; relevant development plan policies and submissions/observations made by third parties, prescribed bodies and in internal reports.
- 3.2.2. The Report considers the development under a number of headings including appropriate assessment, need, requirement for EIA, planning policy, design, siting and layout, access, environment, heritage and flooding. It considers that the application has addressed the two reasons given by the Board for refusing planning permission under PL17.226884 (PA ref. TA/60629) (see planning history below). The report recommends further information in respect of the need for a new mixing/batching plant (having regard to the existing structures on the quarry site to the north); visual impact assessment; lifespan of development; decommissioning and restoration plan; capacity of wastewater treatment lagoons to provide sufficient attenuation and retention to treat effluent in line with existing discharge licence; noise

survey and justification test (development is partially situated in Flood Zone A in respect of flood risk).

- 3.2.3. The second planning report (29th August 2017) considers that the further information submitted has addressed all matters raised in the previous report (including amended site boundaries, relocating the development further north outside of Zone A). It, therefore, recommends granting permission for the proposed development subject to 16 no. conditions.

Technical Reports

- 3.2.4. On file are the following technical reports:

- Road Design (30th January 2017) – As there is no increase in production beyond that permitted in the previous permission and no new access to R156, no objections, subject to conditions.
- Environment (31st January 2017) – Recommends further information in respect of (a) the generation of wastewater and the overall capacity of wastewater treatment lagoons to ensure compliance with existing discharge licence, and (b) potential impacts on noise sensitive receptors.
- Infrastructure (3rd February 2017) – Site is partially situated in Flood Zone A. Recommends further information and a Justification Test in respect of the development.

3.3. Prescribed bodies

- 3.3.1. Reports by prescribed bodies are as follows:

- Inland Fisheries Ireland (22nd December 2016) – No issues with proposed development subject to works being carried out as per Engineering Services Report, Appropriate Assessment and Planning Report.
- Gas Networks Ireland (GNI, 25th January 2017; 14th August 2017) – No objections to the proposed development as it lies outside of the 14m wide gas pipeline wayleave and subject to construction works being carried out in accordance with GNIs Code of Practice for such works.

- An Taisce (25th January 2017) – Grounds of the Board’s previous refusal would have to be addressed in considering the proposed development (PL17.226884). The substantive grounds of the previous refusal still apply. The permission life of the quarry which the application is designed to connect with is due to expire in August 2018. The strategic justification for a block plant in this location and with vehicular connection to the quarry has not been provided. Section 35 of the P&D Act should be applied to this application which forms part of the quarry on the north side of the R156. History of enforcement issues and complaints in relation to the site. Application is part of, and connected with, an existing EIA level development. Extension of an EIA related development requires a new EIA.
- Development Applications Unit, DCHG (15th August 2017) – Recommends archaeological monitoring of all groundworks.

3.4. Submissions

3.4.1. On file are 12 no. third party submissions¹. Matters raised are summarised below:

- Precedent set by the Board in their determination of PL17.226884 (TA/60629).
- No details of existing development (north of R156).
- Lack of compliance with/no information on compliance with conditions relating to existing planning permissions (developments to the north of the R156) e.g. HGV movements in the early hours of the morning, boundary of extraction area, depth of quarry, financial contributions, progressive restoration, monitoring. Lack of enforcement of planning consents. Inadequate security deposits/mechanisms (e.g. reliance on undertakings from limited company) in past permissions to ensure reinstatement of the site.
- Concerns regarding compliance with future conditions of any permission.
- Numerous unauthorised development carried out on the quarry site e.g. lime drying units, storage hopper, concrete base and ESB substation (all cited in

¹ Wild Ireland; Meath Archaeology & Historical Society; J. & J. Swanton; N. & J. Regan; Meath Environmental Protection Alliance; S. Brady & F. Long ; J. & M. Regan; N. Higgins; E. Regan; K. Cummins; and Eco Advocacy; T. & S. Ennis.

enforcement notice UD15/284); substantial overburden mound; concrete batching plant at the site which continues to operate without planning permission; possible extension of concrete products factory.

- Given the history of unauthorised developments, no further applications for new or structures to be retained should be granted (Section 35, Planning and Development Act 2000). With the level of unauthorised development, the whole quarry must now be considered unauthorised.
- Impact on archaeology (burial grounds at Tromman).
- Visual impact of development (sited on low lying land).
- Development to the south of the R156 would constitute disorderly development.
- Further loss of agricultural land is not justified and not warranted.
- Cumulative effect of proposed development with existing quarry/quarries/related development e.g. noise, traffic, extension of the area covered by dust.
- Proximity of development to national school and the effects of the above on the school.
- Concentration and intensification of quarries in the area and impact on quality of life of residents (impact on landscape, traffic, condition of road, structural damage to houses, light pollution, loss of agricultural land).
- Unreasonable extension of works (and environmental effects) beyond original timescale for existing quarry (15-year permission to August 2013, with extension to 2018).
- Risk to gas pipeline running to the south of the appeal site from development.
- Impact of noise from current and proposed development.
- Need for the development (given the substantial CO₂ emissions in the manufacture of cement and the move away from use of concrete towards timber framed housing).

- Inaccurate description of the development (the term ‘culvert’ used to describe the large tunnel under the R156). The scale of the tunnel required to take vehicles the size of a quarry truck would be inappropriate at this location.
- Risk of pollution of stream running to the south of the site (including airborne dust and consequential lowering of pH of water), a tributary of the River Boyne and Blackwater SAC. Risk of pollution of groundwater.
- Validity of application – No EIS submitted. Parent permission required an EIA, it follows therefore that this application should be accompanied by an EIA.
- No timescale sought for the development.
- Quarrying inconsistent with CSOBJ7 (promoting and facilitating sustainable communities) in the Meath CDP 2013-2019.
- Applications for Keegan developments are confusing as they are made under different names e.g. Keegan Quarries, Keegan Precast.

4.0 Planning History

4.1. There is an extensive planning history associated with the appeal site and adjoining quarry. This is set out in detail in the Planning Report on file. I draw the Board’s attention to the following cases which are most relevant to the current appeal:

Appeal Site

- 4.2. In **2009**, under PL17.226884, the Board refused permission for the extension of the existing quarry on land to the north of the R156, quarrying of land to the south of the R156 and the establishment of a pre-cast concrete plant and concrete block plant also on land to the south of the R156. Access to the southern lands was proposed from an internal access road under the regional road. The application was accompanied by an EIS. Permission was refused for two reasons (see attached history file).
- 4.3. In summary, the Board considered that (1) having regard to the location of the site on the opposite side of the R156 to existing quarry activity in the area, the low-lying nature of the site, presence of archaeological site and gas transmission pipeline

(southern side of R156), the development would be visually obtrusive, injure the amenities of the open rural area and properties in the vicinity and comprise a disorderly approach to the expansion of the quarry, and (2) having regard to the proposed extraction of material below the existing water table, and submissions made, the Board was not satisfied that the overall water management system was adequate and at a level of detail to satisfactorily draw conclusions in relation to the management of groundwater that would be pumped from the quarry or that the development would not have an adverse impact on groundwater resources (including nearby wells) or surface water in the area.

Quarry and Related Development (north side of R156)

- 4.4. Planning permission for quarrying on land to the north of the R156 was originally granted in 1998, under PA ref. 97/1868. The extent of the quarry (area and depth) was increased in 2004 under PL17.206702 (PA ref. TA/30334) and the duration of the permission was extended under PA ref. TA/130399 and TA/130400 to August 2018.
- 4.5. Under PL17.235960 (and PA ref. TA/900976) the extraction area of the quarry was further extended by c.2.85ha (on land to the east of the original quarry) and the duration of this permission was extended under PA ref. TA/130581, again to August 2018.
- 4.6. In addition to the above, permission was granted on land to the north of the quarry site for block making and concrete manufacturing in 2001 and 2003 respectively, under PA refs. 00/2075 and TA/20408. Conditions of these permissions required these developments to cease when the quarry development under PA ref. 97/1868 ceases.
- 4.7. Applications are summarised as follows:
 - In **2017**, under PL17.248115 (PA ref. TA/161419), the Board granted permission for the temporary, three-year, retention of a concrete silo structure, with a footprint of 99m² and measuring 28.6m in height, associated with and ancillary to the existing permitted precast concrete facility permitted under PA ref. TA/20408.

- In **2017** the planning authority considered three declarations sought under Section 5 as to whether or not development that had been carried out at the site (lime drying, batching plant and ESB sub-station) constituted development and was or was not exempted development. For each the planning authority considered that the works carried out constituted development requiring planning permission (PA refs. TA/S5/1655; TA/S5/1656 and TA/S5/1623).
- In **2013**, under PA ref. TA/130581, the planning authority granted permission for the extension of the duration of the permission granted under PA ref. PL17.235960 (TA/900976), with permission to expire on the 5th August 2018.
- In **2013**, under PA ref. TA/130401, the planning authority refused permission for the extension of the duration of PA ref. TA/900976.
- In **2013**, under PA ref. TA/130400, the planning authority granted permission for the extension of the duration of planning permission granted under PL17.206702 (PA ref. TA/30334), with permission to expire to expire on the 5th August 2018.
- In **2013**, under PA ref. TA/130399, the planning authority granted permission for the extension of the duration of the permission granted under PA ref. 97/1868, with permission to expire on the 5th August 2018.
- In **2010**, under **PL17.235960** (PA ref. TA/900976), the Board decided to grant permission for the extension of the quarry extraction area (2.85ha)
- In **2004**, under **PL17.206703** and PA ref. TA/30334, the Board decided to grant permission for retention, continuance and extension of quarrying (including modification to layout permitted under PA ref. 97/1868). The application was accompanied by an EIS. Condition no. 7 required the extension and entire quarrying operation to be completed within 15 years as per the conditions granted under PA ref. 97/1868.
- In **2003**, under PA ref. TA/20408, the planning authority granted permission for the erection of a building to manufacture concrete floors, pipes, blocks, bricks and associated products.

- In **2001**, under PA ref. 00/2075, the planning authority granted planning permission for a mobile block making plant, concrete yard and water settlement tank, including temporary offices and storage shed.
- In **1998**, under **PA ref. 97/1868**, the planning authority granted permission (15 years) for a quarry on 8.5ha together with a workshop, a mobile pressing plant, wheel wash, weighbridge and fuel storage unit and truck parking.

4.8. Reference is also made in the Planning Report (6th February 2017) to enforcement notice UD/15/284 that was served on the applicant in relation to '*unauthorised newly constructed block work electrical sub-station, construction of pre-cast concrete units i.e. silos/storage bays, 2 no. concrete batching plants and associated plant and a large industrial building*'.

Adjoining Quarry (to north west of appeal site)

4.9. The planning history of the quarry to the north west of the appeal site is set out in pages 6 and 7 of the Planning Report on file (6th February 2017). It includes permission for the development and extension of a quarry on the adjoining lands, permission for a concrete batching plant and block manufacturing facility, asphalt plant and agricultural lime production and storage unit.

5.0 Policy Context

5.1. Development Plan

5.1.1. The Meath County Development Plan 2013 to 2019 recognises that minerals can only be worked where they occur, the economic benefits of their exploitation and the environmental effects that can arise from quarrying. The Plan, therefore, sets out the following policies in respect of extractive industries (Section 10.12):

- To facilitate adequate supplies of aggregate in the county, and wider area, while addressing key environmental, traffic, social impacts and rehabilitation (Goal).
- To ensure that screening for appropriate assessment is carried out where required (RD POL 21).

- To facilitate the exploitation of the county's natural resources whilst ensuring that such developments are carried out in a manner that does not unduly impinge on visual amenity, environmental quality or adjoining existing land uses (RD POL 22, 23 and 24).
- To ensure that the extractive industry minimises adverse impacts on the road network and that the full costs of road improvements necessary to facilitate the industry are borne by the industry (RD POL 25).
- To ensure that all existing workings, and future extractive activities, are rehabilitated to suitable after uses (RD POL 26).
- To ensure that development proposals do not significantly impact on sites of nature conservation importance, including Special Areas of Conservation, Special Protection Areas, Natural Heritage Areas, areas of significant archaeological potential, sensitive landscapes and World Heritage Sites (RD POL 27).

5.1.2. Policy objective, CS OBJ 7, seeks to promote rural economic development by recognising the need to advance the long term sustainable social and environmental development of rural areas, encourage economic diversification and facilitate growth of rural enterprises.

5.1.3. Policies of the Plan also seek to protect landscape character, quality and distinctiveness in accordance with government policy and the recommendations of the Meath Landscape Character Assessment (LCA), set out in Appendix 7 of the Plan. The appeal site lies within Landscape Character Area 6 (high value, moderate sensitivity), near to its boundary with Landscape Character Area 13 (high value, high sensitivity).

5.2. Natural Heritage Designations

5.2.1. Trammon Stream that flows along the southern boundary of the agricultural field in which the appeal site is situated. The stream discharges into the River Boyne and River Blackwater SAC (site code 002299), c.850m to the north west of the appeal site.

5.2.2. The river is also designated as an SPA, the River Boyne and River Blackwater SPA (site code 004232) c.3km north west of the appeal site (see attachments).

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. There are two third party appeals in respect of the proposed development made by E. Regan (resident to the south east of the appeal site, north west of Kill National School) and Eco Advocacy (on behalf of residents in the Rathmolyon and South Meath area). Similar issues are raised in both appeals, and repeat matters raised in submissions to the planning authority. Concerns are summarised below:

- Precedent set by the Board's determination of PL17.226884 in 2009. Pressure of repeated applications on community.
- Risk of intensification of development. The proposed development has been confined to the corner of the field and has been screened from public view. It is reasonable to believe that the current proposal is the first part of another attempt to intensify the current operation to the other side of the R156.
- Environmental Impact Assessment. No EIA has been submitted, despite development forming part of a quarrying landholding with an area of 37.76ha. Dividing so many developments into different submissions amounts to project splitting.
- Impact on Trammon Stream. Environmental effects of development on the river, including contamination by runoff from concrete hardstanding. Water from the river supplies many farms in the area and is vital to them.
- Appropriate Assessment. No assessment of the impact of the development on the River Boyne SAC (into which Trammon Stream discharges).
- Zoning. The proposed development is an industrial activity. It cannot be considered ancillary to a quarry as it is removed from it. The land is not zoned industrial. The proposed development is unacceptable and would set an undesirable precedent.
- Inaccurate description of development (reference to culvert not large tunnel).

- Visual impact. Of the development and on the visual amenity of appellant's property (low lying field, industrial nature of development). Trees planted by applicant will not screen views of the development. The development would be disorderly and mark a significant intensification of activity in the rural area.
- Timescale of quarrying activity. Unreasonable extension of quarrying/related development beyond original timescale with consequential impacts on residents. The current quarry is permitted to 2018. To permit a development for 10 years, which depends on this quarry is irregular.
- Unauthorised development. History of unauthorised development by applicant (including no permission to import sand and gravel for concrete production to the ready-mix plants). Poor level of enforcement action. History of unauthorised development at other sites under the control of the applicant, including Fowler v Keegan Quarries Ltd [2016 IEHC 602, 2012 463 MCA].
- Lack of compliance with/information on compliance with conditions of previous permissions. Lack of effective policing of permissions.
- Cumulative environmental effects. Arising for the community, as a result of concentration of quarry operations in the area, including effect of HGV traffic on local roads. Impact on property values as a consequence of this (i.e. loss of amenity).
- Loss of agricultural land.
- Impact on archaeology. Including the impact of the development two large burial grounds in the field in which the development is proposed (ME042-033/034)². The sites at Trammon were designated for protection under the National Monument Acts 1930-2004 (serial no. 2/2010), but after being challenged by the applicant by Judicial Review, the protection was revoked.

²The appellant refers the Board to the archaeological monitoring required by way of condition no. 15 of the permission granted under PL17.235960 – extension to quarry to the north of the R156. The appellant states that given the poor weather conditions at the time, no meaningful archaeological monitoring was possible. Despite this, an archaeological report was subsequently submitted showing no evidence of any finds.

- Impact on gas pipeline. From tree planting carried out by applicant in proximity to the pipeline, and proximity of the development to the pipeline (risk of damage).
- Impact on Kill National School. From noise and dust.
- Impact of dust. Dust on local roads/hedgerows and effect of dust on crop yield.
- Noise. From the proposed development. Effect on residential amenity.
- Conditions of the Permission. Unacceptable hours of operation permitted for development (from 7am to 8pm) and unacceptable noise levels, derisory financial contributions. Unreasonable timeframe for development (10 years), in particular when permission for the quarry will expire in 2018. Community have endured more than their fair share of disruption and nuisance.
- Traffic. Excessive truck movements on R156 arising from existing development (authorised and unauthorised).
- Lack of compliance with policy objective CSOBJ7. Of Meath County Development Plan 2013-2019, in respect of sustainable communities.

6.1.2. **Attached to the Eco Advocacy appeal is an application for appeal fees and expenses.**

6.2. Applicant Response

6.2.1. The applicant responds to the appeals under the following headings:

- Unauthorised development – Enforcement matters and the alleged unauthorised developments are matters for the planning authority. The proposed development provides for the relocation of a permitted block plant (PA ref. 00/2075). The matter of enforcement was addressed by the Board under PL17.248115.
- Requirement for EIA – Development does not come within the categories or classes listed in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations (2001). All potential significant impacts have been

addressed through detailed assessments. The need for EIA was considered by the planning authority.

- AA screening – Surface water will be retained on site for use in block production. Excess water will be pumped back into the existing quarry. A buffer zone is provided between the watercourse to the south. Condition no. 5 controls the ultimate disposal of surface water. The appropriate assessment screening report, and addendum report, confirmed that the development would give rise to no impacts on nearby Natura 2000 sites. This finding was accepted by the planning authority.
- Precedent set by PL17.226884 – The proposed development is materially different from the development previously refused (size, absence of quarrying, precast plant, demolition of dwellings and staff accommodation/offices). Reasons for refusal informed the proposed development (visual impact and archaeology). The gas pipeline is removed from the application site and excavations within the site, potentially affecting it, are controlled by condition no. 11 of the permission.
- Visual impact – The proposed development will be screened by landscaped earth berms and structures will be coloured to resemble agricultural buildings in the area. The overall visual impact of the development is considered to be negligible to moderate, including from appellant's dwelling, and this was accepted by the planning authority.
- Archaeological impact – The Archaeological Impact Assessment Report states that no previously unrecorded archaeological or cultural heritage features were identified on the subject site (cartographic sources, aerial photography, previous test trenches). An 80m buffer zone is maintained between the site boundary and the nearest burial ground (ME042:033). A further buffer is provided between the development and the remaining archaeological sites by the gas transmission pipeline. The low-medium potential for buried archaeological sites will be safeguarded by condition no. 9 of the permission (requires archaeological monitoring).
- Noise and dust – Kill NS is c.730m to the south east of the proposed development. The Noise Impact Assessment concludes that the development

will not result in adverse noise or vibrational impact on the closest residential receptors which are between 500m and 800m of the proposed development.

6.3. Planning Authority Response

6.3.1. The planning authority comment on the appeals made as follows:

- The application that was lodged was determined to be valid.
- The development was considered to be consistent with the policies and objectives of the Meath County Development Plan 2013-2019.
- Enforcement action is being taken against unauthorised structures on the site.
- The Board is referred to the Planner's Report for the application dated 28th August 2017.

6.4. Observations

6.4.1. Five observations³ are made on the appeals submitted to the Board. Matters raised generally repeat those set out in the appeals or previous submissions. Additional matters raised are summarised as follows:

- Time of applications (Christmas period).
- Impact on views of those driving through the village of Rathmolyon.
- Lack of resources by communities to deal with such applications.
- Condition of public road and hedgerows.
- Impact of HGVs on amenity and safety of the public road (for walking, cycling etc.).
- Light pollution from existing development.

6.5. Further Responses

6.5.1. The following additional comments are made by Eco Advocacy on the appeal by Mr Eammon:

³ N. Higgins; T. & S. Ennis; J. Swanton & others; J. & M. Regan; An Taisce; Eco Advocacy.

- Given the history of the site (past failures to comply), the appellant was surprised by the Board's decision to grant permission to the unauthorised development in PL17.248115. The Planner's report in respect of PL17.248115 alluded to enforcement between the planning authority and the developer. However, no meaningful enforcement action is being taken by the planning authority. Issues at the site are very serious.

7.0 **Assessment**

7.1. Having regard to the material on the appeal file, the planning history of the site, the policies of the current Meath County Development Plan and my inspection of the appeal site, the adjacent quarry site (north of the R156) and the area in which the site is located, I consider that the key issues in respect of the appeal, relate to the matters raised by the appellants and in the submissions to the planning authority. These can be summarised under the following headings:

- Description of development.
- Unauthorised development and compliance with conditions of previous permissions.
- Principle.
- Precedent.
- Risk of future intensification.
- Need for Environmental Impact Assessment.
- Strategic justification for the Development.
- Visual impact.
- Impact on Trammon Stream.
- Appropriate Assessment.
- Loss of agricultural land.
- Impact on archaeology.
- Traffic.

- Noise, dust and light pollution.
- Cumulative effects on community.
- Impact on gas pipeline.
- Conditions of the permission.
- Other matters.

7.2. Description of Development

7.2.1. It is argued that the description of the development is inaccurate in that it refers to a culvert under the R156 which would be more accurately described as a large tunnel.

7.2.2. The planning authority is responsible for the validation of the planning application for the proposed development and I note that they have accepted the description of the development set out in it. I comment briefly on the matter as follows.

7.2.3. The Department's Development Management Guidelines state that the purpose of public notices is to inform the public of the proposed development and to alert them to its nature and extent, with third parties then able to examine the public file in detail at the planning office. In this instance, the description of the development refers to the '*culvert under the R156 to provide vehicular and services access from the established quarry to the proposed plant*'. The term culvert typically applies to a structure which allows water to run through it under a road. Whilst the use of the term in the description of the development is therefore a little misleading, the description of the development does clearly indicate that it will provide vehicular access to the site. I consider, therefore, that the description of the development is adequate and is sufficient to alert the public to the nature and extent of it.

7.3. Unauthorised Development and Compliance with Conditions of Previous Permissions

7.3.1. There are numerous references in submissions on file to unauthorised development on the applicant's land to the north of the R156; to compliance with/enforcement of conditions laid down in previous planning permissions and to the risk of intensification of unauthorised uses with the proposed development.

7.3.2. Enforcement of planning control is the responsibility of the planning authority, including use of Section 35 of the Planning and Development Act, 2000 (as amended) i.e. refusal of planning permission for past failures to comply. The Board, therefore, generally has no jurisdiction in the matter and it falls outside of the scope of this appeal.

7.3.3. However, with regard to concerns that the development would lead to an intensification of unauthorised uses, I comment as follows:

- i. The proposed development comprises the relocation of the existing block yard from the north of the appeal site and the development of an ancillary mixing/batching plant. The applicant makes no reference to any increase in productivity of the block yard as a consequence of the development, or of the adjoining quarry (e.g. to enable greater output). The Engineering Services Report (November 2016) specifically states that the development will not result in an increase in staff numbers or trip generation to and from the site.
- ii. Notwithstanding the above, the applicant states that:
 - The development is being brought forward to facilitate the expansion of the existing pre-cast concrete manufacturing facility on land to the north of the R156,
 - The existing concrete mixing/batching plant, for the block yard on the northern side of the R156, will be retained to supply the established precast concrete plant,
- iii. From the inspection of the appeal site it is apparent that a newly constructed building for the manufacture of pre-cast concrete products (see attachments) does encroach into the area of the original block yard, reflecting the applicant's stated rationale for the development.

7.3.4. Having regard to the above, I would accept that the proposed development does not of itself give rise to the intensification of unauthorised uses. However, it may indirectly facilitate the intensification of such uses e.g. use of mixing/batching plant to increase supply to the precast concrete plant. Whilst this is a matter which remains one to be addressed by the planning authority, I consider that the Board should be

aware of it in their determination of this appeal. I comment on this matter further below.

7.4. Principle

- 7.4.1. Parties to the appeal raise concerns regarding the appropriateness of the development on the appeal site, given its distance from the adjoining quarry and absence of industrial zoning for the site.
- 7.4.2. The appeal site lies in a rural area and is not zoned for industrial development. Policies of the current Meath County Development Plan recognise the economic benefits of the extractive industry and that minerals can only be worked where they occur. Policies of the plan, therefore, support the development of the extractive industry in the county, subject to satisfactory environmental controls.
- 7.4.3. The proposed development is proposed on lands adjoining the existing quarry, albeit on the southern side of the regional road. Further, the development is intrinsically linked to the adjoining quarry i.e. it is dependent on it for its supply of raw materials, for access and for the discharge of excess surface water. Within this context, I do not consider the development, in a rural location on land which is not zoned for industrial use, to be inappropriate in principle.

7.5. Precedent

- 7.5.1. In 2009, under PL17.226884, the Board refused permission for the extension of the existing quarry on land to the north of the site, quarrying on land to the south of the R156 and establishment of a pre-cast concrete plant and concrete block plant, also to the south of the R156. Two reasons for refusal were given relating to (a) the location of the development on the opposite side of the R156 to existing quarry activity in the area, the low-lying nature of the site, the presence of an archaeological site and gas transmission pipeline and the consequential visual impact of the proposed development and the disorderly approach it would comprise to the expansion of the quarry, and (b) the impact of the development on ground and surface water.
- 7.5.2. In this instance, the development has been substantially reduced in scale. Notably, the development footprint is confined to the north-western corner of the applicant's

landholding (to the south of the R156); quarrying to the south of the R156 has been omitted; and the development now proposed relates to a single component of the previous application i.e. the concrete block plant.

7.5.3. In view of these alterations, even if similar issues arise for assessment e.g. visual impact, impact on archaeology, I consider that the application before the Board differs materially from that previously proposed and should be considered on its own merits.

7.5.4. Parties refer to the difficulty that repeat, and multiple applications, present for the community. Whilst this point is acknowledged, the applicant is entitled to bring forward applications for development under the Planning and Development Act, 2000 (as amended).

7.6. Risk of Future Intensification

7.6.1. Parties argue that if permission for the proposed development is granted, it will lead to an intensification of development south of the regional road.

7.6.2. As stated previously, the applicant is entitled to apply for permission for development proposals on the appeal site, and adjoining lands. However, any application for the intensification of a permitted use would have to be considered on its merits at the time. In regard to the nature of the development, any local constraints, likely environmental effects and prevailing national and local planning policy.

7.7. Need for Environmental Impact Assessment

7.7.1. Part 10 of the Planning and Development Act, 2000 (as amended) requires environmental impact assessment to be carried out for development which would be:

- Of a class specified in Part 1 of Schedule 5 of the Planning and Development Regulations, 2001 (as amended),
- In Part 2, if the development would exceed any relevant limit specified, or
- If the development (falling below such limits, set out in Part 2) would give rise to significant effects on the environment.

7.7.2. Paragraph 19, Part 1 of the Regulations lists quarries, in excess of 25ha, as development for the purposes of Part 10 and paragraph 2(b) of Part 2 lists the

extraction of stone, gravel sand or clay, where the extraction area would be greater than 5 hectares. Paragraph 13, Part 2 of the Schedule lists any change or extension of development already authorised or executed which would result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of the schedule, and result in an increase in size greater than 25% (or an amount equal to 50% of the appropriate threshold, whichever is greater) for the purposes of Part 10.

- 7.7.3. In this instance, the proposed development comprises the relocation of the existing block yard and development of ancillary mixing/batching plant. Of itself, it does not comprise development that falls within Part 1 or Part 2 of the Regulations.
- 7.7.4. As stated previously, the proposed development is intrinsically linked to the adjoining quarry, dependent on it for raw materials, access and discharge of surplus water. It is therefore not a standalone development. If it was therefore considered as part of the adjoining quarry development, EIA would be required if it constituted an increase in the size of the quarry by more than 25%.
- 7.7.5. From the information on file it is evident that:
- i. The applicant has not sought or referred to any increase in the size of the existing quarry, e.g. by way of extraction area or rate of extraction, as a consequence of the proposed development.
 - ii. The appeal site is 3.74ha in size and land to the north of the R156 has an area of c.21ha (including the area of the existing block making plant and pre-cast concrete plant). The proposed development would not extend the quarry area by more than 25%.
- 7.7.6. Having regard to the above, I would infer from this that the proposed development does not, of itself, result in the extension of the existing quarry sufficient to trigger the requirement for environmental impact assessment.
- 7.7.7. With regard to the likelihood of significant environmental effects, the proposed development comprises the relocation of the existing block yard to the south of the R156 and introduces industrial scale activity to a low lying rural area, with potential, principally, for noise, dust, visual impacts, as well as potential effects on archaeology and the water environment. These impacts are addressed below and it is considered that significant environmental effects do not arise. EIA would not therefore be triggered on the basis of likely significant environmental effects.

- 7.7.8. In addition to the above, the applicant has clearly indicated that the proposed development is required in order to facilitate the future expansion of the precast concrete manufacturing facility (with use of the existing mixing/batching plant retained to supply the precast concrete plant). The expansion of this facility is not currently authorised and may, in its own right, trigger the need for environmental impact assessment, for example, if there is a consequential increase in the rate of extraction (beyond permitted levels) or the likelihood of significant environmental effects occurring e.g. increase in noise or vehicle movements etc.
- 7.7.9. Therefore, whilst I would accept that the proposed development of itself would not trigger the requirement for EIA, the absence of clarity regarding other development on the site that it facilitates and the consequences of this for environmental impact assessment, constitutes an unsatisfactory and piecemeal approach to the development of the appeal site and wider lands.

7.8. Strategic Justification for the Development

- 7.8.1. Parties argue that there is no strategic justification for the development as the 'parent' permission for the quarry expires in 2018.
- 7.8.2. I note from the planning history on file that planning permissions granted in respect of the quarry to the north of the appeal site (including PA ref. 97/1868), expire on the 5th August 2018 (see Planning History section of this report above). Further, permission for the block making plant under PA ref. 00/2075 and for the precast concrete facility also require, in condition nos. 5 and 3 respectively, that the developments cease when the quarry permitted under PA ref. 97/1868 ceases.
- 7.8.3. In response to the request for further information, the applicant states that the block yard and batching plant will have a lifespan of c.10 years. However, as stated previously, the proposed development does not stand alone. It is predicated on the ongoing operation of the quarry for the supply of raw materials, access and discharge of surplus surface water. To grant permission for the proposed development, in the absence of certainty regarding the future operation of the related quarry development would seem premature.

7.9. Visual Impact

- 7.9.1. Parties to the appeal refer to the low-lying nature of the appeal site, the industrial nature of the proposed development, the inadequacy of additional planting carried out to screen the development and the visual impact of it on the amenity of the area, of residential property and those driving through the village of Rathmolyon.
- 7.9.2. The appeal site is divided into two parts. To the north of the R156 it comprises the existing roadside hedgerow and land within the existing quarry used for the storage of overburden and for internal access roads. To the south of the R156 it comprises the low lying agricultural field
- 7.9.3. The applicant's Landscape and Visual Impact Assessment states, based on the characteristics and features of the local landscape, that the visual catchment of the site is relatively small, with the focus primarily to the south and south east (i.e. it can be seen most readily from there).
- 7.9.4. Having regard to the prevailing topography, mature hedgerows alongside the public road and pattern of mature trees in hedgerows and copses in the area, I would generally concur with this analysis. From the R156, views of the site to the north and south, are unlikely to be significant given the mature vegetation alongside the road (north and south of it) which will be retained and augmented.
- 7.9.5. Most significant visual impacts will occur to the south east i.e. from the public road running to the south east of the site and from residential property along the road. The applicant has carried out tree planting along the southern boundary of the landholding, south of the appeal site. Further, it is proposed to cut the development into the site, to place landscaped berms around the perimeter of it to screen views, provide additional planting along the internal access road to the site and to colour the proposed structures to resemble agricultural buildings. Visual effects are predicted in the applicant's Landscape and Visual Impact Assessment. These indicate that the development would be difficult to discern in the rural landscape. However, having regard to the height of the proposed structures and the absence of the tunnel under the R156 and access route to the north of the R156, I would consider that the visual effects have been a little underestimated.
- 7.9.6. Notwithstanding this, I consider that the proposed development with the maturing of the proposed landscaping would be reasonably well screened from public roads in

the vicinity of the site and from residential development to the south east of it. However, the proposed development is industrial in type, scale and form and would inevitably change the open, rural character of the site. Further, it would extend quarry related development, for the first time, to the land to the south of the public road. In the absence of strategic justification for the development, I consider this impact to be unwarranted.

7.10. Impact on Trammon Stream

7.10.1. Parties argue that the proposed development could give rise to contamination of Trammon Stream e.g. from the discharge of polluted water from the site and from dust.

7.10.2. Plans for the proposed development indicate that:

- i. The development is situated outside of the lands which are at risk of flooding alongside Trammon Stream (see applicant's response to Item 7 of the request for further information) and provides a buffer of c.80m between the site and the watercourse.
- ii. Surface water will be collected on site (and from the access road and tunnel) and directed into a series of settlement lagoons. Water collected in this way will be used in the block making process and when it exceeds requirements will be pumped back to the quarry for treatment and discharge to ground, subject to the current licence arrangements (limited to 58m³/hour and 1,400m³/day, compliance with quality standards - see Appendix B of applicant's response to request for further information).
- iii. A proposed storm water attenuation tank to accommodate 680m³ of stormwater (with manholes/sewers providing some additional capacity).

7.10.3. Having regard to the above, I would accept that the arrangements for the management of surface water during operation, which effectively remove it from the site and the vicinity of Trammon Stream, would prevent the pollution of the stream during this phase of the development.

7.10.4. However, I would note that there are no details on file regarding the construction phase of the development and how surface water will be managed to prevent

pollution of the stream in the short term. In addition, I note that there are no details on file regarding how dust will be controlled during the operation of the plant. Both of these matters can be addressed by appropriate work practices and, if the Board are minded to grant permission for the development, this matter could be addressed by condition (e.g. in a similar way to condition no. 6 of the planning authority's).

7.11. Appropriate Assessment

7.11.1. The EU Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) and 6(4) require an appropriate assessment of the likely significant effects of a proposed development on its own or in combination with other plans and projects which may have an effect on a European Site (a Special Area of Conservation, SAC, or a Special Protection Area, SPA). Further, in any decision to grant permission for a development, the competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site.

7.11.2. European sites located in proximity to the appeal site comprise the following sites:

- The River Boyne and River Blackwater SAC (site code 002299) – This site lies c.850m to the north west of the appeal site and Trammon Stream to the south of the site discharges into the SAC. Conservation objectives are to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected:
 - Qualifying habitats - Alkaline fens; Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno – Padion*, *Alnion incanae*, *Salicion albae*)*
 - Qualifying species - River Lamprey (*Lampetra fluviatilis*), Salmon (*Salmo salar*) (only in fresh water) and Otter (*Lutra lutra*). [* priority habitat].
- The River Boyne and River Blackwater SPA (site code 004232). This site lies, at its nearest, 3km to the north west of the appeal site (see attachments). Conservation objectives are to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests:

- Qualifying species - Kingfisher (*Alcedo atthis*) [breeding].

7.11.3. No other Natura 2000 sites are connected to the appeal site by any pathway.

Significant effects on other sides will therefore not arise.

7.11.4. The application for the proposed development is accompanied by an Appropriate Assessment Screening Report (November 2016) and an addendum report (July 2017). The reports follow the European Commission's methodological guidance for screening and describes the project, the Natura 2000 sites potentially affected by the development, the conservation objectives for these sites, the likely impacts of the development on Natura 2000 sites and an assessment of the significance of these impacts on the integrity of these sites.

7.11.5. The report concludes:

- i. There will be no direct impacts on the qualifying habitats of the Natura 2000 sites identified (no loss of habitats or habitat fragmentation), as the development is removed from the boundary of the two sites.
- ii. Whilst indirect effects could arise from water pollution e.g. with discharges from the site causing increased sedimentation, siltation, toxicity with resultant impacts on downstream habitats and species, as the development is removed from the nearby stream and having regard to the means to manage and discharge surface water during construction and operation, no such impacts are likely to occur.
- iii. Having regard to the absence of impacts of other applications for development in the area on Trammon Stream (page 19 of report), no in-combination or cumulative impacts will arise.

7.11.6. Having reviewed the Screening Reports and the NPWS data on the sites, I am generally satisfied that adequate information has been provided to clearly identify and assess the significance of potential impacts during the operation of the proposed development. I would accept that having regard to the distance of the site from Trammon Stream and the means to manage and discharge surface water during operation (which can be regarded as an intrinsic part of the work to be carried out), no direct, indirect or cumulative impacts are likely to arise. However, the application is silent on the proposed means to control surface water discharge during

construction, and as stated above, dust during the operation of the development. Whilst adherence to best practice construction methods is likely to mitigate these impacts, such methods have not been set out in the application and cannot, therefore, be regarded as an intrinsic part of the work to be carried out.

Appropriate Assessment – Screening Conclusion

7.11.7. Having regard to the above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the River Boyne and River Blackwater SAC/SPA (site codes 002299 and 004232), in view of the site's Conservation Objectives. If the Board are minded to grant permission for the development, further information would have to be sought from the applicant in respect of the means to control surface water arising during construction and dust during the operation of the plant. In the absence of such information the Board would be precluded from granting approval.

7.12. Loss of Agricultural Land

7.12.1. Parties refer to the loss of agricultural land that will arise as a consequence of the development. Whilst I recognise that the development will result in the loss of agricultural land, the quantum that would be affected by it is relatively modest (i.e. 3.74ha) and the overriding character of the area in which the site is situated remains a rural, agricultural one.

7.13. Impact on Archaeology

7.13.1. Parties to the appeal raise concerns regarding the impact of the development on two burial grounds which lie to the east of the appeal site within the same agricultural field (ME042-033/034).

7.13.2. The Department of Culture, Heritage and the Gaeltacht identify four archaeological sites lie within the agricultural field, to the east of the appeal site, see attachments (scheduled for inclusion in the next revision of the RMP⁴):

- ME042:033 – Burial ground, to the east of the appeal site.
- and ME042:034 - Burial ground, to the south east of the appeal site.

⁴ As stated on the National Monuments Service Archaeological Survey Database.

- ME042:036 – Burnt mound, to the south east of the appeal site.
- ME042:037 – Possible prehistoric circular structure, to the south east of the appeal site.

7.13.3. The applicant's Archaeological Impact Assessment (June 2017) refers to the absence of any surface expression of potential archaeological sites within the appeal site or archaeological features in any cartographic sources, aerial photographs etc. It also refers to a test trench assessment carried out in 2007 across the entire agricultural field in which the appeal site is situated and states that no archaeological features were recorded in the appeal site in this assessment (i.e. in the areas designated as Fields 1 and 2 of the assessment, see page 14 of report⁵).

7.13.4. However, having regard to the proximity of the appeal site to the above sites, the Assessment report states that there is a low to medium potential for the survival of buried archaeological features within the proposed development area. It recommends (a) that ground disturbance works be monitored by a suitably qualified archaeologist, with suitable mitigation measures discussed with the Department should archaeological material be recorded on site, and (b) a post and wire fence around the area of ME042-033 to protect the site. (The report acknowledges that the gas pipeline wayleave provides a further buffer between the proposed development and the remaining archaeological sites).

7.13.5. In response to the application, the Development Applications recommend a condition requiring archaeological monitoring of all groundworks, if planning permission is granted.

7.13.6. Having regard to the absence of archaeological features in the previous test trenching of the site (under PL17.226884), the distance of the development from the existing archaeological features and subject to fencing to safeguard existing features (ME042-033) and the archaeological monitoring of all groundworks, as proposed by the Development Applications Unit, I consider that it is unlikely that any significant impacts on archaeological heritage will arise.

⁵ The location of these test trenches in the location of the appeal site are shown in Archaeological Testing Report, Proposed Quarry Extension, Arch-Tech, 19th September 2007, PL17.226884.

7.14. Traffic

- 7.14.1. Parties to the appeal raise concerns regarding excessive truck movements on the R156 from the existing developments, the poor condition of the public road and the impact of traffic movements on its amenity and safety (e.g. for walking/cycling).
- 7.14.2. The proposed development comprises the relocation of the existing block yard and the development of an ancillary mixing/batching plant. Access to the site from the R156 will be via the existing entrance to the quarry and an internal access road under the R156. The applicant states, in section 7.0 of the Engineering Services Report, November 2016, that the development will not result in an increase in staff numbers or result in an increase in trip generation to and from the site onto the R156 as the development is a relocation of an existing facility. I would, therefore, accept in principle that the relocation of the block yard would not, of itself, generate additional vehicle trips.

7.15. Noise, Dust and Light Pollution

- 7.15.1. Parties to the appeal raise concerns regarding noise arising from the development and its impact on residential amenity; dust on the public road/in the vicinity of the site and the effect of it on hedgerows, plants and crop yield; the potential for respiratory problems in children attending Kill National School; and of light pollution.

Noise

- 7.15.2. The applicant's Noise Impact Assessment (June 2017) identifies noise sensitive receptors near the site (Figure 2). The two houses south of the R156 adjacent to the site are excluded as they are in the ownership of the applicant.
- 7.15.3. 24-hour baseline monitoring was carried at a location to the south east of the appeal site. Noise levels were influenced by traffic on the regional road and the local road to the east of the site (Table 4). The report states that noise from the nearby quarries north of the site was not audible, due to extended distance between the assessment location and the quarries (and these characteristics were evident at the time of site inspection).
- 7.15.4. The Noise Impact Assessment predicts likely noise levels arising from the proposed plant on the site (assuming that all plant is operational 100% of the time). Predicted

noise levels at nearest sensitive receptors range between 32 and 37 dB(A) $L_{Aeq, 1hr}$. Noise from HGVs is predicted to be 13dB(A) $L_{Aeq, period}$, arising from a maximum of 2 HGV movements per hour during peak periods. No adverse vibrational impacts are predicted. Section 5 of the Report sets out noise standard mitigation measures. These include controlling noise at source to noise, site management procedures (e.g. complaints procedures) and annual noise monitoring.

- 7.15.5. The proposed development will give rise to a new source of noise, on land to the south of the R156, as a result of block manufacturing activities and associated HGV movements. Whilst I would accept that the development would be audible at nearby sensitive receptors, predicted noise levels are well within standards for the quarry industry and could be controlled and monitored by condition. I do not consider, therefore, that the development would adversely affect residential amenity of nearby properties, by virtue of noise.

Dust

- 7.15.6. There is no information from the applicant the means to manage/control dust emissions within the site. However, the proposed development is removed from nearby sensitive receptors (including Kill National School) and will be surrounded on three sides by landscaped bunds. In principle, therefore, I do not consider that dust is likely to have a significant effect on the amenity of residents in the area or of school children. However, if the Board are minded to grant permission I would recommend that the applicant be required to set out means to control and manage dust on site (as previously stated) and limit overall dust emissions at site boundaries to industry standards. Subject to these controls I do not consider that significant impacts on hedgerows, plants or crops in the vicinity of the site would arise.

Light Pollution

- 7.15.7. There is no information on file regarding lighting of the proposed development. If the Board are minded to grant permission for the development, this matter could be controlled by condition (i.e. for the applicant to submit detailed arrangements for lighting of the site, to minimise light pollution arising from it).

7.16. Cumulative Effects on Community

- 7.16.1. Parties to the appeal refer to the long term and cumulative effects of the development on the community, because of the concentration of quarries in the area, and the impact of this on property values. They argue that the development is contrary to policy objective CS OBJ 7 of the Meath County Development Plan 2013-2019.
- 7.16.2. The proposed development comprises the relocation of the existing block yard, from land to the north of the R156, and the development of ancillary mixing/batching plant. As stated previously, the applicant has indicated that there will be no increase in productivity as a consequence of the development and therefore that the development would not result in an intensification of activity or additional effects on the community.
- 7.16.3. Notwithstanding the above, the proposed development would extend quarry related activity to the south of the R156 and bring it in greater proximity to residential development, in particular to the south east of the site. It would therefore add to the cumulative effects of quarrying in the area, for example, extending the visual limit of development, introducing HGV movements south of the regional road and noisy activities to the site.
- 7.16.4. Whilst these effects are not individually significant, as discussed above, the proposed development is not a stand-alone one and is dependent on the existing quarry development to the north of the R156. Permission for this related activity will expire in August of this year. In the absence of permission for the extension of the quarry, it would seem inappropriate, disorderly and premature to grant permission for the introduction of quarry related activity to land to the south of the public road which would add to the cumulative effects, and duration, of the industry in the area.
- 7.16.5. Policy objective CS OBJ 7 of the current Meath County Development Plan seeks to promote rural economic development by recognising the need to advance the long term sustainable social and environmental development of rural areas and to encourage economic diversification and facilitate growth of rural enterprises.
- 7.16.6. Quarries, and related activities, are acknowledged in the development plan as a legitimate activity in the county which are tied to the geographical location of the resource. Further, policies of the plan seek to facilitate adequate supplies of

aggregate in the county (and wider area) while addressing key environmental impacts. The proposed development, which comes forward as a quarry related development, and subject to satisfactory environmental controls, is not therefore in principle at odds with policy objective CS OBJ 7 of the development plan.

7.17. Impact on Gas Pipeline

7.17.1. A gas transmission pipeline lies to the south east of the appeal site. It lies within a 14m wayleave, shown in Gas Networks Ireland's submission to the planning authority dated 14th October 2017. Unlike the previous application (PL17.226884), the appeal site is removed from the pipeline/wayleave area by c.140m and Gas Networks Ireland have raised no objections to it. Having regard to this level of separation and to the views of the statutory body responsible for its maintenance and safety, I do not consider that the proposed development poses any risk to the pipeline. (Issues regarding tree planting in the vicinity by the pipeline, raised by the appellants, fall outside the scope of this appeal and are a matter for Gas Networks Ireland).

7.18. Conditions of the Permission

7.18.1. Parties argue that conditions of the permission proposed by the planning authority are unreasonable (hours of operation, timeframe) and that financial contributions are derisory.

Operating Hours

7.18.2. The planning authority's grant of permission sets out hours of operation of between 8am and 8pm Monday to Friday, 8am to 2pm on Saturdays with no work on Sundays or Bank Holidays.

7.18.3. The Department's Guidelines on Quarries and Ancillary Activities (April 2004) recommend operating hours of between 7am and 6pm Monday to Friday, 7am to 2pm on Saturdays and no work on Sundays or Bank Holidays. Similarly, in the Board's previous determinations in respect of the site, where permission was granted, operating hours were restricted to 7am to 6pm daily, 7am to 2pm on Saturdays with no work on Sundays or Bank Holidays (PL17. 206702 and PL17.

235960). If the Board are minded to grant permission for the proposed development, I would recommend that works be confined to these standard operating hours.

Timeframe

7.18.4. Condition no. 2 of the planning authority's grant of permission, limits the permission granted to a period of 10 years. However, as discussed above, the proposed development is predicated on the operation of the adjoining quarry. Planning permission for this (and related development north of the R156) expires very shortly, in August 2018 and I consider that it would be inappropriate to grant permission for the proposed development, in the absence of greater certainty regarding the future life of the quarry.

Financial

7.18.5. The Meath Development Contribution Scheme 2016 – 2021 sets out development charges for different types of development. Development charges have been levied by the planning authority by applying the development charges in respect of industrial/manufacturing development to the 186sqm of combined floorspace associated with the proposed (see Planning Report, August 2018). Whilst the amount levied appears quite small, it is consistent with the Development Contribution Scheme for the county.

7.18.6. With regard to condition no. 16 (cash deposit/bond as security for the satisfactory restoration of the site). The amount to be levied is not stated, and typical of this type of condition, will be agreed with the planning authority. Whilst I acknowledge the appellant's concerns, it is also in the interest of the planning authority to secure an appropriate deposit/bond to ensure that in the event of non-completion of the restoration plan, they have the means to restore the site.

7.19. Other Matters

7.19.1. One of the parties to the appeal draws the Board's attention to the timing of application (Christmas period). There are no impediments to submitting a planning application at this time. Further, the statutory notices have ensured that the public are aware of the development and have been able to make submissions/appeal the planning authority's decision on it.

7.19.2. Observers argue that they find the different applicants for the various quarry and quarry related developments confusing (e.g. Keegan Quarries, Keegan Precast). Whilst I would acknowledge this point, the applicant is entitled to bring forward an application by the appropriate legal structure for the development.

8.0 Recommendation

- 8.1. In summary, the proposed development does not stand alone. It is intrinsically linked to the existing quarry development to the north of the appeal site, which it relies on for raw materials, access and for the disposal of excess surface water. Further, it is brought forward to facilitate the expansion of the existing pre-cast concrete manufacturing facility to the north of the R156, the details of which are not on file. Permission for the quarry, and related development, to the north of the site (including the existing block yard and concrete manufacturing facility) will expire in August of this year.
- 8.2. Within this context it would seem inappropriate, premature and disorderly to grant permission for the proposed development. I recommend, therefore, that planning permission for the proposed development be refused.

9.0 Reasons and Considerations

The proposed development is dependent on the operation of the existing quarry to the north of the R156 and will facilitate the expansion of the existing pre-cast concrete manufacturing facility, also to the north of the R156. Planning permission for the quarry, the existing block yard and existing pre-cast concrete manufacturing facility, expires on the 5th August 2018. In the absence of a development strategy for these adjacent lands and a valid planning permission for the on-going operation of the quarry, it is considered, that the proposed development located on the opposite side of the R156 to existing quarry activity in the area, on low-lying land, would represent a piecemeal and disorderly approach to the development of the site and to the expansion of the pre-cast concrete manufacturing facility. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Deirdre MacGabhann
Senior Planning Inspector

27th March 2018

Appendix 8

304/2010 Supreme Court Judgement

Judgment

Title: Cronin (Readymix) Ltd -v- An Bord Pleanála & ors

Neutral Citation: [2017] IESC 36

Supreme Court Record Number: 304/2010

High Court Record Number: 2007 No. 144 JR

Date of Delivery: 30/05/2017

Court: Supreme Court

Composition of Court: MacMenamin J., Laffoy J., O'Malley Iseult J.

Judgment by: O'Malley Iseult J.

Status: Approved

Result: Appeal allowed



THE SUPREME COURT

[Supreme Court Appeal No. 304/2010]

[High Court Record No: 2007 No. 144 JR]

MacMenamin J.
Laffoy J.
O'Malley J.

BETWEEN:

MICHAEL CRONIN (READYMIX) LTD

RESPONDENT

AND

AN BORD PLEANÁLA

APPELLANT

AND

KERRY COUNTY COUNCIL AND THE DEPARTMENT OF THE ENVIRONMENT, HERITAGE AND LOCAL GOVERNMENT

NOTICE PARTIES

JUDGMENT of Ms. Justice O'Malley delivered the 30th day of May 2017.

Introduction

1. In these judicial review proceedings the respondent to the appeal (hereafter "Cronin" or "the company") sought an order of *certiorari* in respect of a ruling made by An Bord Pleanála ("the Board") pursuant to the terms of s.5 of the Planning and Development Act 2000 ("the Act"). The Board had determined that works carried out by the company amounted to development and were not exempt from the requirement to obtain planning permission. The learned High Court judge (Ryan J., as he then was) granted the relief sought but also granted a certificate for appeal to this Court pursuant to s.50(4)(f)(i) of the Act. The question certified is whether or not he was correct in his interpretation of s.4(1)(h) of the Act, which led him to hold that the contentious works carried out by Cronin constituted exempted development within the meaning of the Act.

2. The facts relevant to the appeal can be briefly stated. Cronin operates a quarry at Coolcaslagh in Co. Kerry. The site owned by the company covers about 130 acres, of which 96 acres are used for excavation. It produces both readymix concrete and concrete blocks at the site.

3. In late 2003 the County Council ("the planning authority") became concerned about the extent of the operations and inspected the site with a view to enforcement proceedings. The inspector found a hard surfaced yard, of some two acres in extent, being used for the purposes of the block-making operation. The company's position was that quarrying and the production of concrete at the site pre-dated the Local Government (Planning and Development) Act 1963; that making concrete blocks was not different in kind to the manufacture of readymix concrete since the same ingredients were used; and that there was no new structure on the site but simply the replacement and extension of an old yard for the purpose of drying and storing the blocks prior to despatch to customers.

4. In May 2006 the planning authority applied for a determination from the Board under the procedure provided for in s.5 of the Act as to whether or not there had been development, and, if so, whether or not it was exempted development. The authority believed that the quarry and the concrete plant had been in existence for longer than seven years and accordingly no enforcement action could be taken in that regard. However, it considered that they were both unauthorised developments. It also said that it had established that the block manufacturing business was a recent development and therefore amenable to enforcement.

5. The case made by Cronin was that the works had not required planning permission. It was asserted, firstly, that the entire quarry site and related processing activities pre-dated the time of commencement of the Local Government (Planning and Development) Act 1963. It was submitted, in relation to the repaving and extension of the yard, that no new structure had been erected and that the previously-existing concrete yard had been in use as part of the established readymix concrete batching operation. The space taken up was less than two acres of a site of 130 acres. There was no appreciable increase in the extent of manufacturing operations; no perceptible traffic impact; and no perceptible noise or dust impact. The works had been carried out

in a low-lying, worked out area of the quarry and were not visible from any public road or any residence in the vicinity. In those circumstances the exemption provided for in s.4(1)(h) of the Act was relied upon. The development, it was submitted, came within that provision because it constituted works for the "improvement" or "alteration" of a structure, which affected only the interior of the structure or which did not materially affect the external appearance of that structure so as to render its appearance inconsistent with the character of the structure.

6. It was also submitted that the planning authority had failed to demonstrate that the block-making amounted to a material change of use, rather than being ancillary to the overall quarry use. The batching process for the blocks was said to be no different to the process for readymix concrete, up to the point that the wet concrete emerged from the batching plant. At that point readymix concrete was poured directly into delivery trucks and taken to construction sites, whereas the blocks had to be shaped and were then laid out for three days on the paved area to dry out before delivery. The overall level of production of concrete had not changed.

7. The inspector who reported to the Board took the view that on the evidence, the Board could only conclude that some form of quarry operation and block manufacture was in place prior to the commencement of the 1963 Act, but that it could not be determined that no material change of use by reason of intensification had not occurred. She pointed to evidence suggesting that production had increased in 1984. In the circumstances she felt that it could not be determined that the quarry was authorised, and she therefore could not accept that the use of the batching plant was ancillary to an authorised quarry.

8. The inspector considered that the laying out of the hard surfaced area and the use of the two-acre part of the site for purposes related to block manufacture was of critical importance. Her conclusion was that the laying out of the hard surface area was development and was not exempted development. Her reasons were as follows:

"In relation to the enlargement of the yard, which is stated to be about 2 acres in extent, there is no dispute between the parties that the yard has been extended to facilitate drying and storage essential to the production of concrete blocks. The operator's case is that the replacement of the old yard and the extension of the yard are not visible and that an exemption under s.4(1)(h) applies. Section 4(1)(h) relates to the 'maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure...'

I submit that the replacement /repaving and extension of a concrete yard would not be described as either maintenance or improvement of a structure as neither would allow for an extension of the area. The term 'alteration' is defined to include plastering or painting, removal of plaster or stucco or the replacement of a door, window or roof that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures'.

I consider that neither the legal definition nor the ordinary dictionary definition of 'alteration' encompass the concept of an extension or enlargement as a defining characteristic but rather relates to more minor changes to a structure. I consider that an extension of the yard has taken place and that this is 'works' and is 'development', but would not be described as 'maintenance, improvement or other alteration of any structure' and does not therefore fall within the exempted development provisions set out in section 4(1)(h) of the 2000 Act and I reject the operator's arguments in this regard."

(Emphasis in the original.)

9. The inspector accepted Cronin's argument that the production of concrete blocks, as opposed to readymix, did not have a material planning impact in terms of the type and quantity of raw materials used or in relation to the traffic implications. Nor did it constitute an intensification of use in terms of materials sourced from the site and then processed and exported from the site. However, it was likely to give rise to additional noise and dust related disturbance. On this aspect, she noted that there was a private residence nearby. In addition, concrete block production required an extensive area of land for the purpose of open area storage. In this respect she considered that there had been a significant change in the nature of the process and an intensification of use of the lands. She said:

"The production of concrete blocks is reliant on the laying out of 2 acres of a 130 acre site, of which only 96 acres is used for excavation, and the use of that land for the drying and storage of blocks. I consider that this use of land has material planning consequences in terms of the visual impact of the development when viewed from surrounding lands – natural regeneration of the site could have occurred if this area was not surfaced. There are changes in terms of the surface water flows in the area and the extensive nature of the operation in landuse terms compared with the production of readymix with possible resulting impacts on geology and hydrology. The development of an extensive hard surface area at this location would also militate against the development of a habitat which would potentially be of ecological importance and this is a further consequence in terms of the proper planning and sustainable development of the area. I conclude that the development of a 2 acre hard surfaced area has material planning consequences. The process of production of concrete blocks is therefore materially different to that of the production of readymix and constitutes a material change of use."

10. In coming to the conclusion that there had been development and that it was not exempted development, the Board ruled, *inter alia*, as follows:

- that the laying out of a hard surfaced area of two acres in extent was development;
- that the laying out of a hard surfaced area of two acres in extent did not fall within the scope of s.4(1)(h) of the 2000 Act, in that it did not constitute works for the maintenance, improvement or other alteration to a structure;
- that the manufacture of blocks was dependent on the use of a large area of land for drying and storage which gave rise to material planning effects; and
- that the production of concrete blocks was an intensification of use that consisted of a material change of use of the land.

11. Cronin thereafter instituted judicial review proceedings. The two reliefs claimed were an order of *certiorari* of the decision that the block making operation was development, and was not exempted development, and a declaration that the Board did not have jurisdiction to make that decision in the absence of sufficient evidence as to the use of the lands at October 1st, 1964 and/or prior to the alleged material change of use of the lands. It should be noted that, having regard to the certified question, this appeal is not concerned with the concept of "material change of use" but only with the issue of exempted development.

The relevant legislative provisions

12. It is relevant to consider, to begin with, the general policy of the planning permission regime as set out in the Act. Section 32

provides that, subject to the other provisions of the Act, permission is required in respect of any development that is not exempted. Subsection (2) of that section stipulates that, where permission is required, development is not to be carried out except under and in accordance with permission granted under the Act.

13. In the vast majority of cases, an application for permission to develop land is to be made to the local planning authority. In deciding whether or not to grant permission, or to grant permission subject to conditions, the planning authority is constrained by the provisions of s. 34 of the Act to consider the proper planning and sustainable development of the area. Regard must be had to the development plan for the area; the provisions of any special amenity area order relating to the area; any European site or other prescribed area; where relevant, the policy of the Government or any Minister of the Government; and any other relevant provisions of the Act or regulations made thereunder. Section 34(4) provides for a non-exhaustive list of 18 matters that may be the subject of conditions attached to planning permission, including measures to regulate the use of any adjoining land owned by the applicant, the control of noise and vibration and conditions relating to the carrying out of the necessary works.

14. Development, for the purposes of the Act, is defined in s.3 as meaning, except where the context otherwise requires,

"the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land".

15. Section 2(1) provides in relevant part that the word "works" includes

"any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal."

16. Section 4(1) sets out a list of categories of developments which do not require permission. These are referred to as exempted developments. As far as non-State developers are concerned, the notable classes are perhaps those dealing with the use of agricultural land and those dealing with forestry-related activities. There is also an exemption for house occupiers in relation to the use of any structure or land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such.

17. Section 4(2) empowers the Minister to provide, by regulation, for any class of development to be exempted development for the purposes of the Act where, *inter alia*, in his or her opinion, the carrying out of that class of development would not offend against principles of proper planning and sustainable development by reason of its size, nature or limited effect on its surroundings.

18. The Act has been amended in recent years but as of the date of hearing of this matter in the High Court the category of exemption in issue in the case was s.4(1)(h), which refers to

"development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures."

19. The word "structure" means any building, structure, excavation or other thing constructed or made on, in or under any land, or any part of a structure so defined. Where the context so admits it also includes the land on, in or under which the structure is situate.

20. It is also necessary to consider the meaning of the word "alteration". It is not defined as such, but s. 2(1) of the Act provides that it

"includes

(a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures."

The High Court judgment

21. It was contended on behalf of Cronin that the work done to the yard surface was an alteration or an improvement, or perhaps even maintenance, of the structure. The structure in question was either the quarry as a whole, or the concrete yard surface.

22. The Board submitted that the laying down of the yard was an extension, whether considered as an extension of the quarry itself or of the concrete area. Extensions are specifically mentioned in the definition of "works" and must be seen as a separate and distinct category within that definition. They cannot be subsumed into the concepts of "alteration" or "improvement" and are not specifically included in the exemption provisions. The works therefore could not be exempt, whether they materially affected the appearance of the structure or not.

23. The trial judge considered that the Board's approach required the exclusion from s.4(1)(h) of some of the meanings of "works" set out in s.2(1). He preferred to assume that the word was to be given the same meaning in both sections, so that an extended version of the provision for exempted development under the relevant heading would read:

"the carrying out of works (including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal) for the maintenance, improvement or other alteration of any structure, being works which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure."

(Emphasis in the original).

24. Ryan J. rejected the argument that extensions were excluded from s.4(1)(h), stating that an extension could be considered an improvement or an alteration. The words should not be construed as a term of art in a criminal statute or a Tax Act. At p.9 of the judgment he said:

"The Board was wrong in its interpretation of s.4(1)(h), in my view. An extension is not excluded as a matter of definition. Maintenance and supervision [sic – recte improvement] (and other alteration) are the purposes for which the work is done in exempted development. The definition of works in s.2 lists the kind of activities of which any act or operation constitutes works. So, an act of demolition amounts to works; so does an operation of renewal etc. An act or operation of construction or repair may be required for the purpose of maintenance of a structure and that is obviously intended to be exempted development, but it would be excluded if the Board's submissions are correct. By insisting that the work done must be actual maintenance,

improvement or other alteration, rather than for [the purpose of] maintenance etc., the Board confuses purpose and act and overlooks 'the carrying out of works' in s.4(1)(h)."

25. The trial judge considered that his was, in any event, a more practical approach because otherwise permission would be required for every small extension to a private house. He acknowledged, however, that his interpretation required the giving of two different meanings to the word "alteration". This was because, in his view, "alteration" in s.2(1) described acts, including painting and plastering, which resulted in a material impact on the external appearance of a building while "alteration" in s.4(1)(h) related to purpose. He found it necessary to take this approach in order to avoid attributing meanings to the word which were actually in conflict with each other.

26. In his concluding remarks on the issue the judge said:

"In the result, the Inspector and the Board did not ask the correct question or questions. It was clear that works had been carried out. The fundamental question therefore was not about the nature of the work done but rather about its purpose and effect. Did the work make the structure inconsistent with its character? If it did not, the next question was whether the work done was for the maintenance, improvement or other alteration of the structure. In the circumstances of this case, I think that neighbouring structures did not enter into the question of whether the works made the quarry inconsistent with them.

This misunderstanding of s.4(1)(h) in its statutory context is fatal to the decision made by the Board."

Submissions in the appeal

27. Counsel for the Board summarises the effect of the ruling of the trial judge as being that all types of works described in s.2(1) can be exempt under s.4(1)(h), provided they are for the specified purposes and do not materially affect the appearance of the structure in question. This would be so even if the development bore no relationship to the original structure. It is submitted that this approach overlooks the fact that the Act deals with a regulatory scheme, which imposes a general requirement that all development should be the subject of planning permission. This general requirement should, it is submitted, be interpreted broadly while the discrete exemptions provided for should be interpreted narrowly. By including all s.2 descriptions of "works" within the exemption in s.4(1)(h), depending only on purpose and visual impact, the trial judge's reading of the legislation ignored the importance of other planning considerations such as environmental impact. Appearance is of very slight relevance in the case of a quarry but issues relating to water, noise and traffic could be very significant.

28. It is submitted that it was an error on the part of the trial judge to consider that the purposive reading adopted by him was required in order to allow for small extensions to private houses, since the power of the Minister, under s.4(2) to exempt specified classes of development, by way of statutory instrument, has already been utilised for that and many other categories.

29. Looking specifically at s.4(1)(h), counsel submits that it provides for a limited category of works that amount to alterations (with the concepts of maintenance and improvement being subsets), which are either wholly internal or, if external, are insignificant. It is unnecessary in such cases to subject the development to the whole range of planning considerations, precisely because the paragraph only applies to a limited range of works. It would be absurd to construe it as covering any works, no matter what the scale and no matter how slight the relationship with the original structure, just because they are intended as improvements.

30. Counsel for the Board relies on *Dillon v. Irish Cement Ltd* (unrep., Supreme Court, 26th November, 1986) as an authority dealing specifically with the proper approach to interpretation of an exemption under the Act. The category of exempted works in question in that case was set out in regulations made under the then applicable legislation. Finlay C.J. said:

"I am satisfied that in construing the provisions of the exemption Regulations the appropriate approach for a Court is to look upon them as being regulations which put certain users or proposed development of land into a special and, in a sense, privileged category. They permit the person who has that in mind to do so without being in the same position as everyone else who seeks to develop his lands, namely, subject to the opposition or interests of adjoining landowners or persons concerned with the amenity and general development of the countryside. To that extent, I am satisfied that these Regulations should by a Court be strictly construed in the sense that for a developer to put himself within them he must be clearly and unambiguously within them in regard to what he proposes to do..."

31. Reliance is also placed on *South Dublin County Council v. Fallowvale Limited* [2005] IEHC 408. In that case McKechnie J. was dealing with an application for an injunction, under s. 160 of the Act, where the respondent developer claimed the benefit of an exemption. In determining where the onus of proof lay in such proceedings he considered a number of authorities, including *Dillon v. Irish Cement* and subsequent authorities where it had been cited. His conclusion (at paragraph 70) was that there was a clear preponderance of authority for the proposition that, when the development complained of was sought to be excused under an exemption provision, the onus of establishing that point was on the person asserting it.

32. On behalf of Cronin, it is submitted that the Court should give the words of the legislation their natural and ordinary meaning. Counsel argues that *Dillon* and *Fallowvale* were both concerned with the question of the onus of proof rather than the appropriate principles of statutory construction, and do not govern the issue in this case. If the Oireachtas had intended to limit the "works" concerned to certain sub-categories it would have referred to "works of ... maintenance, improvement or other alteration". Use of the word "for" is said to express the concept of purpose.

33. However, it is also submitted that the principle of strict construction of penal provisions is applicable, on the basis that the Act creates, in s.151, an offence of carrying out "unauthorised" development (that is, post-1964 development that has no permission and is not exempted development). On this basis, s.5 of the Interpretation Act 2005 is relied upon for the proposition that the words used should not be given a purposive meaning.

34. Counsel argues that the learned High Court judge was correct in holding that the exemption in question is limited only by the purpose of the development and its effect in terms of visual impact. It is said that the "structure" that has been altered in this case could be considered to be either the yard or the quarry. The previous hard-standing area was in itself an alteration to the quarry, so any alteration to that area might be said to be an alteration to the quarry. Counsel contended that there was no limitation of a permissible development in terms of size, provided that it remained within the quarry structure. It would be permissible to concrete over the entire floor of the quarry.

35. On this aspect, counsel for the Board refers to s. 261 and the definition of "quarry" therein, which specifically excludes a place at which manufacturing is carried out.

36. It is accepted by Cronin that the interpretation now urged might be said to weaken the framework created by the Act for environmental protection in the planning process. However, it is submitted that the existing controls relating to intensification and

material change of use still apply. In any event, if the provision has an adverse effect it is a matter for the Oireachtas and not for intervention by the Court.

A penal statute?

37. Section 5 of the Interpretation Act 2005 provides as follows:

"5.-(1) In construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction)-

(a) that is obscure or ambiguous, or

(b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of-

(i) in the case of an Act to which paragraph (a) of the definition of "Act" in section 2(1) relates, the Oireachtas, or

(ii) in the case of an Act to which paragraph (b) of that definition relates, the parliament concerned,

the provision shall be given a construction that reflects the plain intention of the Oireachtas or Parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole."

38. Section 151 of the Planning and Development Act provides that any person who has carried out or who is carrying out "unauthorised" development shall be guilty of an offence. The offence is triable either summarily or on indictment. Section 156 provides that in such proceedings

"it shall not be necessary for the prosecution to show, and it shall be assumed until the contrary is shown by the defendant, that the subject matter of the prosecution was development and was not exempted development."

39. Section 156 thus creates a reverse burden or onus of proof. It would be inappropriate to determine in these proceedings what the precise parameters of that burden might be. If necessary it would fall to be considered in the light of authority holding that such a burden, in general, requires an accused person only to demonstrate the existence of a reasonable doubt. (For a recent discussion of this topic, see *Director of Public Prosecutions v. Heffernan* [2017] IESC 5.)

40. I am satisfied that the Act is not a penal statute in the sense of having as its objective the creation of a criminal offence, with the provision of a range of defences. The purpose and scheme of the Act is to create a regulatory regime within an administrative framework which, in the interests of the common good, places limits on the right of landowners to develop their land as they might wish. The principal objectives of the regime are proper planning and sustainable development, and the chief method of ensuring the attainment of those objectives is the planning permission process. It is based on the principle that developments that might have some significant impact, having regard to the range of factors encompassed within the concepts of proper planning and sustainable development, should go through the assessment process necessary for the grant of planning permission. The primary roles in that process are given to the planning authorities and the Board. The main powers of enforcement provided for in the Act are conferred on them.

41. A crucial point, for the purposes of this case, is that those bodies are responsible for deciding what is or is not exempted development. They do so by exercising civil powers conferred by the Act, not in the context of a criminal prosecution. It is necessary to point out again that the issue in this case arises from a ruling made in the procedure provided under s.5 of the Act. That provision sets out a scheme whereby, in the first instance, any person may apply to the relevant planning authority for a declaration as to whether what has occurred in a particular development is or is not development; or whether it is exempt development. A planning authority may, on its own initiative, make a similar application to the Board. The procedure is an expedient method of determining the status, within the regulatory regime, of a particular development about which some doubt may exist.

42. In *Grianán an Aileach Interpretative Centre v. Donegal County Council* (No.2) [2004] 2 I.R. 625 the Supreme Court held that, having regard to the availability of the s. 5 procedure, the High Court had no jurisdiction to grant a declaration that certain proposed activities at a venue were covered by the terms of its planning permission. While such a question might legitimately come before the courts in, for example, enforcement proceedings, the jurisdiction to determine the issue in the first place had been conferred on the planning authority and on the Board. In *Wicklow County Council v. Fortune* [2013] IEHC 397 Hogan J. held that this reasoning must be taken as impliedly precluding the High Court from finding that a development was exempted where there was an unchallenged decision by the Board that it was not. I agreed with his conclusion in my judgment in *Wicklow County Council v. O'Reilly* [2015] IEHC 667.

43. It follows that the primary role in determining whether a development is exempted or not is given to (depending on the circumstances) either the planning authority or the Board. A decision by one of those bodies is an authoritative ruling on the issue, subject to the potential for judicial review. However, it plainly does not, and could not, result in a determination of guilt or innocence of a criminal offence. There was no suggestion to the contrary at any stage of these proceedings. In my view, therefore, it is entirely inappropriate to read the provisions of s.4 as if they related to "the imposition of a penal or other sanction". What they are concerned with is the exemption of categories of development from the general requirement to obtain permission.

44. In any event, I consider that s. 5 of the Interpretation Act has no application to the matter before the Court. Section 4(1)(h) is not obscure or ambiguous and does not lead to an absurd result.

Conclusion

45. The issue, then, is whether the plain intention of the Oireachtas can be ascertained. In my view it can. I agree with the argument of counsel for the Board, as summarised in paragraphs 28 to 30 above, that the effect of the High Court judgment would be to render exempt a range of developments far in excess of the intention of the Oireachtas. One must bear in mind the overall framework and scheme of the Act, with the many considerations that come into play in the planning process, and look at the context of the provision in question within that framework. I think it is manifestly unlikely that the intention was to render exempt all works carried out on any existing structure, including unlimited extensions in size, subject only to considerations of visual appearance (and subsequent considerations arising from any intensification of use). Nor do I consider that the words used in the section compel the Court to the conclusion that this is the meaning of the section.

46. In the first place, it seems necessary to stress that there is no single definition of the word "alteration" for the purposes of the Act. Thus, for at least some purposes of the Act an "alteration" may involve something that changes the external appearance in a way that is inconsistent with the character of the structure in question, or with the character of neighbouring structures. However, for the purposes of the exemption an "alteration" must not have that effect.

47. Given the different ways in which the word is used, it is best taken as simply bearing its ordinary meaning of "change". Obviously, an extension is an alteration but that does not really advance the argument in any direction.

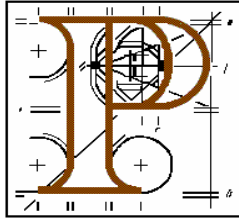
48. It is true that, in principle, an extension could be considered to be an improvement. However, that is a concept that requires further examination. Almost by definition, any proposed development will be an improvement from the point of view of the developer. In my view the trial judge fell into error in ascribing such significance to the word "for" in the phrase "*works for the maintenance etc*" as to make the purpose for which the works were carried out of paramount importance. In the context of the overall framework, policies and purposes of the Act, that is to ascribe a weight which I do not believe the word can bear. I do not consider that it was the intention of the legislature to make the necessity to apply for planning permission dependent on the motive and purpose of the developer. It seems to me that an "improvement", for the purposes of an exemption, must be something that relates to the internal use and function of the structure, resulting in either no externally noticeable difference or an insignificant difference.

49. In my view the interpretation placed on s.4(1)(h) of the Act by the High Court was incorrect. I accept the arguments of the Board as to its true meaning, and consider that an extension is a development that does not come within the exemption. In the circumstances I would allow the appeal.

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Appendix 9

QV0182 - Board Direction and Inspectors Report



Board Direction

Ref: QV17.QV0182

The submissions on this file and the Inspector's report were considered at a further Board meeting held on 29th July 2014. The Board also considered the file relating to the adjoining quarry operated by Keegan Quarries Ltd. (QV0217) at this meeting.

The Board decided to **set aside** the planning authority's determination in relation to this quarry under section 261A(2)(a)(ii).

REASONS AND CONSIDERATIONS

In making its decision the Board had regard to:

- (a) Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, as amended,
- (b) the provisions of the Planning and Development Acts 2000-2011, and in particular Part XA and section 261A,
- (c) the document "Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government (2010),
- (d) the Department of the Environment, Community and Local Government - Section 261A of the Planning and Development Act, 2000 and related provisions, Supplementary Guidelines for Planning Authorities,
- (e) the submissions on file, including the report regarding Determination of the Requirement for Appropriate Assessment prepared by Scott Cawley, dated 19th day of July 2012, and the report of the Inspector,
- (f) the scale and nature of operations at this quarry,
- (g) the planning history of the subject lands extending over the period since 1997, the detailed environmental information including EIS contained in the applications for permission/appeal under register reference (i) TA/30258 (PL17.206229) and (ii) TA/70175 (PL17.227088) and the fact that the lands have been the subject of environmental impact assessment on three separate occasions by An Bord Pleanála – in 1997, in 2004 and in 2009 resulting in the granting of planning permission in all these cases;

(h) the lack of any particular environmental threat being identified as a consequence of those assessments which included detailed analysis of matters affecting surface and groundwater;

(i) the generally favourable compliance history of the facility with respect to its various grants of planning permission and its discharge licence and the absence of any incidence of surface water pollution arising in receiving waters;

(j) the apparent error made by the planning authority's advisors with respect to the existence of a proximate hydrological link between the receiving waters of the surface and ground-waters discharged from the site and the nearby River Boyne cSAC (no such link exists);

(k) the actual hydrological distance to the River Boyne cSAC which is in excess of 9 kilometres from the site;

(l) the significant overland distance to the Tromman stream (in excess of 500m) from the site and the lack of a hydrological link between them; and

(m) the potential for in combination effects involving the adjoining quarry (planning authority reference QY75; An Bord Pleanála reference PL17.QV0217) operated by Keegan Quarries Limited.

Having evaluated all the available scientific and technical information relating to the subject the Board considered that, by itself, and in combination with other plans or projects, the development on this site after the 26th day of February, 1997 would not have been likely to have had a significant effect on any European Site, in view of the conservation objectives of those sites, and, therefore, that development was not carried out after the 26th day of February, 1997, that would have required an Appropriate Assessment and therefore sets aside the Planning Authority's determination under section 261A(2)(a)(ii) of the Planning and Development Act 2000, as amended.

In deciding not to accept the Inspector's recommendation to confirm the planning authority's determination in respect of section 261A(2)(a)(ii) the Board considered the significant physical separation, hydrologically, between the site and the River Boyne cSAC (in excess of 9 km), the generally favourable compliance record of the site with regard to its discharge licence and lack of any evidence of surface or groundwater pollution occurring as a result of activities at this quarry. In this respect the Board is satisfied that the likelihood of direct impacts on the cSAC as a result of discharges from the site to the northern boundary stream is negligible, which conclusion generally accords with the inspector's analysis.

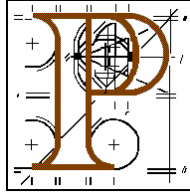
With respect to the inspector's concerns relating to hydrogeology and in particular the potential for affecting the flows in the Tromman stream the Board further considered the data on groundwater and specifically on the likely impact of the (then) proposed future excavation on the local

hydrogeological environment, including local watercourses, presented in section 6 of the Environmental Impact Statement submitted with the application and appeal in respect of PL17.227088; the further information submitted to the planning authority in respect of groundwater on 2nd October 2007 and the assessment carried out by the inspector and the Board in granting permission in this case. These data suggest that any influence on regional hydrology, which includes the Tromman stream, due to dewatering of the excavation will be small.

The Board is satisfied on the basis of the available information that (a) the risk of any impacts on the Tromman stream is low and (b) the likelihood of significant effects on the Natura site by this quarry itself or in combination with the adjacent development either directly or indirectly is negligible.

Board Member: _____ Date: 8th August 2014
G.J. Dennison

An Bord Pleanála



Inspector's Report

Review under Section 261A(6)(a) of notification pursuant to Section 261A(5)(a)

DESCRIPTION : Quarry
SITE ADDRESS: Tromman, Rathmoylan, Co. Meath

DETERMINATION

Planning Authority : Meath County Council
Planning Authority Reg. Ref.: QY76
Owner / Occupier : Readymix Ltd. / Cemex (ROI) Ltd./ Irish Asphalt Ltd.

Planning Authority Determination: Section 261A(5)(a) Notice determining that 2(a)(ii) applies and further determining under section (5)(a) that 2(a)(ii) applies to development which took place after 3 July 2008, deciding that permission was granted under the Acts and that there was no requirement to register, and notifying the applicant that the planning authority intends issuing an enforcement notice under section 154 requiring cessation of the unauthorised quarry.

REVIEW :

Review requested by : (1) An Taisce, The National Trust for Ireland; (2) Cemex (ROI) Ltd., c/o SLR; (3) Kieran Cummins & Associates Planning and Environmental Consultants.

Type of application : 1no. first party application for review; 2no. third party applications for review

INSPECTOR : John Desmond

Date of inspection: **27/06/13**

SITE DESCRIPTION

The site subject of this application for review is located in mid-south of County Meath, c.2km west of Rathmoylan, c.7km south-southwest of Trim and c.9km north of Enfield (all distance are from the centre of the relevant settlement). The quarry landholding is contained wholly within the townland of Tromman. The site accesses onto the R156 along the southern boundary. An unnamed watercourse of c.1.5m width runs east-west along the northern boundary of the landholding, changing course to run northwards c.550m to the west of the site directly adjacent (and possibly just overlapping) the boundary of the River Boyne and River Blackwater cSAC. The stream discharges to Knightsbrook River c.5km downstream to the north. The Knightsbrook River discharges to the River Boyne almost 10km downstream of the quarry discharge point, where it enters the area covered by the River Boyne and River Blackwater cSAC and the River Boyne and River Blackwater SPA. The Tromman River is located c.650m to the west of the site and is contained within the cSAC. The said river runs south to north, parallel to a stretch of the unnamed stream, however there would appear to be no surface water connection between the two. The quarry is within c.250m of the cSAC at the nearest point and within c.2.2km of the SPA boundary to the northwest.

The report of the Council's planning officer states the site area as 48.8ha. This matches the landholding area subject of the land registry search attached on file and the boundaries evident on the ground. The said area includes the former private gardens (c.1.5ha) to the now-demolished Trommant residence. Whilst this area is not in use as a quarry it can be considered to be incidental land. The quarry boundaries do not match the registered quarry boundary outlined in red on the certified aerial photograph attaching to the Manager's Order no.S261/159 pertaining to quarry ref.no.QY76 which encompasses c.58ha and the adjacent separate quarry to the east and excludes the western c.12ha area of the quarry.

The report of the Council's engineer states that the existing extraction area is 12.1ha in area. Based on the most recent aerial photographs for the site (Google Earth dated 29/04/11) and a site inspection, I measure the extraction pit at about 14.3ha. The Council engineer measured the pit floor at 34.0m AOD, the pit height at 71.3m AOD and the stripped area at 64.0m AOD. An area of c.3.4ha to the northwest of the pit has been stripped. An area of c.2.6ha to the north-northwest is used for the storage of overburden and of concrete product manufacturing waste. An area of c.13ha to the northeast of the pit is in use for processing and storage of processed materials, for overburden storage (covered and planted), site office, staff facilities and site parking, and an extensive complex of silt settlement lagoons (not currently in use). I could not locate the discharge point from the silt lagoons. A concrete products manufacturing facility (primarily, or possibly only block production) covering c.2.7ha is located at the northernmost section of the site. Approximately 6ha of the site accommodate landscaped berms, mainly along the south, southwest and northeast perimeters. An area of woodland forming part of the curtilage of a former

residence, Trommant House, now demolished, remains at the southernmost corner of the site.

The quarry's water treatment management facility is located along the northwest perimeter of the site and it would appear to discharge to the adjacent watercourse at the northwest corner of the site, however I could not obtain a view of the discharge point due to the presence of overgrowth. Water is pumped from a sump in the quarry pit floor to a settlement pond adjacent the north of the pit, from where it is pumped to a reed bed settlement pond, then through a second reed bed, then to another stilling pond, then through an extensive gravel filter bed and then through boulder rock. It enters a ditch to the east, which forms the west boundary to the concrete block manufacturing facility. The said ditch was overgrown and the point of discharge to the unnamed stream could not be viewed. The site was subject of ongoing dewatering at the time my inspection. It appears that runoff from the concrete block manufacturing area is directed to the ditch at the west of the manufacturing area (i.e. the same ditch through which the treated effluent flows from the quarry) and to lands adjacent the unnamed watercourse to the north. There was no obvious pollution evident from the said runoff.

Access to the site from the R156 is via a fixed-surface internal haul road lined by sprinklers at regular intervals. There is an entrance gate between the quarry site and the agricultural field to the northwest, however vehicular access between the two sites is not possible due to the difference in site levels (the adjacent lands and gate being many metres lower).

The adjacent landholding to the east comprises a quarry (with ancillary development and associated concrete products manufacturing) of significant scale operated by Keegan Quarries. The lands to the north, west and south are predominantly agricultural in nature.

The area is rural in character, with gently rolling agricultural lands divided by traditional field boundary hedgerows and interspersed with one-off housing. The nearest settlements comprise small villages, with Trim the nearest town of size. The nearest residential dwellings are located on lands to the southwest (c.100m distant), set within agricultural fields. Another is located opposite the site to the south of the R156. There is a significant density of one-off housing development along the R156 within 2km to the west. The local road network is narrow, of poor horizontal and vertical alignment and, like most of the rural road network it is largely without road markings, public lighting, footpaths or hard-shoulder. I count 21no. individual quarries within c.5km radius of the subject quarry (inclusive of Keegan's Quarry which is not indicated on the Council's on line quarry register map and Cemex Quarry).

The quarry appeared to be well maintained and operated.

RELEVANT PLANNING HISTORY

On subject quarry site:

PL17.227088 / Reg.ref.TA/70175: 10-year permission **GRANTED** by the Board (16/01/09) for an extension by deepening to the existing quarry over an area of 16.1ha to 24m Ordnance Datum and all site development and associated landscaping, restoration and other ancillary works. An EIS accompanied this application.

PL17.206229 / Reg.ref.TA/30258: Permission **GRANTED** by the planning authority, and upheld by the Board (01/07/04) on appeal (first party against conditions), for 12.36ha extension to quarry area. Permission also included extension of existing north-eastern quarry face from extent permitted under reg.ref.1981 (0.72ha), relocation of car parking, staff offices, etc., reconfiguration of banking and road layout, etc., provision of 2no. portacabins, septic tank and restoration works. Included **RETENTION** of extension of northeast face from extent permitted under reg.ref.98/1981 (2.67ha), of processing area, associated equipment, storage, access road, fuel tanks, and concrete batching plant located to northeast and / or north and / or east of location permitted under reg.ref.98/1981. The site area was stated as 33.9ha. The total extension of the quarry extraction area totalled 15.75ha. The application was lodged 16/07/03. The quarry floor was proposed at / above (and limited by condition to) 54m AOD. Estimated capacity for extraction set at 800,000 tonnes per annum. An EIS accompanied this application.

Reg.ref.TA/20222: Permission **GRANTED** by the planning authority (29/07/02) for construction of an asphalt plant and associated development. No EIS submitted, but environmental reports addressing air and climate, noise and vibration, and water were submitted.

PL17.125619 / Reg.ref.00/2156: Permission **GRANTED** by the planning authority and first party appeal against contribution conditions upheld by the Board (08/02/02). Permission for batching plant for export of 25,000m³ concrete per annum, concrete block plant including concrete batching plant, block manufacturing building for production of 3 million blocks per annum plus specified ancillary facilities / structures. The application did not include an EIS.

PL17.111632 / Reg.ref.98/1981: Permission **GRANTED** by the Board (16/12/99) for quarry and associated activities over 37ha to include 9.7ha quarrying area, 2.75ha processing area and storage and ancillary development. 400,000 tonnes output per annum proposed, with lifespan estimated at 15-20 years but was limited to 15 years by condition no.7(2). Progressive restoration was not proposed but was required by condition no.7(4) to be completed within 2 years of ceasing of extractions. Excavation depth limited to 54m AOD by condition no.2. Permanent ground water level indicated as 66m AOD (p.2 of Non-Technical Summary of EIS). An EIS was submitted as part of the application.

Other

Ref.no.1/100: License to Discharge Trade Effluent to Waters (Note: Copy of license attached to owner / operator's submission). No copy or details volunteered by the planning authority.) License granted to Readymix (Dublin) Ltd for its premises at Tromman, Rathmolyon, Co. Meath to discharge trade effluent to waters dated 26/05/00. Total volume of effluent discharged shall not exceed 530cu.m per day on average. Limit values set for suspended solids, dissolved solids and nitrates (NO₃) and quality values set for dissolved oxygen, pH range and temperature.

Enforcement

UD07/117 & UD07/133: The complaints related to the hours of operation and deposition of spoil at Cemex site (depth of excavations at Keegan's quarry), non-compliance with conditions regarding prevention of spillage and dust blow from transportation vehicles, non-compliance with conditions on vibration levels from blasting; and non-compliance with permitted hours of operation. No warning letter or enforcement notice appears to have issued.

PLANNING AUTHORITY DETERMINATION & DECISION

DETERMINATION under subsection 261A(2)(a): Meath County Council has determined that - In accordance with Section 261A(2)(a) that development was:

(i) Carried out development after 26 February 1997, which was not authorised by a pre 1964 authorisation or a permission granted under Part IV of the Act of 1963 prior to 26 February 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such as assessment was not carried out."

Reason:

Having regard to the relevant available information and identification of risks to the surface water system from ongoing discharge and surface water run-off, potential for likely significant affects from surface water run-off and pollution events (alone and in combination with other quarries in the vicinity) exist on the River Boyne and Rive Blackwater cSAC and River Boyne and River Blackwater SPA.

AND

(ii) Has further determined that development took place after 3rd July, 2008 to which inter alia, the foregoing determination relates

Reason:

The Planning Authority is satisfied on the basis of the available evidence that development took place post 3rd July 2008 which would have required

an Appropriate Assessment having regard to the potential for likely significant affects from surface water run-off and pollution events (alone and in combination with other quarries in the vicinity) on the River Boyne and River Blackwater SPA.

DECISION under subsection 261A(5)(a): *Meath County Council hereby decides – In accordance with Section 261A(5)(a) the subject quarry:*

(i) Commenced operation on or after 1st October 1964 and permission was granted in respect of this quarry under Part III the Planning & Development Act 2000-2011 or Part IV of the Local Government (Planning & Development) Act 1963,

and

(ii) there was no requirement to register under Section 261

Reason:

The Planning Authority having been so satisfied from its investigations in respect of this quarry and its inspection of the Planning Register and Register of Quarries pursuant to S261 of the Planning & Development Act 2000-2011.

NOTIFICATION: *Meath County Council notified the owner / operator that it “intends to issue and enforcement notice in relation to this quarry under section 154 of the Planning and Development Acts 2000-2011 requiring the cessation of the unauthorised quarrying i.e. that element of the quarry operating since 3rd July 2008 and the taking of such steps as the authority considers appropriate.”*

REPORTS & SUBMISSIONS TO THE PLANNING AUTHORITY

Planning Officer’s report (22/08/12)

The report and recommendation of the Council’s planner’s report is consistent with the decision of the planning authority. The main points of the report can be summarised as follows:

Quarry site description – Indicates that the stated (by whom is unclear) site area is 48.8ha and the quarry site is located on the western side of the internal quarry access road. The quarry is a limestone rock quarry extracted by blasting. The main extraction area covers c.12.1ha and has yielded 8.6m tonnes, with a height of 71.3m AOB excavated to 34m AOD. Ground water evident but no de-watering taking place at time of inspection as pipe works or pumps were visible. An 11.29ha area to the north is in use for storage stockpiles of processed material. A 7.25ha area to the west has been stripped of topsoil and used for dumping of poor excavated material.

Provides an overview of the site's planning history, referring to reg.ref.98/1981 (PL17.111632), reg.ref.00/2156 (PL17.125619), reg.ref.TA/20222, reg.ref.TA/30258 (PL17.206229), reg.ref.TA/70175 (PL17.227088) and to enforcement files UD/07/133 and UD/07/117.

Summarises the main points of 12no. observations.

Assessment – The quarry has been operating within the parameters of the relevant permissions in terms of its surface area. An EIS was submitted in respect of permitted applications reg.ref.98/1981 (PL17.111632), reg.ref.TA/30258 (PL17.206229), reg.ref.TA/70175 (PL17.227088).

There is no evidence that an AA was undertaken in respect of the planning applications made in respect of the quarry. There was potential for likely significant affects from surface and ground water impacts on European Sites (River Boyne and River Blackwater cSAC and SPA) advertised or classified at the time of the grants of permission that would have required AA to be carried out.

The works carried out post 3 July 2008, including that permitted under reg.ref.TA/70175 (PL17.227088) by the Board in 2009 including the vertical extension of the quarry by a further 16m from 2009, would have necessitated AA having regard to the volume and method of extraction and the proximity to the Natura 2000 sites.

Permission was granted in respect of the quarry and there was no requirement to register under section 261.

Section 5(a) notice warranted.

Referrals / Departmental Reports

Scott Cawley Ecologists – report of 19/07/12 concluded that there was potential for likely significant affects from surface water and ground water impacts on European Sites which had been advertised or classified at the time of the grant of permission in 2009 and therefore AA was required but not completed. The report indicated that hydrological pathways exist between the quarry and the European Site, with de-watered groundwater discharged to the adjacent stream to the north which in turn discharges to River Boyne and Blackwater cSAC 500m downstream; that the quarry has a discharge license, that Meath County Council monitoring results show exceedences of the maximum limit values for dissolved solids, nitrate and suspended solids; and that there are 28 quarries within 5km have potential to act in combination

Property ownership research – report of Catherine Anderson E. engineer of 17/07/12. Site owned by Readymix Ltd and Readymix (manufacturing) Ltd.

Valuation report – Quarry / Sandpit, land property no.1621554 at Tromman, Rathmoylan, Trim. Readymix (Dublin) Ltd. Issue date 18/09/01.

E. Engineer – report of Mark Farrell 28/06/12. Main extraction area of 12.1ha yielding c.8.6m tonnes limestone rock to depth 34.0m AOD from 71.3m AOD. Water ingress evident with water pumped from quarry floor to north. Block-making production area, processed materials storage area and site offices and maintenance on 11.29ha area to north. 7.25ha area to west stripped of topsoil to 64.0mAOD and used for dumping of poor excavated material.

Submissions / Objections

The submissions made by the following 9no. parties, Thomas & Sheila Ennis (25/01/12); Ms Patricia Hehir (25/01/12); Michael Higgins (25/01/12); Eamon Regan (25/01/12); Michael Cummins (25/01/12); Mr Robert Maguire (25/01/12); Mr Nicholas Higgins (25/01/12); Ms Kathleen Cummins (25/01/12); Mr John Swanton (25/01/12) raise the same points and are summarised together as follows:

- Retention of development subject of EIA is debarred arising from ECJ judgement C.215-08.
- Concern regarding permitted extraction area, groundwater issues, compliance with reinstatement obligations, previous retention applications and EIA (implications in light of C.215-08), financial contributions compliance, discharges to watercourses, unauthorised de-watering, archaeological monitoring compliance and unauthorised removal of woodland (section 37 of the Forestry Act 1946 refers).

Kieran Cummins & Associates 24/01/12

The main points can be summarised as follows:

- Significant landscape alterations post 2007 including land-stripping, making entrance to adjoining lands to north and the spreading overburden on those lands to depth of 10-12m contrary to EIA and Habitats directives.
- The said adjacent lands could be classified as a fen, a valuable and declining habitat.
- The overburden should have been stored for reinstatement of the quarry.
- TA/30258 (PL17.206229) included retention of, inter alia, a quarry extension – in the absence of EIA or AA covering the lands subject of the retention the operations should cease and the lands be reinstated.
- Questions compliance with permitted area of extraction, with financial contributions and with permitted reinstatement plans.
- Questions the permitted depths and submits that the depths should be raised and commencement of reinstatement.
- Hazard of cliff faces.
- Employment is irrelevant consideration under the directive.

The main points of the submission can be summarised as follows:

- Legal onus to address the status of all quarries with regard to compliance with the EIA and Habitats directives and European and Irish court judgements.
- ECJ judgement C.215-08 – retention of development prohibited where EIA applies.
- ECJ judgement C.50-09 – failure of state to fulfil obligations under Article 3 of the EIA Directive.
- Significant habitat impacts arising from any quarrying raises the issue of requirement of Appropriate Assessment under the Habitats Directive.
- Substitute Consent is retention by a different name and does not resolve C.215-06 [sic] which ruled that there must be no grant of retrospective permission of development were EIA is required.
- The planning authority will be required to close down any quarry were previous retention applications or unjustified Section 261 Registrations were lodged which would have required EIS to be lodged.
- Section 261 resulted in large scale claims of pre-1963 quarries without proper documentary evidence to support the existence of or the extent of the quarry unit at that time – concern about authenticity of claims.
- Such claims should be investigated and compared to 1970's air-corps photographs.
- Screening for EIA is required for quarries of less than 5ha, with regard to European sites, priority habitats, water courses or archaeological features and cumulative impact.
- Quarries with existing planning consents – where financial contributions are outstanding, this is a material contravention of the planning authorisation and requires that a quarry be refused permission to continue.
- Endemic non-compliance with reinstatement conditions – any quarry not in compliance should be subject to enforcement procedures without delay.
- Breach of permitted extraction area must be assessed.
- Evidence of unauthorised blasting or illegal dewatering should result in immediate closure and enforcement action.
- Volume of existing extractions should be assessed by a site-surveyor and, where the water table has been breached, by a hydrologist.
- Unauthorised disposal of water to watercourses should be assessed due to potential impacts (from high lime content of discharges, for example) such a fish kills, and should result in immediate closure and enforcement action.
- Breach of water table – may result in permanent lake which would leave the aquifer open to contamination and form a serious safety hazard. Needs assessment by hydrologist
- Archaeological monitoring – it is common for applications for extension or continuation to have not monitoring data on previous development.

Peter Sweetman & Associates (20/01/12)

The main points of the submission can be summarised as follows:

- With reference to ECJ judgement in case C2009/50, it is submitted that no EIA, as required under Article 3 of the EIA Directive 85/337/EEC, as amended by 97/11/EC and 2003/35/EC, has ever been carried out by the Council or on appeal to An Bord Pleanála.
- EIA is therefore required for any of the quarries listed in the Quarry Register 2011 public.xls (pages 1-4, attached to this submission, which includes the subject quarry Qy76) which exceed 25ha (required under Annex I of the Directive), exceed 5ha (required under Irish Regulations implementing Annex II of the Directive).
- Appropriate Assessment is required for all quarries which are likely to have an effect on a habitat under the Habitats Directive 92/43/EC Appropriate Assessment.

GROUPS OF REVIEW

An Taisce – The National Trust for Ireland (05/09/12)

The main grounds of this review application (which does not specify which subsection review is required under) can be summarised as follows:

- For a developer to be able to submit a retrospective EIA for the development or expansion of a quarry, the developer must be able to demonstrate exceptional circumstances as specified in the ECJ judgement C215-06 of 03/07/08.
- No exceptional circumstances apply to this quarry and therefore it cannot be granted substitute consent.
- Site is adjacent and was development in tandem with Keegan Quarries ref.Q75 since 1998.
- More of this operation falls foul of the EIA Directive, Habitats Directive and C.215-06 and the whole operation should cease.
- No reference in previous EIS's to landscape works that has taken place since 2007 on adjacent Fen lands. The operations fall completely foul of EU law and no substitute consent should issue.
- The lands subject of retention application under TA/30258 should have been subject of EIA and / or AA and may therefore be required to cease operations as contrary to EU law.
- Questions compliance with permitted extraction area, financial contribution conditions and permitted reinstatement plans.
- Concern raised over discharges to watercourses and the results of County Council monitoring of same.

- Depth – concern about permitted depth of quarry to 7m AOD which is wildly at variance with established norms at the site and implies that it was an error and should have read 57m AOD. Should either quarry be permitted to continue then the depths should be revised upwards and the quarries reinstated and wound down.
- Proximity of site to tributaries feeding into the cSAC. Blasting in proximity to SPA with potential to disturb Kingfisher.
- Residential – impact on dwellings within 500m to 1km.
- Hazard – steep cliffs.
- Employment – horticulture is a more sustainable use over the same area in term of employment.
- There is no basis for substitute consent given that the quarry operators disregarded the covenants made in their earlier EIS and there is no basis for this quarry to operate on the basis of a retrospective EIA or AA and the Board should refuse any application for substitute consent.

Operator, Cemex (ROI) Ltd, c/o SLR Consultant's (11/09/12)

The main grounds of this review application under Section 261A(6)(a)(v) can be summarised as follows:

- December 1999: 15-year permission granted by the Board PL17.111632 (reg.ref.98/1981) for quarry and ancillary over 37ha (9.9ha extraction area) to 54m AOD depth. The application included an EIS.
- February 2002: permission granted by the Board PL17.125619 (ref.ref.00/2156) for concrete batching plant (25,000m³ annual capacity), concrete block manufacturing plant (3 million blocks annual capacity) and associated buildings, infrastructure and storage.
- September 2002: permission granted for asphalt plant and etc., by the planning authority reg.ref.TA/20222.
- July 2004: permission granted by the Board PL17.206229 for c.12.36ha lateral extension of existing quarry plus relocation of ancillary facilities and the retention of northeast quarry face over 2.67ha and extension of 0.72ha. Application accompanied by EIS.
- No requirement to register under section 261 due to permission PL17.206229.
- January 2009: The Board granted 10-year permission (PL17.227088 / TA/70175) for 16.1ha extension to quarry plus ancillary works including deepening quarry to 24mOD. Application accompanied by EIS.
- Given that permission has been granted since 1999 for applications accompanied by EIS, the planning authority is satisfied that there are no additional requirements in respect of EIA.
- Section 27(2) of the European Communities (Natural Habitats) Regulations 1997 stated that *'an environmental impact assessment in respect of a proposed development (prepared in accordance with the requirements under*

the Local Government (Planning and Development) regulations, 1994) shall be an appropriate assessment. This remained in place until 21 September 2011, however ECJ case C418/04 of 13/12/07 held a similar provision in Regulation 17 of the Habitats Regulations was incorrect. Therefore until 13/12/07 where an EIA was carried out and considered all relevant effects then the AA requirements can be considered to have been adequately addressed.

- The EIAs carried out in respect of this quarry on three occasions (November 1998, July 2003 and April 2007) considered all relevant environmental effects, including direct and indirect impacts on flora and fauna and the requirements in relation to AA have been adequately addressed.

Impact of quarry on European Sites –

- It is unclear how the exceedences referred to in the planner's report were determined as no supporting evidence is provided.
- Cemex (ROI) Ltd water quality monitoring results from January 2010 to July 2012 which show (based on background levels for the relevant substances) that activities in the quarry do not give rise to significant effects on surface water and ground water and have, contrary to the Scott Cawley Screening Report, improved the water quality of the received waters downstream of the site.
- Results show 1 out of 18 samples for Total Suspended Solids (TSS) and 7 out of 18 samples for Total Dissolved Solids (TDS) exceeded limits and there was no breach in pH, temperature, dissolved oxygen and / or nitrate.
- Clean groundwater is pumped from a sump on the quarry floor to settlement ponds before being discharged from site and is not used for any processing.
- Of the 7 exceedences for TDS only 2 resulted in an increase of more than 10% in TDS in the downstream sample.
- TDS are inorganic naturally occurring constituents of water including Sodium, Magnesium, Calcium, Chloride, Sulphate and Bicarbonate and are not included in the Water Framework Directive Surface Water Regulations (SI No.272 of 2009), the Fresh Water Fish Directive (2006/44/EC) or the Salmonid Water Regulations (SI No. 293 of 1988).
- Cemex (ROI) Ltd have implemented a comprehensive EMS (details in in appendix E to submission) at all their operational sites and the EMS has received certification of conformity with BS EN ISO 14001:2004 (attached as appendix F to submission).

Scott Cawley Screening Assessment –

- Was not comprehensive, was desk-based and did not take account of mitigation measures.
- Does not appear to have had regard to content of the 3no. previous EIA undertaken.

- Unclear that it had regard to discharge license and interpreted conditions of same correctly.
- Potential impacts on European Sites identified by Scott Cawley include –
 - Drawdown of water table – addressed by Section 6 (pages 6-15) EIS 2007 and by further information and ultimately permitted by the Board. Groundwater monitoring is carried out (continuous water level logger) at 2no. wells in the vicinity.
 - Discharge of groundwater into surrounding water features – discharge is by license (ref.no.1/00) granted May 2000; regular monitoring conducted upstream and downstream of discharge point by Cemex for 7 parameters (results for period January 2010-2012 contained in appendix D to submission) shows, on balance, the discharge improves the water quality.
 - Surface water runoff and diffuse / point source discharge – quarry operates in strict accordance with conditions attached to the permissions, to the discharge license, the DoEHLG quarry guidelines (2004), Environmental Management in the Extractive Industry (2006) and the operators ISO 14001 accredited EMS. Rainfall is directed to sump on quarry floor and passes through the lagoon system, oil interceptor and stilling pond before discharge. The above mentioned monitoring demonstrates that the quarry does not give rise to significant affects.
 - Contamination of ground / surface water through pollutants – sections Env 05, 06, 18 and 20 of the EMS are relevant (contained in appendix E of submission) and minimise any risk of contamination; details existing mitigation measures on site.
 - Dust from quarrying – quarry operates in strict accordance with conditions attached to the permissions and license and relevant guidelines and the EMS. Dust monitoring carried out monthly since 1999 with levels well below the limits set by condition no.11 of PL17.206229. EMS section Env 07 and Env 11 are relevant.

Determination subsection (5) –

- Some extraction development was carried out below the permitted 54m AOD (PL.17.206229 of 2004 / TA30258) but was completed well in advance of 3 July 2008, with work returning to the top bench of the quarry in early 2008. Work continued below the 54m AOD limit post January 2009 in accordance with permission PL17.206229 / TA30258. No unauthorised development was carried out post 3 July 2008.
- The EIS accompanying TA/30258 was submitted 13 April 2007 in advance of ECJ decision on C.418/04 on 13 December 2007 and can be assumed to have adequately addressed the AA requirements that applied at that time.
- The Board is therefore requested to set aside the determination of Meath County Council under Section 261A(5)(a).

Kieran Cummins & Associates (11/09/12)

The main grounds of this review application (specific subsection under 261A(6)(a) not stated) can be summarised as follows:

- MCC letter of 22/08/12 directs the quarry operator to apply to the Board for substitute consent under 177E.
- European law requires that such quarries should have been closed down.
- No exceptional circumstances apply to this quarry to enable the developer to submit a retrospective EIS as specified by ECJ judgement C215-06 of 3 July 2008 and it cannot be granted substitute consent.
- More of the operation falls foul of the EIA Directive, the Habitats Directive and the said ECJ judgement than that identified by the planning authority and the whole operation should cease.
- Deposition of overburden 10m-12m deep on Fen, a valuable and declining habitat in Europe. No reference to same in the previous EIS's. The overburden should have been stored for reinstatement of the quarry.
- TA/30258 (PL17.206229) included retention of, inter alia, a quarry extension – in the absence of EIA or AA covering the lands subject of the retention the operations should cease and the lands be reinstated.
- Questions compliance with permitted area of extraction, with financial contributions and with permitted reinstatement plans.
- Raises the issue of discharges to the local watercourse, the assessment by the local authority reflects the worst fears of local residents regarding pollution. Refer to photographs attached to submission.
- Questions the permitted depths and submits that the depths should be raised and commencement of reinstatement.
- Proximity to SAC and SPA; notes concerns raised in the planning authority's assessment.
- Impact on residential amenity.
- Hazard of cliff faces.
- Employment is irrelevant consideration under the directive.
- There is no basis for this quarry to operate on the basis of a retrospective EIA or AA.
- Photographs accompany the submission.
- Copy of point 3 made in respect of adjoining Keegan Quarry Q75 is appended to submission.
- Copies of third party submissions made to the section 261A assessment file are appended to the submission.

RESPONSES

Kieran Cummins (21/10/12)

The main points of the response can be summarised as follows:

- No permission sought for large scale deposition of spoil on adjoining lands, an issue ignored by the planning authority.
- Retention formed part of previous grants of permission, contrary to C215/06, and the operation should be subject to closure and enforcement.
- C418/04 clarified that AA is not EIA.
- Photographs submitted with previous submission show egress stream and receiving river are white in colour, proving existence of past pollutants.
- The owner/operator's statement that the treated discharge improves the water quality is bizarre and unfounded.
- The prescribed standards have been exceeded in the past.
- The EMS is at question in light of the photographic evidence and presence of noxious weeds visible on site during summer months.
- Local landowners experience is contrary to the operator's statement that the radius of influence of the drawdown is quite small.
- Questions the statements of the operator regarding the discontinuing of extractions below 54m AOD for a period of time.
- Requests the Board to uphold the planning authority's determination; address the issue of past retention as contrary to section 261A; address issue of large scale deposition on adjoining land in its determination.

Operator, Cemex (ROI) Ltd, c/o SLR Consultant's (25/10/12)

The main points of the response can be summarised as follows:

- Deposition on fen –
 - Materials derived from the quarry were sold as a product (not waste) to an adjacent landowner carrying out land improvement work in around 2007.
 - MCC investigated but took no further action.
 - Fig.10.4 of EIS 2007 indicates c.8ha waterbody feature as part of restoration concept. The stripped material was excess the requirements for restoration of the remainder of the quarry.
 - NPWS mapping indicates no 'fen', designation or protection in this area.
- Retention application –
 - Application TA/30258 / PL17.206229 was accompanied by an EIS.
- Area of extraction –
 - The development is located fully within the boundaries granted by permission.
- Financial contributions –

- This is a matter for MCC.
- Reinstatement plans –
 - It is not feasible to restore the site on a phased basis as the majority of same is in use and there is no requirement to do so. The details are required to be agreed by condition and implemented within 12 months of expiry of the permission. Landscaping has taken place around the perimeter. Condition no.4 of PL17.227088, no.3(c) of PL17.206229 and no.7(4) of PL17.111632 refer.
- Discharge to watercourse –
 - The response is a repeat of details in the operator’s review application submission.
- Depth –
 - Permission PL17.227088 (to expire 15/01/19) allowed quarrying to a depth of 24m OD. The application was accompanied by an EIS and included a detailed assessment of potential impact on surface and groundwater regimes and cone of depression. Conditions were attached to protect local groundwater from increase in cone of depression, requires (condition no.5) detailed groundwater monitoring and (condition no.6) immediate mitigation where water supplies adversely affected.
- cSAC
 - refers back to discharges to watercourse.
- Residential
 - The quarry is operated in accordance with planning conditions imposed to minimise any negative impacts on residences and environment and in accordance with the EMS.
- Hazard
 - This is a matter for the HSA. CEMEX complies fully with all health and safety regulations and employs a full-time health and safety manager.
- Employment
 - The existence of quarries is to provide and maintain a secure supply of construction aggregates in the region.
- Determination in respect of subsection 261A(5) post 3 July 2008 development
 - The absence of an appropriate assessment in respect of development undertaken in accordance with a planning permission (as is the case in this instance) is not basis for enforcement action. Enforcement action is only required in instances where –
 - A quarry failed to register under section 261 when required to do so;
 - Significant unauthorised development was undertaken without the benefit of planning permission post 3rd July to a degree whereby an EIS or AA would have been required for such development and no such assessments were carried out;

- A quarry is unauthorised by virtue of having no planning permission.
- o Implies that Meath County Council's interpretation is incorrect and that section 261A requires that AA be undertaken and not enforcement action in respect of the development carried out in accordance with a permission granted post 3 July 2008.
- o The deepening of the quarry was subject of application TA/70175 / PL17.227088 submitted 13 April 2007, prior to the ECJ ruling C418/04, pertaining to Regulation 17 of the Habitats Regulations, that EIA is not AA. Suggest that the EIS submitted with the said application can be deemed to have adequately met the requirements in respect of appropriate assessment.

An Taisce (29/10/12)

The response indicates that the concerns raised by An Taisce have not been resolved. No new issues.

Meath County Planning Authority (31/10/12)

No further comment.

Operator, Cemex (ROI) Ltd, c/o SLR Consultant's (17/06/13)

An unsolicited submission was received from the planning authority comprising a further information submission from owner / operator in respect of their application for a discharge license. There is no provision under section 261A for the Board to consider submissions other than those submitted in accordance with section 261A(6)(a), (b) or (c).

POLICY DOCUMENTS

Meath County Development Plan 2013-2019 – adopted 17/12/12 and in effect from 22/01/13

Chapter 10 Rural Development

Section 10.12 'Extractive Industry and Building Materials Production: Goal and policies RD POL 21-27.

Chapter 11 Development Management Guidelines and Standards

Section 11.14 Extractive Industry and Building Materials (also 11.14.1 Duration; 11.14.2 Rehabilitation).

Appendix 7 Meath Landscape Character

Landscape Character – LCA 6 Central Lowlands – Landscape Character: High value of; Landscape Sensitivity: Moderate; Landscape Importance: regional importance.

OTHER REFERENCE DOCUMENTS

'Section 261A of the Planning and Development Act, 2000 and related provisions, Guidelines for Planning Authorities' (DoEC&LG, January 2012)

'Section 261A of the Planning and Development Act, 2000 and related provisions, Supplementary Guidelines for Planning Authorities' (DoEC&LG, July 2012)

'Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities' (DoEH&LG, December 2009).

'Assessment of plans and projects significantly affecting Natura 2000 sites' (EC, November, 2001)

'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development' (DoEH&LG, August 2003).

'Advice Notes On Current Practice (in the preparation of Environmental Impact Statements)' (EPA, September 2003).

'Guidelines on the information to be contained in Environmental Impact Statements', (EPA, March 2002).

'Quarries and Ancillary Development, Guidelines for Planning Authorities' (DoEH&LG, 2004).

'Environmental Management Guidelines: Environmental Management in the Extractive Industry (Non-Scheduled Minerals)', (EPA, 2006)

'Guidelines for Inspectors: Quarrying and the Water Environment', unpublished (February 2013).

ASSESSMENT:

1.0 Introduction

- 1.1 This assessment relates to applications for a review by the first party and by two third parties, under subsection 261A(6)(a) of the Act of 2000, of a notice issued by the Planning Authority under subsection 261A(5)(a) of the Act of 2000 in respect of a quarry at Tromman, Rathmolyon, County Meath. The first party requests a review under section 261A(6)(v) of the decision of the planning authority under section 261A(5)(a), however the two third parties make no such specification. This review therefore relates to the determination of the planning authority under subsection (2)(a) and to its decisions under subsection (5)(a).
- 1.2 I have reviewed and taken account of all details and documents submitted by the persons applying for the review, the submissions and/or observations received to the review, and the information furnished by the planning authority including the planning history pertaining to the site. I have not had regard to the submission by the planning authority received 17/06/13 as there is no provision under section 261A(6) of the Act for the Board to consider same.
- 1.3 The section 5(a) notice states that “*Meath County Council has considered the above quarry as detailed in the attached aerial photograph*”. The said photograph shows two adjacent but separate quarries (QY76 and QY75), with no obvious boundary between the two indicated, and with a red line boundary indicating the ‘*registered quarry boundaries (s261)*’ encompassing most of the subject quarry and all of the adjacent quarry together. Having reviewed both files, including the planner’s and engineer’s reports and the planning history files, I have attached an aerial photograph demarcating the boundary of the quarry subject of this review application in the interest of clarity. As this application for review relates to a notice under section 261A(5)(a) it is concerned with development carried out after 26 February 1997 and after 3 July 2008.

2.0 **Determination under Subsection 261A(2)(a)**

- 2.1 **DETERMINATION under subsection 261A(2)(a):** Meath County Council has determined that - In accordance with Section 261A(2)(a) that development was:
- (i) Carried out development after 26 February 1997, which was not authorised by a pre 1964 authorisation or a permission granted under Part IV of the Act of 1963 prior to 26 February 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such as assessment was not carried out.”*

Reason:

Having regard to the relevant available information and identification of risks to the surface water system from ongoing discharge and surface water run-off, potential for likely significant affects from surface water run-off and pollution events (alone and in combination with other quarries in the vicinity) exist on the River Boyne and Rive Blackwater cSAC and River Boyne and River Blackwater SPA.

- 2.2 In making a determination under subsection 261A(2)(a) the Planning Authority was informed by the assessment reports of its planning officer (03/08/12) and its executive engineer (28/06/12) and by an by an appropriate assessment screening report prepared by Scott Cawley Consultants (dated 19/07/12).
- 2.3 The subject quarry site is situated within 300m of the River Boyne and River Blackwater cSAC (ref.002299) and within c.2.2km of the River Boyne and River Blackwater SPA (ref.004232). The determination of the Planning Authority under section 261A(2)(a)(ii) is consistent with the recommendations of the Scott Cawley report.
- 2.4 **Development post 26 February 1997:** S.I. No.94/1997 - European Communities (Natural Habitats) Regulations, 1997 – commencing 26 February 1997, made appropriate assessment a legal requirement in Ireland. As noted above, the site is proximate to two European Sites and therefore the issue of appropriate assessment is directly relevant, particularly given the nature and scale of the subject quarry. The date of the advertisement of the relevant cSAC is June 2003 and the date of designation of the relevant SPA is June 2011. Unlike the regulations for EIA (S.I. No. 349/1989 and etc.) which set a threshold for EIA based on the extent of the ‘*area involved in ‘extraction’*’ (or the ‘*extraction area*’ in later amendments to same), the appropriate assessment regulations did not set threshold levels and therefore the consideration of whether AA is or is not required is not restricted by consideration of the extent of the extraction area.
- 2.5 The DoEH&LG’s guidelines on ‘*Appropriate Assessment of Plans and Projects in Ireland*’ (2009) indicate that any plan or project not directly connected with or necessary to the management of a Natura Site must be subject to appropriate assessment of its implications for the Natura Site in view of the site’s conservations objectives. The guidelines advise that, based on the precautionary principle underpinning the Habitats Directive, where doubt exists about the risk of a significant effect arising from a proposed project, an appropriate assessment must be carried out. The EC guidelines on the ‘*Assessment of plans and projects significantly affecting Natura 2000 sites*’ (2001) clarify that whilst an appropriate assessment may form part of an environmental impact assessment or a strategic environmental assessment, “*the assessments required by Article 6 [of the Habitats Directive] should be*

clearly distinguishable and identified within an environmental statement or reported separately.”

- 2.6 **The first issue** to consider is the scale of development that has taken place after 26 February 1997. The entire quarry development has taken place post 26 February 1997. It currently comprises a pit of approximately 14.3ha; a stripped area of c.3.4ha to the west; an overburden storage area of c.2.6ha to the north; c.7ha area accommodating processed materials’ storage area, processing area, offices and other accommodations; a grown-over overburden area to the north; a silt pond system (currently out of use) to the northeast and mid-east totalling c.2ha; a waste water management system including reed beds at the northwest section of the site with discharge point to the northwest corner. The balance of the site includes a screen berm and planted area to the south, with a mature area of woodland (former residential gardens) to the southeast totalling c.6.5ha altogether. There is also a 2.54ha concrete block manufacturing area to the north, however although this is associated with the wider development on the site, it is not quarry use.
- 2.7 **The second issue** to consider is whether the subject quarry development was authorised by a grant of permission prior to 26 February 1997, or by a pre-1964 authorisation, prior to the introduction of the requirement for appropriate assessment. The quarry was not authorised by a grant of permission prior to 26 February 1997 or by a pre-1964 authorisation.
- 2.8 **The third issue** to consider is whether the quarry development not authorised by a pre-1964 authorisation or grant of planning permission and that has taken place post 26 February 1997 would have required Appropriate Assessment. The relevant European Sites are the River Boyne and River Blackwater cSAC and the River Boyne and River Blackwater SPA. The said cSAC was first advertised in June 2003 and the said SPA was classified in June 2011, from which time they were protected under statute and from which time development proposals may have necessitated appropriate assessment to be carried out. The conservation objective for the River Boyne and River Blackwater cSAC is to maintain or restore the favourable conservation condition of the Annex I habitat(s) and / or the Annex II species for which the SAC has been selected (i.e. the qualifying interests), namely:
- *Lampetra fluviatilis* [river lamprey]
 - *Salmo salar* (only in fresh water) [Atlantic salmon]
 - *Lutra lutra* [otter]
 - Alkaline fens

- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*,

Alnion incanae, *Salicion albae*)

The conservation objective for the SPA site is to maintain and restore the Kingfisher (its qualifying interest) to favourable conservation condition.

- 2.9 The entirety of the quarry development was authorised and commenced after the transposing of the Habitats Directive into Irish law on 26 February 1997. The quarry pit authorised under PL17.111632 (Reg.ref.98/1981) was stated as 9.7ha¹, with the pit floor restricted to 54mAOD by condition no.2. The extraction permitted under PL17.111632 appears to have been completed. Associated development included a 2.75ha processing area to the north, overburden to be deposition and graded on most of the balance of lands (13ha to the north and 2ha to the south) within a 37ha quarry holding. The extraction rate was stated as 400,000 tonnes per annum. The River Boyne and River Blackwater cSAC and the River Boyne and River Blackwater SPA had not been advertised or classified at the time of making of the decision by the Board on appeal and appropriate assessment was not therefore required. Associated manufacturing developments were also authorised² in advance of the advertising and classifying of the respective European sites and would not have triggered requirement to carry out appropriate assessment.
- 2.10 Extensions to the extraction area amounting to 15.75ha (the sum of the stated areas) was authorised under PL17.206229 (Reg.ref.TA/30258) on 01/07/04. As the decision PL17.206299 post-dated the advertising of the River Boyne and River Barrow cSAC in June 2003, the requirements under article 6 of the Habitats Directive were applicable. The actual extension to the extraction area may have been closer to 10-12ha overall as the stated areas included ancillary areas, such as berms and setbacks from the boundary. The quarry floor level was also permitted at 54m AOD. The estimated extraction rate was doubled to 800,000 tonnes per annum under this permission. A sand manufacturing plant and 3no. associated settlement lagoons (0.78ha stated area) were also permitted for retention. The extraction area has not been extended over the full permitted extent to the west. The western extension was stated at 12.36ha but, excluding berms, setbacks from the boundaries, etc., it measured closer to c.7ha. I estimate that only c.2ha of that area has commenced extraction, with another 3.35ha stripped and a further 2ha of the permitted pit extension accommodating a large overburden storage mound.

¹ The actual extent of the permitted extraction pit may be closer to c.8.5ha, excluding berms and ancillary areas, although a concise area is difficult to determine.

² PL17.125619 (concrete batching and block manufacturing) and reg.ref.TA/20222 (asphalt plant).

- 2.11 The Board granted permission (10-year) under PL17.227088 (Reg.ref.TA/70175) on 16/01/09 for an extension by deepening to the existing quarry over an area of 16.1ha to 24m AOD (the application to the planning authority was made on 13/04/07), with the estimated extraction rate remaining unchanged. As the decision PL17.206299 post-dated the advertising of the River Boyne and River Barrow cSAC in June 2003 and the requirements under article 6 of the Habitats Directive were applicable. The said permitted development has not yet been carried out in its entirety but is on-going. I estimate the pit extends to c.14.3ha, with c.5ha to the west, stripped (and/or accommodating overburden storage) but awaiting extraction. I estimate that c.6ha of the extraction pit has been extracted below the 54m AOD to c.34m AOD. The ancillary sand manufacturing processing activity has been discontinued, although there is no reason to expect that this is anything but on a temporary basis.
- 2.12 Given the nature and scale of the aforementioned quarry extractions and the associated developments permitted after June 2003, the close proximity of the subject development to the European Site (c.250m to the west at the nearest point), the presence of a watercourse adjacent the site's northern boundary to which it was proposed to continue discharging effluent³, the presence of an adjacent quarry discharging to the same watercourse and another 19no. quarries within 5km radius⁴, concern about the potential for significant effects on the cSAC clearly arise. I have reviewed the EIS submitted with Reg.ref.TA/30258 (PL17.206229) and I am satisfied that it did not include a de facto Natura Impact Statement and did not otherwise adequately address the likelihood for significant effects on the cSAC or the SPA. Having reviewed the reports of the Council's Planning Officer and the Board's Inspector, I am satisfied that no appropriate assessment was carried out in respect of the then proposed development.
- 2.13 Scott Cawley Ecologists conducted a determination for requirement for appropriate assessment under section 261A(2). The report did not expressly address the development permitted under PL17.206229 but focused on the later permission in 2009 (PL17. 227088 / Reg.ref.TA/70175), however I consider the same issues of concern arise in both cases. It identifies potential for likely significant affects from surface water and ground water impacts on European Sites (the aforementioned cSAC and SPA) based on the presence of hydrological pathways between the quarry and the European Site, with de-watered groundwater discharged to the adjacent stream to the north which in turn discharges to River Boyne and Blackwater cSAC which is stated to be

³ Permitted at up to 530 cu.m per day according to License to Discharge Trade Effluent to Water ref.1/100 in May 2000,

⁴ The Scott Cawley report refers to 28no. quarries, but I count only 21no. included the Cemex and Keegan's quarries.

500m downstream. However the Scott Cawley report is incorrect⁵. Having inspected the watercourse, I found it does not discharge to the Tromman River within the cSAC to the west but instead turns 90-degrees to take a northerly course c.500m west of the point of the site and discharges to the Knightsbrook River c.5km downstream. The Knightsbrook River confluences with the Boyne c.10km downstream of the quarry's effluent discharge point.

- 2.14 The potential significant effects on the cSAC identified by Scott Cawley comprise depreciation of water quality and potential contamination from silt (suspended solids), hydrocarbons (assumed to be fuels and oils) and toxins (not specified), leading to decreased habitat quality that could result in detrimental impacts upon the species of qualifying increase, including impacts on spawning habitat and prey species. The unnamed stream is a small watercourse (c.1-1.5m wide) with long stretches of channel clogged by reeds and other plants. I consider it highly unlikely that the stream has the capacity to transport suspended solids downstream in such quantities and over such a distances to have any significant effect on the cSAC.
- 2.15 The effluent discharge relates to dewatering of the extraction area but also, necessarily, relates to surface water runoff that is directed towards the pit. The ground water can be expected to be clean water and appeared very clean on inspection. The quarry includes a comprehensive water treatment system including stilling ponds, reed beds and an extensive gravel berm filter which can be expected to remove the majority of suspended solids. Overall, the quarry operations and the water management system appeared to be quite well run. The surface water runoff from the concrete block operations runs to the ditch to the west (into which the treated effluent discharges before entering the unnamed stream) and also to lands adjacent the stream to the north. The runoff to the west appears to be filtered through an informal gravel filter before entering the ditch but runoff to the north is uncontrolled. Whilst this is undesirable there was no clear evidence of contamination, the contaminants can be expected to be inert materials and the risk of any significant effect on the cSAC 10km downstream would appear highly unlikely.
- 2.16 The stream may be capable of transporting hydrocarbons and toxins over longer distances. The EIS of 2003 showed the then existing fuel tanks provided with adequate bunding and also showed an oil interceptor then under construction. The risk of discharges of hydrocarbons and oils would appear unlikely, except in the case of accidental spillage. Although it is not possible to predict the nature, extent and impact of accidental spillages, such events would be expected to be rare and of short term duration.

⁵ The Scott Cawley report appears to be based on incorrect river catchment data on the EPA's website which shows the said stream connected to the Tromman River to the west.

- 2.17 Meath County Council reported that monitoring of the license discharge from the site showed exceedences of maximum limit values for dissolved solids in 18 out of 24 samples, for nitrate in 24 out of 24 samples and for suspended solids in 5 out of 24 samples over the period of water monitoring. The operator submits that its water quality monitoring from January 2010 to July 2012 show the development does not give rise to significant effects on surface water and ground water, with only 2 samples resulting in exceeding of the limits for total dissolved solids imposed in the discharge license (i.e. the discharge resulted in increase of more than 10% TSS in downstream sample compared to the upstream sample), only 1 out of 18 samples exceeded the total suspended solid limit and there was no breach in pH, temperature, dissolved oxygen and / or nitrate. It is also submitted that the operator employs a comprehensive Environmental Management System.
- 2.18 I have reviewed the surface water quality data available on the EPA Envision maps. The unnamed watercourse is not rated by the EPA. The Knightsbrook River c.1km downstream of the confluence with the unnamed stream is Q4, good status. This would suggest that discharges to the unnamed stream have not had a significant impact on the surface water quality of Knightbrook River or the River Boyne.
- 2.19 I found no estimate of the total quantity of discharge resulting from the development prior to 2003 in the EIS attaching to PL17.111632 (permitted in 1999) or to the cone of drawdown. Similarly I could not find this information set out clearly in the EIS attaching to PL17.206229 (permitted 2004). The EIS attaching PL17.227088 (permitted 2009) indicates that the increased depth of extraction will entail increased abstraction and discharge and will result in a single stream receiving discharge from a single point rather than potentially several streams receiving gradual baseflow contribution that would normally be expected from groundwater. It estimated the then radius of the cone of drawdown to be 284m (from sump) and that it would extend in a non-proportionate manner with the increase in depth, however it indicates that it will be governed by local geological structure which seems to imply significant uncertainty. I estimate the sump to be located at a distance of c.650m from the Tromman River at the nearest point to the south. The assessment does not appear to take account of the cumulative impact of drawdown on the adjoining quarry site on the ground water levels.
- 2.20 The EIS indicated that the rate of discharge (limited to 530cu.m per day by discharge license granted in May 2000) may be exceeded once the quarry floor goes below 39m AOD which indicates that drawdown will be more significant. In a further information submission the operator indicated that the highest rate of discharge recorded was 50cu.m per day. However an average of 237cu.m was then being abstracted per day of which 90% was used in concrete

manufacturing, washing plants and dust suppression, thereby limiting the discharge requirements from the quarry.

2.21 The risk of dewatering impacting on the hydrological balance within the Tromman River to the east through dewatering of groundwater to a depth of 34m AOD and below, with any discharged groundwater diverted to the unnamed stream away from Tromman River, is uncertain and is not explored in the EIS pertaining to the development. Based on the information available, the likelihood of significant effects on the cSAC in view of the sites conservation objectives pertaining to the qualifying interests cannot be excluded, particularly in view of potential in combination effects associated with the adjacent Keegan's Quarry. The discharge license (ref.04/2) pertaining to Keegan's Quarry limits the discharge to 1400cu.m per day. The EIS of 2003 incorrectly assumes that the unnamed stream to the north and the Tromman River to the south (referred to as an unnamed stream) converge c.1.5km to the northwest near Castletown Bridge. Having regard to the requirements of the Habitats Directive and to the EPA and EC guidance documents on Appropriate Assessment, I am of the opinion that appropriate assessment was required but such an assessment was not carried out. I therefore recommend that the determination of the planning authority under section 261A(2)(a)(ii) should be set confirmed.

2.22 **Development post 3 July 2008:** As noted above the Board granted permission (10-year) under PL17.227088 (Reg.ref.TA/70175) on 16/01/09 for an extension by deepening to the existing quarry over an area of 16.1ha to 24m AOD (the application to the planning authority was made on 13/04/07). I estimate that, so far, c.6ha of the pit has progressed to c.34mAOD under the permission. The decision was made subsequent to the ECJ ruling in case C418/04⁶ of 13/12/07 that it was incorrect that environmental impact assessment was appropriate assessment. I am satisfied that the EIS submitted attaching to PL17.111632 (permitted in 1999), to PL17.206229 (permitted 2004) and to PL17.227088 (permitted 2009) did not constitute a de facto NIS and that the assessments carried out by the planning and the Board's Inspector did not constitute appropriate assessment.

2.23 Based on the information available, the likelihood of significant effects on the River Boyne and River Blackwater cSAC at Tromman River disruption of the hydrological balance of the watercourse arising from dewatering of the quarry carried out in conjunction with extractions carried out post 3 July 2008, in view of the sites conservation objectives pertaining to the qualifying interests, cannot be excluded, particularly in view of potential in combination effects associated with the adjacent Keegan's Quarry (see paragraph 2.21 above). Having regard

⁶ 'In the decision of the European Court of Justice in case C-418/04, given on 13 December 2007, it was held that a similar provision in Regulation 17 of the Habitats Regulations (i.e. that an environmental impact assessment shall be an appropriate assessment) was not correct' (p.6, Supplementary Guidelines, July 2012).

to the requirements of the Habitats Directive and to the EPA and EC guidance documents on Appropriate Assessment, I am of the opinion that appropriate assessment was required but such an assessment was not carried out. I therefore recommend that the determination of the planning authority under section 261A(2)(a)(ii) should be confirmed.

2.24 I am satisfied that the likelihood of significant effects on the River Boyne and River Blackwater SPA, in view of the site's conservation objectives pertaining to its qualifying interest (Kingfisher), can reasonably be excluded due to the distance to the SPA (over 2km). I therefore do not agree that a significant effect on Kingfisher, in terms of noise and dust, is likely to result from the development carried out post June 2011 and authorised post 3 July 2008.

3.0 **Review of DECISION under subsection 261A(5)(a)**

3.1 The planning authority decided that the subject quarry:

(i) *Commenced operation on or after 1st October 1964 and permission was granted in respect of this quarry under Part III the Planning & Development Act 2000-2011 or Part IV of the Local Government (Planning & Development) Act 1963,*

and

(ii) *there was no requirement to register under Section 261*

3.2 I note that permission was granted in respect of the quarry under Part III of the Planning and Development Act 2000, as amended, and under Part IV of the Local Government (Planning and Development) Act 1963. I also note that there was no requirement for the subject quarry to register under section 261 having regard to the provisions of section 261(11). Should the Board decide to confirm the determinations of the planning authority, the decisions under section 261A(5)(a) should be confirmed.

4.0 RECOMMENDATION

I recommend that the Board, in exercise of the powers conferred on it under section 261A of the Planning and Development Act, 2000, as amended:

based on the Reasons and Considerations marked (1) set out below, confirm the determination of the Planning Authority in respect of this development made under section 261A(2)(a)(ii) of the Planning and Development Act 2000, as amended, and

based on the Reasons and Considerations marked (2) set out below, confirm the determination of the Planning Authority in respect of this development made under section 261A(5)(a) of the Planning and Development Act 2000, as amended, and

based on the Reasons and Considerations marked (3) set out below, confirm the decision of the Planning Authority in respect of this development made under section 261A(5)(a) of the Planning and Development Act 2000, as amended, and

(1) REASONS AND CONSIDERATIONS

Having regard to:

- (a) the documentation on the review file; including the site's planning history and the aerial photography for the area,
- (b) the provisions of the Planning and Development Acts, 2000 to 2011, as amended, and in particular Part XA and section 261A,
- (c) the European Communities (Natural Habitats) Regulations, 1997 and the Planning and Development Regulations, 2001, as amended,
- (d) the Department of the Environment, Heritage and Local Government – Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (2009)
- (e) the Department of the Environment, Community and Local Government - Section 261A of the Planning and Development Act, 2000 and related provisions, Guidelines for Planning Authorities January 2012 and supplementary Guidelines July 2012,
- (f) the characteristics of the development including the depth, scale and nature of that quarry development which requires significant ongoing dewatering of the site,

- (g) the characteristic of the quarry development carried out on adjacent land to the east which also requires significant ongoing dewatering,
- (h) the proximity of the quarry development to the Tromman River within the River Boyne and Blackwater cSAC site ref.002299,
- (i) the qualifying interests and conservation objectives pertaining to the River Boyne and Blackwater cSAC,

it is considered that the likelihood of significant effects on the River Boyne and River Blackwater cSAC from that development carried out after June 2003 (and 26 February 1997), in itself and / or in combination with other projects, with particular reference to disruption of hydrological balance to the Tromman River, could not be excluded and therefore required, having regard to the Habitats Directive, an appropriate assessment but that such an assessment was not carried out.

(2) REASONS AND CONSIDERATIONS

Having regard to:

- (a) the documentation on the review file; including the site's planning history, with particular reference to reg.ref.TA70175 / PL.17.227088 and the aerial photography for the area,
- (b) the provisions of the Planning and Development Acts, 2000 to 2011, as amended, and in particular Part XA and section 261A,
- (c) the European Communities (Natural Habitats) Regulations, 1997 and the Planning and Development Regulations, 2001, as amended,
- (d) the Department of the Environment, Heritage and Local Government – Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (2009)
- (e) the Department of the Environment, Community and Local Government - Section 261A of the Planning and Development Act, 2000 and related provisions, Guidelines for Planning Authorities January 2012 and supplementary Guidelines July 2012,
- (f) the characteristics of the development carried out after 3 July 2008, including the depth, scale and nature of that quarry development which requires significant ongoing dewatering of the site,
- (g) the characteristic of the quarry development carried out on adjacent land to the east which also requires significant ongoing dewatering,
- (h) the proximity of the quarry development to the Tromman River within the River Boyne and Blackwater cSAC site ref.002299,
- (i) the qualifying interests and conservation objectives pertaining to the River Boyne and Blackwater cSAC,

it is considered that the likelihood of significant effects on the River Boyne and River Blackwater cSAC from that development carried out after 3 July 2008, in itself and / or in combination with other projects, with particular reference to disruption of hydrological balance to the Tromman River, could not be excluded and therefore did require, having regard to the Habitats Directive, an appropriate assessment but that such an assessment was not carried out.

(3) REASONS AND CONSIDERATIONS

Having regard to:

- (a) The planning history of the site, including the planning permission granted in respect of the subject quarry under planning register numbers PL17.227088 / reg.ref.TA/70175, PL17.206299 / reg.ref.TA/30258 and PL17.111632 / reg.ref.98/1981,

It is considered that:

- (i) permission was granted for a quarry at the subject site under Part IV of the Local Government (Planning and Development) Act, 1963 and under Part III of the Planning and Development Act, 2000, as amended, and that
- (ii) the requirements in relation to registration under Section 261, as amended, were not applicable.

John Desmond
Planning Inspector
12/08/13