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V.A.T No. 97507781

An Bord Pleanála,
64 Marlborough St.
Dublin 1.
D01 V902

AN BORD PLEANÁLA

LDG- _____

ABP- _____

19 JUL 2023

Fee: € _____ Type: _____

Time: _____ By: post

18th July 2023.

Re: Application for Substitute Consent relating to the regularization of sand and gravel extraction operations at Maplestown, Co. Carlow

Case Number: ABP-31-311893-21

Dear Mr. Kelleedy,

Your letter of 10th July 2023 refers.

We are concerned that this letter would appear to request that the applicant supplies information to the Board in order that the Board can determine the application, namely, to demonstrate that exceptional circumstances exist that would allow the Board to grant substitute consent.

Please be advised that such information has previously been supplied to the Board on 18th March 2020 and the Board determined on 16th June that such exceptional circumstances do exist and that it would be appropriate for the Board to consider an application for substitute consent.

On that basis our client commissioned the preparation and submission of an application for substitute consent which was submitted to the Board in November 2021. Our client is still awaiting the Board's decision.

Notwithstanding the above our client has instructed us to resubmit the previous submission setting out the exceptional circumstances that exist, even though these exceptional circumstances have not changed. Please be advised that this information is being supplied

- Environmental Impact Assessment/EIS
- Environmental Monitoring and Sampling
- Waste Management
- Environmental Reporting
- Ecology
- Project Management
- Training

- IPPC/Waste Licencing
- EMS/ISO14001 Design, Implementation and Auditing
- Environmental Compliance
- Planning
- Waste Management Facility/Collection Permits
- Environmental Risk Assessment/ Due Diligence
- Commercial Tenders

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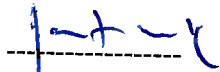
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V.A.T No. 97507781

on a 'strictly without prejudice' basis and our client will reserve the right to judicially review any decision that is made by the Board as a result of the submission of this information, that differs materially from the Board Order ABP-306956 dated 16th June 2021.

We trust that we can expect a decision on this case in the near future.

Yours sincerely,



Jim Dowdall LLM

Enviroguide Consulting

(on behalf of Mark Phelan.)

- Environmental Impact Assessment/EIS
- Environmental Monitoring and Sampling
- Waste Management
- Environmental Reporting
- Ecology
- Project Management
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- Environmental Compliance
- Planning
- Waste Management Facility/Collection Permits
- Environmental Risk Assessment/ Due Diligence
- Commercial Tenders




APPLICATION FOR LEAVE TO APPLY FOR SUBSTITUTE CONSENT


**FOR
QUARRY DEVELOPMENT
AT
MAPLESTOWN CO. CARLOW**


18 March 2020

**ON BEHALF OF
Mr. Mark Phelan**

Prepared by
Enviroguide Consulting

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 **Kerry**
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Introduction:

The subject quarry at Maplestown, Rathvilly, Co. Carlow was granted permission for a 95,000 tonnes per annum facility by An Bord Pleanála ref 221741 on 24th July 2007. It had previously been granted permission by the planning authority Carlow County Council reference 06/842 subject to 16 conditions. This was appealed by third parties.

In the original application, permission was sought for 10 years of extraction in five phases. In granting permission, the Planning Authority granted permission for 6 years after which time the quarry was to be decommissioned. This issue is addressed in the Board Inspector's report section 10.8 where he states:

"The subject application seeks permission for 10 years of extraction in 5 phases, based on an annual extraction rate of up to 100,000 tonnes. The application does not provide any breakdown of the extent of extraction proposed within each phase. Condition no. 6 restricts the life of the permission to 6 years after which time the development shall be decommissioned. The condition does not require any amendment to the phasing of the development and is therefore understood that the permission relates to phases 1 – 3 inclusive. The basis for applying a six-year life is unclear, particularly as this would allow for development in closest proximity to adjoining houses, rather than phases 4 and 5, which would provide increased separation from, and give rise to reduced impacts on, adjoining residential properties.

As noted above, an increase in separation from adjoining residential properties is regarded as appropriate. While there is no objection to the proposed ten-year life of the permission, revisions to the phasing plan to provide 100m separation would reduce the extent of extraction somewhat. I would therefore recommend that a condition requiring a revised phasing be appended to any decision to grant permission in this instance."

In recommending that permission be granted for the proposed development the Inspector recommended *inter alia* Condition 2 which requires that:

"No extraction or processing activities shall be carried out within 100 metres of adjoining residential properties. Prior to the commencement of development, the extent of extraction activities and a revised phasing plan for the development in this regard shall be submitted to and agreed in writing with the planning authority".

In accepting the Inspector's recommendation to grant permission the Board adopted Condition 2 verbatim in its Decision:

Condition 2: No extraction or processing activities shall be carried out within 100 metres of adjoining residential properties. Prior to the commencement of development, the extent of extraction activities and a revised phasing plan for the development in this regard shall be submitted to and agreed in writing with the planning authority.

The Decision to Grant was silent on the Life of the Permission.

Therefore, the applicant believed that a 10-year permission had been granted. That the applicant could have reasonably believed that a 10-year permission had been granted is based on the following:

1. The applicant applied for a 10-year permission in the first instance
2. The planning authority addressed this in the original grant and restricted it to a 6-year permission
3. An Bord Pleanála's Inspector re-examined this decision of the planning authority and recommended a 10-year grant.
4. An Bord Pleanála's Inspector recommended a specific condition (Condition 2) to address this issue and the inconsistency in relation to the phasing plan by virtue of the 6-year timeline granted by the planning authority.
5. In accepting the Inspector's recommendation to grant the Decision to Grant included Condition 2 which was recommended for the purpose of a 10-year grant.
6. Otherwise the Decision to Grant was silent on the lifetime of the permission.

As a result, the applicant believed that he had a 10-year permission and continued to operate past the 24th July 2012, the expiry date of a 5-year permission. At all times the applicant acted in good faith.

The ownership of the lands changed hands on 10th April 2019 and the new owner Mr. Mark Phelan was advised and was of the belief that planning permission for the quarrying activity was in place until 24th July 2019 with a further 90 days to wind down operations or to apply for additional consents.

In October 2019 Mick Smith Haulage and Sons Ltd at the request of the owner applied for permission to remediate the quarry with imported greenfield soil and stone as the quarry was coming to the end of extraction (Planning Reference 19/403). The remediation was to comply with Condition 17 of the Board's Decision to Grant, which required:

Condition 17: Restoration operations shall be carried out in a progressive manner throughout the life of the proposed development. One year prior to the cessation of extraction operations, a full final landscaping/restoration scheme shall be agreed with the planning authority and shall be implemented within two years of the cessation of extraction activities. No materials shall be imported onto the site for the purpose of site restoration unless a further grant of permission has been obtained.

During this process clarification was sought from the Board regarding the term relating to PL01.221741 extractive development at Maplestown, Co. Carlow by William J Smyth, Planning and Strategic management Consultant to the Extractive Industry on behalf of the leaseholder Doyle Concrete (Hugginstown) Co. Kilkenny, who leased the land from Mr. Mark Phelan. This letter was dated 1st September 2019 and was stamped by the Board as received on 4th October 2019.

The Board responded in a letter dated 1st November that "the duration of a permission is normally five years however if permission is granted for more than five years it is specified as a condition in the Board's Order.

Permission for this proposed development was subsequently refused by Carlow County Council on 4th December 2019 for 6 reasons which include *inter alia*:

1. The site of the proposed development comprises an operational quarry development the subject of previous permission reg. ref. 06/842 (An Bord Pleanála Ref. PL 01.221741), the appropriate period of which expired on 24th July 2012. For these reasons, the underlying quarry development comprising the site on which the proposed development would take place is not authorised. Accordingly, the proposed development would represent works to an unauthorised development, would consolidate and facilitate this unauthorised development, and therefore to permit the proposed development would set an undesirable precedent and would not be appropriate having regard to the proper planning and sustainable development of the area.

It is contended here that this reason for refusal is not valid and will be addressed later in this document. The main point here is that this was the first time the owner had any indication that the development (i.e. the quarry) did not have planning permission and was unauthorised.

Following on from this decision and the owner becoming aware that the activity does not have permission, the quarrying activity was subsequently ceased, and the only activity currently being carried out is the removal of stockpiled material from the site.

Requirements for leave to apply for substitute consent:

Under Part XA Section 177C of the Planning and Development Act 2000-2020:

A person who has carried out development or the owner or occupier of the land, in any of the case types referred to in the note on section 177B, may apply to An Bord Pleanála for leave to apply for substitute consent where the person considers that exceptional circumstances arise which would justify such an application.

The Act requires that:

177D – (1) 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 was or is required in respect of the development concerned and where it is further satisfied -

(a) that a permission granted for development by a planning authority or the Board is in breach of law, invalid or otherwise defective in a material respect whether by reason of a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union, or otherwise, by reason of—

(i) any matter contained in or omitted from the application for the permission including omission of an environmental impact statement or a Natura impact statement or both of those

statements as the case may be, or inadequacy of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or

(ii) any error of fact or law or procedural error,

Or

(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 Directive or the Habitats Directive;

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

(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 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.

Application for Leave to apply for Substitute Consent:

The applicant, Mr. Mark Phelan wishes to apply to An Bord Pleanála for leave to apply for Substitute Consent for the currently unauthorised quarry at Maplestown, Co. Carlow. He also intends to apply as part of this application for permission for the remediation of this quarry using imported inert greenfield soil. It is further proposed to develop an additional 2.98 ha of additional quarry and permission will also be sought for this proposed development. It is believed that this approach will allow for the regularisation of the unauthorised development, remediation of the existing quarry and allow for permission to be sought for additional quarry works while allowing the combined works be Environmentally assessed by means of a Remedial Environmental Impact Assessment Report and a Natura Impact Statement.

It should be noted here that following An Bord Pleanála's decision in case number PL27.249167 - Appeal by Austin Stephenson care of Declan Brassil and Company Limited of Lincoln House, Phoenix Street, Smithfield, Dublin against the decision made on the 4th day of August, 2017 by Wicklow County Council to refuse permission to the said Austin Stephenson for the proposed development, it can be concluded that remediation of an unauthorised

quarry, where quarrying has ceased is not consolidation of unauthorised development and can be permitted. However, it is deemed that the approach of seeking substitute consent for the unauthorised development and consent for proposed remediation development and consent for proposed additional quarrying makes for proper environmental assessment.

Does this case fulfil the criteria set out in Section 177D?

It is contended here that exceptional circumstance exist that will allow the Board to permit the applicant the opportunity to regularise the unauthorised development due to the confusion that existed until late 2019 regarding the duration of the permission.

In order to assist the Board in reaching a decision the following information is provided in relation to the criteria as set out in S. 177D (2):

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

The unauthorised development is unauthorised by virtue of the time duration of a previously permitted development. This permitted development was accompanied by an Environmental Impact Statement (EIS) at application and appeal stage. As the original application was for a ten year permission this EIS assessed the operation of the facility over a period of ten years (up to July 2020) and therefore it can be concluded that it has been assessed and there was no attempt to circumvent the Environmental Impact Assessment Directive and that the application for substitute consent will not circumvent the EIA Directive by virtue of the fact that all pre-existing and proposed activities will be environmentally assessed.

The requirement for "Appropriate Assessment" is set out in Articles 6(3) and 6(4) of the Habitats Directive (92/43/EEC). The Habitats Directive is transposed into Irish law by the European Communities (Birds and Natural Habitats) Regulations 2011 as amended (hereafter referred to as the Habitats Regulations).

European Sites are defined in Regulation 2(1) of the Habitats Regulations and comprise Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), at all stages of designation commencing with the Minister's notice of intention to designate. Regulation 42 of the Habitats Regulations requires the EPA to undertake Stage 1 Screening for Appropriate Assessment (AA) and where necessary Stage 2 Appropriate Assessment of any plan or project for which an application for consent is received.

While the requirement for Appropriate Assessment was a legal requirement before the Habitats Regulations it only became enforced by these Regulations and was therefore not supplied or sought by the planning authority or An Bord Pleanála in 2006 when this case was under consideration. Therefore, there was no issue of circumventing the requirements of the Habitats Directive. The proposed application affords an opportunity to carry out a screening for Appropriate Assessment on the entire project and prepare a Natura Impact Statement if deemed necessary.

In summary by regularising the development the Board would not be assisting the applicant in circumventing the requirements of the EIA Directive or the Habitats Directive but would be enabling him to update the previous EIA (now EIAR) and allowing him to carry out an Appropriate Assessment.

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

This is discussed in detail above where it has been demonstrated that the applicant believed that a ten year permission was in place for the facility for the following reasons (repeated from above):

1. The applicant applied for a 10-year permission in the first instance
2. The planning authority addressed this in the original grant and restricted it to a 6-year permission
3. An Bord Pleanála's Inspector re-examined this decision of the planning authority and recommended a 10-year grant.
4. An Bord Pleanála's Inspector recommended a specific condition (Condition 2) to address this issue and the inconsistency in relation to the phasing plan by virtue of the 6-year timeline granted by the planning authority.
5. In accepting the Inspector's recommendation to grant the Decision to Grant included Condition 2 which was recommended for the purpose of a 10-year grant.
6. Otherwise the Decision to Grant was silent on the lifetime of the permission.

The applicant became the owner in April 2019 and no issues with the planning were identified during this change of ownership. It is understood that the previous owner believed, in good faith, that a ten-year permission was in place for the facility. Therefore, the applicant/owner only became aware that the development was unauthorised following the receipt of the letter from An Bord Pleanála dated 1st November 2019 to his Consultant Mr. William Smyth and subsequent refusal of permission for remediation of the site by Carlow County Council dated 4th December 2019.

In view of the above it can be concluded that the applicant could not reasonably have had a belief that the development was not authorised;

(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 appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;

The original application (06/842 Carlow County Council and PL01.221741ABP) was accompanied by an EIS which assessed a ten-year operation of the facility. The Board's Inspector commented as follows:

"10.8.5 Adequacy of the EIS – The significant impacts of the proposed development are considered above and difficulties arising are identified. In addition, I note that section 10.0 of the copy of the Non-Technical Summary received – Noise, is blank. This would appear to be a clerical error rather than a deficiency in the EIA process. The consideration of alternatives in the EIS is limited and those alternative sites, layouts or process, referred to in the document are not identified.

Notwithstanding the identified deficiencies in the document, I generally regard the EIS as being in compliance with the requirements of Article 94 of the 2001 Regulations and can be considered to be adequate."

Given the above and given that a new EIAR (remedial) will be prepared as part of the application for substitute consent and consent, it is not considered that the ability to carry out an assessment of the environmental impacts has been impaired.

In addition, the previous planning application and subsequent appeal of the decision to ABP received a number of submissions and observations from members of the public and these were taken into account by both the planning authority and the Board in making their decision. The Board's decision specifically referred to "such matters included any submissions and observations received by it (the Board) in accordance with statutory provisions.

Therefore, the provision for public participation has not been *substantially impaired*.

There was no Appropriate Assessment carried out as it was not a requirement at the time. However, the proposed application for substitute consent and consent will involve a Screening for Appropriate Assessment and if required an NIS. This will allow for the assessment to be carried out and the appropriate public participation take place.

This will ensure that the provision for public participation in relation to the Habitats Directive will not have 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.

There is currently no known significant impacts on the environment or adverse effects on the integrity of a European Site as a result of the existing development. This was determined in the EIS originally submitted with the application in 2006. If leave to apply for substitute consent is granted by the Board this EIS will be used as a baseline and will provide valuable metrics upon which to base any remedial EIAR or assessment of future impacts.

In addition, the application for Substitute Consent will be accompanied by a Remedial NIS and that would be expected to confirm that the existing and proposed developments have had or will have no significant impact on a European Site.

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

There are no known significant effects on a European Site.

In order to identify potentially affected Natura 2000 sites using the guidelines set out by DEHLG (2009), the precautionary principle was adopted and all SPAs and SACs within a 15km distance radius of the proposed development were included in the zone of influence (ZOI). Natura 2000 sites located outside of this 15km radius are considered to be either one, or a combination, of the following; (a) located at such a distance to be beyond the influence of potential negative impacts associated with the proposed development; (b) separated by a substantial marine buffer; (c) located within different surface water catchment zones to the proposed development; and/or (d) located at such a distance that the proposed development site is considered to be outside the natural range of any qualifying species.

Three SACs and no SPAs are located within the precautionary ZOI of the proposed development site. The name of each site, corresponding code and qualifying interests are detailed in the **Error! Reference source not found.** below. The distances to each site listed below are

taken from the nearest possible point of the proposed development site boundary to nearest possible point of each Natura 2000 site.

NATURA 2000 SITES WITHIN 15KM RADIUS OF THE PROPOSED DEVELOPMENT SITE.

*=PRIORITY HABITATS

Site Code	Site Name	Qualifying Interests	Distance to Site
Special Areas of Conservation (SAC)			
001757	Holdenstown Bog SAC	- [7140] Transition Mires	3.4km
000781	Slaney River Valley SAC	<ul style="list-style-type: none"> - [1130] Estuaries - [1140] Tidal Mudflats and Sandflats - [1330] Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) - [1410] Mediterranean salt meadows (<i>Juncetalia maritimi</i>) - [3260] Floating River Vegetation - [91A0] Old Oak Woodlands - [91E0] Alluvial Forests* - [1029] Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>) - [1095] Sea Lamprey (<i>Petromyzon marinus</i>) - [1096] Brook Lamprey (<i>Lampetra planeri</i>) - [1099] River Lamprey (<i>Lampetra fluviatilis</i>) - [1103] Twaite Shad (<i>Alosa fallax</i>) - [1106] Atlantic Salmon (<i>Salmo salar</i>) - [1355] Otter (<i>Lutra lutra</i>) - [1365] Common (Harbour) Seal (<i>Phoca vitulina</i>) 	3.7km
	River Barrow and River Nore SAC	<ul style="list-style-type: none"> - [1130] Estuaries - [1140] Tidal Mudflats and Sandflats - [1170] Reefs - [1310] <i>Salicornia</i> Mud - [1330] Atlantic Salt Meadows - [1410] Mediterranean Salt Meadows - [3260] Floating River Vegetation - [4030] Dry Heath - [6430] Hydrophilous Tall Herb Communities - [7220] Petrifying Springs* - [91A0] Old Oak Woodlands - [91E0] Alluvial Forests* - [1016] Desmoulin's Whorl Snail (<i>Vertigo moulinsiana</i>) - [1029] Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>) - [1092] White-clawed Crayfish (<i>Austropotamobius palipes</i>) - [1095] Sea Lamprey (<i>Petromyzon marinus</i>) - [1096] Brook Lamprey (<i>Lampetra planeri</i>) - [1099] River Lamprey (<i>Lampetra fluviatilis</i>) - [1103] Twaite Shad (<i>Alosa fallax</i>) 	5.7km

		<ul style="list-style-type: none"> - [1106] Atlantic Salmon (<i>Salmo salar</i>) - [1355] Otter (<i>Lutra lutra</i>) - [1421] Killarney Fern (<i>Trichomanes speciosum</i>) - [1990] Nore Freshwater Pearl Mussel (<i>Margaritifera durrovensis</i>) 	
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No known effects have been identified as a result of the existing (now unauthorised) development. A full screening report and likely an NIS will be carried out to identify if the existing activity, the proposed remediation of the quarry using imported greenfield soil, and the proposed new quarrying project, will or is likely to have a significant effect on a European site.

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

The applicant has no history of non-compliance with previous planning permissions and as previously stated he only acquired this property in 2018 and now wishes to regularise it.

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

We would ask the Board to take account of the fact that all parties involved with this development acted in good faith in believing that the quarry development was authorised for a period of 10 years and that once they discovered that this was not the case, took steps to regularise it by having discussions with the Planning Authority who advised that they need to seek leave to apply for substitute consent from the Board. They also ceased quarrying operations and the only activity on site currently is the removal of previously quarried material.

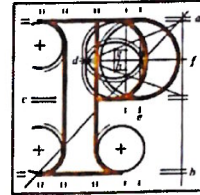
In short the applicant would ask the Board to assist him in putting right a situation that he inherited and that he wants to regularise.

The following documents are attached:

1. An Bord Pleanala's Inspectors Report on appeal in respect of 06/842.
2. Decision of An Bord Pleanala to Grant Permission with Conditions.
3. Correspondence between William J Smyth and An Bord Pleanala September/November 2019
4. Notification of Carlow County Council to refuse permission for 19/403.
5. Site Location map and layout plan – please note the layout plan is for illustrative purposes only.

Our Case Number: ABP-306956-20

Your Reference: Mark Phelan



**An
Bord
Pleanála**

Enviroguide Consulting
3D, Core C , Block 71
The Plaza, Park West
Dublin 12
D12 F9 TN

17th June, 2021

Re: Quarry
Maplestown, Co. Carlow.

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 2020. 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.

Please note that the final date for the making of an application for substitute consent is 8th September, 2021.

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.

Separately, it would greatly assist the 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

Tell	Tel	(01) 858 8100
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Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
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64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

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,

B. McManus

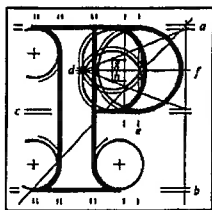
Brid McManus
Executive Officer

BP100QN

Tell
Glao Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

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64 Sráid Maoibhríde 64 Marlborough Street
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D01 V902 D01 V902



An
Bord
Pleanála

Board Order
ABP-306956-20

Planning and Development Acts 2000 to 2020

Planning Authority: Carlow County Council

Application for Leave To Apply For Substitute Consent, by Mark Phelan
care of Enviroguide Consulting of 3D, Core C, Block 71, The Plaza, Park
West, Dublin.

Development: Quarry at Maplestown, County Carlow.

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 sections 177C and 177D of the Planning and Development Act, 2000, as amended, the planning history of the site, all the documentation on file, and the report of the Planning Inspector, the Board is satisfied that:

- The development is one where an Environmental Impact Assessment and/or Appropriate Assessment are required, and were carried out satisfactorily and no additional works have taken place that would require amendment or reconsideration of the Environmental Impact Assessment or Appropriate Assessment.
- The permission granted for a quarry under An Bord Pleanála appeal reference number PL 01.221741, subject to 25 number conditions, was sufficiently ambiguous that the owner had reasonable grounds for considering that the operations could extend beyond 10 years from the grant of permission, and that this constitutes exceptional circumstances to allow leave to apply for substitute consent.

It is furthermore considered that exceptional circumstances exist by reference, in particular, to the fact that:

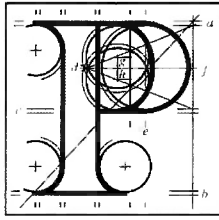
- the regularisation of the development would not circumvent the purpose or objectives of the Environmental Impact Assessment Directive or of the Habitats Directive,
- the applicant could reasonably have had a belief that the development was not unauthorised, and
- the ability to carry out an Environmental Impact Assessment and Appropriate Assessment, and provide for public participation in such assessments, has not been substantially impaired.

The Board decided that it would be appropriate to consider an application for the regularisation of the development by means of an application for substitute consent.


Dave Walsh

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

Dated this 16th day of June 2021.



An
Bord
Pleanála

Inspector's Report ABP-306956-20

Development	Substitute Consent under Section 177C(2)(b)
Location	Quarry at Maplestown, County Carlow
Planning Authority	Carlow County Council.
Planning Authority Reg. Ref.	Click here to enter text.
Applicant	Click here to enter text.
Type of Application	Leave to apply for Substitute Consent
Planning Authority Decision	Refusal.

Date of Site Inspection 16th June 2020.

Inspector Philip Davis.

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1.0 Introduction

This application is for the leave to apply for Substitute Consent under Section 177C(2)(b) of the 2000 Act, as amended. It is for an existing quarry in north-west County Carlow, which was previously granted a planning permission with EIS which has run out of time. The operator has argued that exceptional circumstances exist with regard to a genuine belief that the permission granted was still in operation.

2.0 Site Location and Description

2.1. Maplestown, County Carlow

The townland of Maplestown is located at the north-east of county Carlow, close to the borders with Kildare and Wicklow. The townland is roughly equidistant between the settlements of Baltinglass and Castledermot and is characterised by low hills in an undulating countryside which extends west from the foothills of the Wicklow Mountains. The area is mostly grazing land on what appear to be well drained but low fertility fields on deep deposits of fluvio-glacial gravels. Fields are bounded with ditches and hedgerows and are mostly used for sheep and cattle grazing, with a number of sand and gravel quarries in the area. Settlement is quite sparse, with occasional farmhouses and dwellings scattered around a third class road network. The nearest main road is the N81, some 2-km to the east, linked to the site via a relatively narrow third-class road. There is a national school just west of the townland.

2.2. The site

The quarry subject to this application for leave to apply for Substitute Consent is within an irregularly shaped landholding with an area that appears to be around 25 hectares (differing figures for the overall working area and landholding are given in the previous applications for this site), located on the eastern side of a third class road close to a junction. It extends into a slight hill which rises to the east. There is a wide entrance with cleared areas on either side. A track (with a wheel-washing area) leads to the main quarry, an active sand and gravel extraction and processing centre. The quarry consists of a processing area in the centre, spoil heaps and sand/gravel storage on the western side, with the main excavation area into the

hillside to the east. The excavation is a single bench, perhaps up to 10-12 metres in height. The material is dry, fine grained fluvio-glacial material with some stones. There is a pond in the south-eastern side of the site which appears to be fed from groundwater. There are three linked settlement ponds on higher ground to the west of this pond, these are part of the drainage/gravel processing system. The water system appears to be enclosed, with water possibly extracted from the pond or from an on-site well (most likely the latter). I saw no outfall from the site, but it seems there is some storm water overflow from the settlement ponds to a small watercourse to the south.

The site is bounded by well drained fields, mostly in grazing use. There is a circular enclosure to the east, between the site and a large farmstead – this is part of the overall landholding. This enclosure appears to be of modern origin and is not a recorded ancient monument. The nearest dwellings are to the west, along the access road. There is a small river (River Graney) just over 100 metres north of the site, and a smaller watercourse running through drains bounding the site to the south – the latter appears to be very eutrophic. The Graney forms the boundary between Carlow and Kildare (note that the county boundary as shown on some of the attached aerial photographs obtained online which indicate the boundary runs through the site are inaccurate). The two watercourses flow to the River Lerr to the west, a tributary of the Barrow.

3.0 Leave to Appeal

The owner of the lands is seeking leave to apply for Substitute Consent for quarry works under section 177C(2)(b) of the 2000 Act, as amended.

4.0 Planning Authority

4.1. Planning Authority Reports

4.1.1. Planning Reports

Carlow County Council have stated that they have no objection to the making of the application.

By way of background, it is advised that it is considered that the original permission (**06/842/PL01.221741**) expired on 24/07/2012. It is stated that the decision of ABP did not extend the permission for more than the normal period of five years. Also, a subsequent application to extend the duration of the permission (**19/312**) was returned invalid to the applicant as it was not received by the PA prior to the end of the appropriate period.

4.1.2. Other Technical Reports

None on file.

4.2. Prescribed Bodies

None on file.

4.3. Third Party Observations

None on file.

5.0 Planning History

An enforcement notice was served on the landholder in 2006 regarding unauthorised gravel extraction on the site.

In July 2007 the Board, on appeal, decided to grant permission for a quarry on the site subject to 25 no. conditions (**PL01.221741**). An EIS was submitted with the application. The application was described on the site notice as:

The development will consist/consists of:

Extract and process sand and gravel at Maplestown, Co. Carlow. We are also seeking permission to retain a new entrance and existing sand and gravel pit on site. An EIS is submitted as part of this application.

Subsequently, the planning authority on the 4th December 2019 refused permission for an application for the importation of material for restoration of the site (**19/403**).

The reason for refusal is as follows:

The site of the proposed development comprises an operational quarry development the subject of previous permission reg ref. 06/842 (An Bord Pleanála Ref. PL01.221741), the appropriate period of which expired on 24th July 2012. For these reasons, the underlying quarry development comprising the site on which the proposed development would take place is not authorised. Accordingly, the proposed development would represent works to an unauthorised development, would consolidate and facilitate this unauthorised development, and therefore to permit the proposed development would set an undesirable precedent and would not be appropriate having regard to the proper planning and sustainable development of the area.

In a determination under Section 261A(2)(a)(ii) of the Act, the Board determined that there were no significant impact from the works prior to the granting of planning permission and that the details within the submitted EIS satisfied the requirements of the Habitats Directive (**01.QV.0147**).

In a determination under Section 261A(2)(a)(ii) of the Act, the Board determined that works to a quarry would not have required an appropriate assessment (**01.QV.0150**). This quarry site is located about 500 metres east of the site in question.

6.0 Policy Context

6.1. Development Plan

The appeal site is in open countryside without a specific designation. There are no recorded ancient monuments or protected structures within or particularly close to the site.

6.2. Natural Heritage Designations

The site is in open countryside with no specific designations. The nearest designated EU site is the Rivers Barrow and Nore SAC – the closest part of the complex is the Lerr River tributary, about 4 km to the west, as it flows south from Castledermot. This SAC was advertised as parts of tranche 2 (July 1999) and (June 2003).

7.0 The Application for Leave to apply for Substitute Consent

The application was submitted on behalf of Mr. Mark Phelan of Maplestown, the owner of the site. It provides an overview of the history of the site and states that the current owner purchased the lands on the 10th of April 2019, on the understanding that the lands had a 10 year permission. The planning authority have advised that this is not the case, as no specific condition was attached to the Board decision (it is submitted that the original application was for a 10 year permission). An application was submitted for remediation of the quarry in 2019 (**19/403**) on foot of condition 17 of the Board decision (requiring restoration), but this was refused by the planning authority. The applicant sets out a request following the requirements of S.177C and S.177D. For convenience I will address the specific points made in the main assessment below.

8.0 Assessment

- 8.1. The applicant has requested that the Board grant leave to apply for Substitute Consent. The grounds for the Board to make such a decision are set out in S.177D of the 2000 Act, as amended (I have paraphrased and edited the relevant sections for clarity):

177D.— (1) 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—

(a) that a permission granted for development by a planning authority or the Board is in breach of law, invalid or otherwise defective in a material respect whether by reason of a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union, or otherwise, by reason of—

(i) any matter contained in or omitted from the application for the permission including omission of an environmental impact statement or a Natura impact statement or both of those statements as the case may be, or inadequacy of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or

(ii) any error of fact or law or procedural error,

or

(b)

(2) In considering whether exceptional 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. 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.

8.2. Overview

The site in question is an active sand and gravel quarry. I observed a number of heavy vehicles accessing the site and leaving loaded with material during my site visit. Such works are not authorised by existing permissions. I did not visit the inner working area, but there are photographs on the previous history files indicating the

extent and nature of the works on site at that time and I am satisfied from my observations that the works have not gone beyond the permitted physical extent. While I will go over all the key questions as set out under 177D (Part XA) of the Act, I consider the most important question to be whether exceptional circumstances exist to permit the opportunity for regularisation of the development. With regard to S.177D(1), the Board shall only grant leave to apply for substitute consent under section 177C if it is satisfied that an EIA, a determination as to whether EIA is required, or AA was required. In this regard, I note that in two previous files these questions were addressed in the negative. I would note that an EIS was submitted with the original permission, and that the question of whether an AA was required was addressed in 01.QV.0147. I note that the statutory and legal context for addressing both EIA and AA have changed significantly since those dates. Notwithstanding this, I do not consider that there are any fundamental changes relating to the quarry at present. I consider that this requirement has been met.

8.3. In regard to the other criteria under 177D(1):

that a permission granted for development by a planning authority or the Board is in breach of law, invalid or otherwise defective in a material respect

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.

With respect to 177D(1), the original permission was granted on foot of an EIA that was carried out and assessed by the planning authority and ABP on the appeal. It was decided in a subsequent S.261 submission that Appropriate Assessment was not required. There is no active permission for the site, and no decisions by a court that a permission is defective by way of any matter contained in respect of an EIS or NIS, or that there have been any errors of fact in law or procedural errors. The basis of this application is that an error was made by the site owner in allowing the permission to run out of time. I consider it an arguable case that such an error constitutes 'exceptional circumstances'.

I am therefore satisfied that the case generally fulfils the criteria set out in S.177D(1).

- 8.4. S.177D(2) sets out a number of considerations for the Board in such cases.

S.177D(b)(2)(a): whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;

Although the original permission is not operable, there is no evidence on file or observable from my site visit that there is a breach of the extent of the works or limits set out in the original EIA. The issue of the need for Appropriate Assessment was addressed in a separate application. The quarry is within the catchment of the Barrow River, which has several EU designated habitats, but the Board ruled at the time that due to the separation distance and the nature of the proposed development, no NIS (Stage II AA) was required. There has been no change of circumstances to consider that this should be reassessed. I note that the small stream that runs south of the quarry appears to be very eutrophic, but I am satisfied from my observations that this is likely the result of upstream agricultural pollution and is not connected with the operation of the quarry as there is no functional connection between the works and the quarry and the eutrophication continues upstream from the quarry site.

I would therefore conclude that regularisation of this development would not circumvent the purpose and objectives of either Directive.

- 8.5. **S.177D(b)(2)(b):** whether the applicant had or could reasonably have had a belief that the development was not unauthorised;

The core of the submission is that the original permission granted for the Board was intended as a 10 year permission. It is not described as such on the site notice, and there is no condition to this end in the Board's decision. However, it is described as such in the Inspectors Report - the first paragraph of section 3 (page 2) of the report clearly states that the application is for 12 years including restoration. The Inspector

did not make further reference to this, and it is not referred to in the Order or Direction. It is argued by the applicant that from the context of the Report, the Direction, and the subsequent decision, that it seems to have been a simple oversight that the final decision did not clearly specify that it was for 10 years, 12 years in total including restoration.

The applicant goes into some detail in his submission, claiming that the quarry was bought in good faith and he was advised at the time that it was a 10 year permission. It is also noted that no enforcement action was taken at the time by the planning authority.

From the evidence on file, I would conclude that the question of whether it was the intention of the Board at the time to grant for 10 years in total is unclear. It is also questionable from the final decision as to whether there is any legal basis to argue that the permission was for 10 years, as this is neither set out on the application notice, nor mentioned in the final decision. But the EIS does set out a general 10 year lifetime for the quarry, so I accept that this could have been a genuine and reasonable error by the site owners, and it does not appear to have resulted in environmental or amenity impacts above and beyond those anticipated in the application and EIA. I would note that an extension and alteration to the permission would be required to allow for the site restoration as anticipated in the permission.

I would therefore consider that there are grounds for giving the benefit of the doubt to the site owner/occupier in order to allow for the site to be completed and restored as anticipated in the original submission.

- 8.6. **S.177D(b)(2)(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.

I am satisfied from my site visit, the history files (including previous inspectors reports and Board decisions) and from the information submitted that the works that have taken place are in accordance with the original EIS and that no NIS is required, and as such that the provision for public participation would not be substantially impaired by granting leave to apply for substitute consent.

- 8.7. **S.177D(b)(2)(e):** the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;

The quarry is still in operation and is partially visible from public areas. The original application envisaged a full landscaping and restoration scheme. Details of this were not agreed in accordance with the conditions of the permission and the planning authority has refused an application for remediation on the basis that the works are unauthorised. I would consider that there is a justifiable case that granting leave for a substitute consent application would allow for the reduction of the impact on the environment – in particular visual impacts. I do not consider that it would either remediate or impact on the integrity of a European Site.

- 8.8. **S.177D(b)(2)(f):** whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;

As noted above, the quarry is currently operation without the benefit of planning permission (notwithstanding the ambiguity over the extent of planning permission as I have discussed above). I would note that the overall works appear to have been carried out generally in accordance with the permission granted and the original EIA. I would therefore not consider this an impediment to granting leave to apply for a substitute consent, but I would note that such an application should not facilitate ongoing unauthorised development. An application for substitute consent should only be permitted if it is clearly demonstrated that ongoing works have ceased at the time of the application.

- 8.9. **S.177D(b)(2)(g):** such other matters as the Board considers relevant.

I do not consider that there are other relevant matters to consider. None have been raised by the planning authority or in other submissions.

9.0 Recommendation

I recommend that the Board gives the applicant leave to apply for substitute consent under S.177C(2)b of the 2000 Act, as amended.

10.0 Reasons and Considerations

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 177C and section 177D of the Planning and Development Act, as amended, the planning history of the site, all the documentation on file, and the report of the Planning Inspector, the Board is satisfied that:

- The development is one where an Environmental Impact Assessment and Appropriate Assessment are required, and were carried out satisfactorily and no additional works have taken place that would require amendment or reconsideration of the EIA or AA.
- The permission granted for permission for a quarry under number PL01.221741, subject to 25 no. conditions was sufficiently ambiguous that the owner had reasonable grounds for considering that the operations could extend beyond 10 years from the grant of permission, and that this constitutes exceptional circumstances to allow leave to apply for substitute consent.

It is furthermore considered that exceptional circumstances exist by reference, in particular,

- to the fact that the regularisation of the development would not circumvent the purpose or objectives of the Environmental Impact Assessment Directive or of the Habitats Directive,
- that the applicant could reasonably have had a belief that the development was not unauthorised,
- that the ability to carry out an Environmental Impact Assessment and Appropriate Assessment, and provide for public participation in such assessments, has not been substantially impaired.

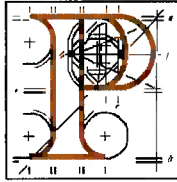
The Board decided that it would be appropriate to consider an application for the regularisation of the development by means of an application for substitute consent.

Philip Davis

Planning Inspector

16th November 2020

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2006

Carlow County

Planning Register Reference Number: 06/842

An Bord Pleanála Reference Number: PL 01.221741

APPEAL by John and Catriona O'Reilly and others care of Broadstone, Rathvilly, County Carlow against the decision made on the 12th day of January, 2007 by Carlow County Council to grant subject to conditions a permission to Sancom Limited care of Essgee Consultants of 1 Southern Gardens, Kilkenny Road, Carlow in accordance with plans and particulars lodged with the said Council.

PROPOSED DEVELOPMENT: Extract and process sand and gravel and retain a new entrance and existing sand and gravel pit on site at Maplestown, County Carlow.

DECISION

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions 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 the policies and objectives of the development plan for the area, 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, the nature of the material, being a tied and fixed resource on the site, and the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, 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, would be acceptable in terms of traffic safety and convenience and would not be contrary to 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 further plans and particulars received by the planning authority on the 8th day of December, 2006, except as may otherwise be required in order to comply with the following conditions. The mitigation measures contained in the Environmental Impact Statement, and other amended particulars submitted with the planning application, shall be implemented in full by the developer, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity and the proper planning and sustainable development of the area.

2. No extraction or processing activities shall be carried out within 100 metres of adjoining residential properties. Prior to commencement of development, the extent of extraction activities and a revised phasing plan for the development in this regard shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of residential amenity.

3. All HGV traffic shall access/exit the site from the north along the L-8097 only and shall not traverse the L-8097 south of the site entrance.

Reason: In the interest of traffic safety.

4. The design and layout of the proposed site entrance shall be in accordance with the detailed requirements of the planning authority for such works. Queuing of vehicles outside the site shall not be permitted and sufficient parking for all vehicle types shall be provided on site.

Reason: In the interest of traffic safety and residential amenity.

5. The quarry, and all activities occurring therein, shall only operate between 0700 hours and 1800 hours, Monday to Friday and between 0700 hours and 1400 hours on Saturdays. No activity shall take place outside these hours or on Sundays or Bank or Public Holidays. Extraction of sand and gravel shall be limited to between 0800 hours and 1800 hours, Monday to Friday inclusive and between 0800 hours and 1400 hours on Saturdays.

Reason: In order to protect the residential amenities of nearby properties.

6. (1) Noise levels attributable to the operation of the entire quarry complex, when measured at the nearest noise sensitive locations, shall not exceed 55 dB(A) (60 minute L_{Aeq}) during permitted operating hours and shall not exceed 45 dB(A) (15 minute L_{Aeq}) at any other time.
- (2) Notwithstanding (1) above, noise levels attributable to temporary works required in the construction of screening mounds around the site shall not exceed 70dB(A) during permitted operating hours. A timeframe for the completion of such works shall be agreed in writing with the planning authority prior to the commencement of activity on the site.
- (3) A quarterly noise survey and assessment programme shall be undertaken to assess the impact of noise emissions arising from the operation of the entire quarry complex. The scope and methodology of this survey and assessment programme shall be submitted to the planning authority for written agreement prior to commencement of any works on the site. The results obtained from the programme shall be submitted quarterly for the written agreement of the planning authority. The developer shall carry out any amendments to the programme required by the planning authority following this quarterly review.

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

7. The final extraction depth shall, in no part of the site, be less than one metre above the level of the water table. Prior to commencement of development, detailed site investigations shall be undertaken on the site to determine the depth of the water table and the final extraction depth shall be agreed in writing with the planning authority. A monitoring scheme shall be submitted to and agreed with the planning authority to measure the groundwater levels at the lowest part of the site.

Reason: To prevent pollution of groundwater.

8. A Groundwater Monitoring Programme shall be implemented for the protection of groundwater. Groundwater monitoring wells shall be installed around the boundary of the site, the number and locations of which shall be agreed in writing with the planning authority prior to commencement of development. Water levels and quality shall be recorded every month and a log of the results shall be submitted to the planning authority for written agreement on a quarterly basis. Where activities on the subject site are found to adversely affect local water supplies, replacement water supplies shall be provided to the written satisfaction of the planning authority.

Reason: In the interest of proper planning and sustainable development and to monitor groundwater in the vicinity of the site.

9. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services. All aspects of the stormwater management system shall be in place, as confirmed in writing by the planning authority, prior to any quarrying works occurring on the site.

Reason: In the interest of the protection of water quality.

10. Prior to commencement of development, details of the settlement ponds and all associated structures shall be submitted to and agreed in writing with the planning authority. Regard shall be had to Appendix D of the Environmental Management Guidelines – Environmental Management in the Extractive Industry (Non-Scheduled Minerals), EPA 2006. Such development shall be carried out in accordance with an appropriate Construction Quality Assurance (QA) Plan and certification of satisfactory completion of these installations by appropriately qualified experts shall be submitted to the planning authority prior to the commencement of quarrying works on the site.

Reason: In the interest of the protection of water quality.

11. (1) Total dust deposition (soluble and insoluble) arising from the operation of the entire quarry complex, based on TA Luft Air Quality Standard, shall not exceed 350 milligrams/m²/day (when averaged over a 30 day period) at any position along the boundary of the facility. Dust suppression measures shall be carried out on an ongoing basis within the quarry.
- (2) No activity within the entire quarry operation shall give rise to a point emission of particulate matter exceeding 50 mg/m³.
- (3) A monthly survey and monitoring programme of dust and particulate emissions shall be undertaken to provide for compliance with these limits. Details of this programme, including the location of dust monitoring stations, and details of dust suppression measures to be carried out within the entire quarry complex, shall be submitted for the written agreement of the planning authority prior to commencement of any quarrying works on the site. This programme shall include an annual review of all dust monitoring data, to be undertaken by a competent person, the results of which shall be submitted to the planning authority within two weeks of completion for its written agreement. The developer shall carry out any amendments to the programme required by the planning authority following this annual review.

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

12. The developer shall provide all landowners within 500 metres of the entire quarry complex with appropriate contact details which may be used in the event that any such landowner wishes to inform the developer of any incident or otherwise to make a complaint in respect of an aspect of quarry operation.

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

13. The wheels and undersides of all vehicles transporting materials from the quarry site shall, prior to the exit of such vehicles onto the haul road, be washed in a wheel washing facility which shall be constructed, installed and operated in accordance with the requirements of the planning authority. The access road between the public road edge and the wheelwash facility shall be surfaced in permanent durable material, details of which shall be agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of amenity and of traffic safety and convenience.

14. Details of landscaping and boundary treatment in respect of the entire quarry complex shall be subject to the written agreement of the planning authority prior to commencement of development. This shall include the timeframe, specific location and final form and height of proposed screening berms, details of all planting proposed on screen berms, details of the location and height of stockpiles, details of the ongoing care and management of such planting, details of a phased programme of landscaping within the quarry and details of an adequate barrier to prevent unrestricted access to the top of the quarry face from adjacent lands. The existing hedgerow bordering the site shall be carefully retained.

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

15. All trees, shrubs, hedgerows and groups of trees for retention within and bounding the site shall be enclosed within stout fencing, details of which shall be agreed with the planning authority. The fencing shall enclose at least the area covered by the spread of the branches, shall be erected before any site works begin and shall be maintained for the duration of activities on the site.

Reason: To ensure the protection of habitats within the area.

16. A buffer zone, a minimum of 10 metres wide, bounding the stream to the south of the site, shall be fenced off and appropriately landscaped. This area shall be maintained free from development and site activity. In particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil or chemicals, or lighting of fires within this area.

Reason: To ensure the protection of habitats within the area.

17. Restoration operations shall be carried out in a progressive manner throughout the life of the proposed development. One year prior to the cessation of extraction operations, a full final landscaping/restoration scheme shall be agreed with the planning authority and shall be implemented within two years of the cessation of extraction activities. No materials shall be imported onto the site for the purpose of site restoration unless a further grant of permission has been obtained.

Reason: In the interest of public amenity, public safety and the proper planning and sustainable development of the area.

18. All external lighting shall be of sodium type. All lights shall be suitably shaded to prevent glare or light spillage outside the site.

Reason: To safeguard the amenities of the area.

19. The developer shall facilitate the planning authority in preserving, recording or otherwise protecting archaeological materials or features that may exist within the site. In this regard, the developer shall carry out the following prior to commencement of development:

- (a) the developer is required to engage the services of a suitably qualified archaeologist to carry out an archaeological assessment of the development site,
- (b) the archaeologist shall carry out any relevant documentary and historical research,
- (c) the archaeologist shall carry out a geophysical and topographical survey of the development area,
- (d) having reviewed the results of the geophysical and topographical survey in light of the development plans the archaeologist shall, in consultation with the Heritage and Planning Division of the Department of Environment, Heritage and Local Government further assess the proposed development area by means of archaeological test trenching (licensed under the National Monuments Act, 1930-1994), and
- (e) having completed the works, the archaeologist shall submit a written report to the planning authority and to the Heritage and Planning Division prior to commencement of development. Where archaeological material/features are shown to be present, preservation in site, preservation by record (excavation) or monitoring may be required.

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.

20. Within two months of the date of this order, the developer shall submit to and for the written agreement of the planning authority a proposal for an Environmental Management System (EMS). This shall include provisions for the following:
- (a) Proposals for the suppression of on-site noise.
 - (b) Proposals for the suppression of dust on-site and on the access roads and haul road.
 - (c) Measures to minimise dust emissions from laden HGV's traversing the adjoining road network, (for example covered loads).
 - (d) Measures to reduce environmental risks associated with re-fuelling, greasing, and other activities within the site. Such measures may include, but are not restricted to, the use of spillage mats and catch trays.
 - (e) Details of safety measures for the land above the quarry, to include warning signs and stock proof fencing.
 - (f) Management of all landscaping, with particular reference to enhancing the ecological value of the woodland/grassland, on the bunds and buffer areas.
 - (g) Monitoring of ground and surface water quality, levels and discharges, and measures to be adopted in the event of a water supply being disrupted by the quarry development.
 - (h) Proposals for the provision of unhindered access by officials of the planning authority or its authorised agents to carry out inspections, sampling, monitoring or other investigations as deemed necessary.
 - (i) Details of the maintenance and cleaning of settlement lagoons and proposals for the treatment of removed silt to prevent subsequent dispersal.
 - (j) Details of the instrumentation, means to be used and the method of measurement of noise, vibration, and dust emission.
 - (k) Full details of site manager, contact numbers (including out of hours), and public information signs on the entrance to the facility.

All actions shall be implemented within six months of the date of agreement with the planning authority.

In the event of "Trigger Levels" being reached or exceeded for any of the specified monitoring parameters, including those referred to above and at condition numbers 6 and 11, the developer shall notify the planning authority without delay and shall carry out any remedial measures specified by the planning authority including, if necessary, cessation of works. The determination of appropriate "Trigger Levels" in relation to the conditions of this permission shall form part of the agreed EMS.

Reason: In the interest of safeguarding local amenities and the protection of public health.

21. On an annual basis (by the end of January each year) for the lifetime of the facility, the developer shall submit to the planning authority five copies of an environmental audit. Independent environmental auditors approved by the planning authority shall carry out this audit. The audit shall be carried out at the expense of the developer and made available to the public. This audit shall contain:
- (a) an annual topographical survey carried out by an independent qualified surveyor agreed by the planning authority. This survey shall show all areas excavated and restored. On the basis of this, a full materials balance shall be provided to the planning authority,
 - (b) a full record of any breaches over the previous year for noise, dust, and water quality, and
 - (c) a written record of all complaints, including actions taken on each complaint.

In addition to this annual audit, the developer shall submit quarterly reports with full monitoring records of dust monitoring, noise monitoring, surface water quality monitoring and groundwater monitoring, details of such information to be agreed with the planning authority. Notwithstanding this requirement, all incidents where levels of noise or dust exceed agreed levels shall be notified to the planning authority within two working days. Incidents of surface or groundwater pollution, or incidents that may result in groundwater pollution, shall be notified to the planning authority without delay.

The annual audit and all other agreements to be reached between the developer and the planning authority, as required by way of the conditions in this permission, shall be in writing and copies of the audit and such agreements shall be made available for public inspection during normal office hours at the planning authority's offices, and at another agreed location in the broad vicinity of the site.

Reason: In the interest of residential amenity and to ensure a sustainable use of non-renewable resources.

22. Advance warning signs in relation to the development shall be erected at the developer's expense on the adjoining public road. Details relating to location and size of the signs shall be submitted to and agreed with the planning authority prior to commencement of development.

Reason: In the interest of traffic safety.

23. Programmes shall be implemented for the minimisation, reuse, recovery and recycling of waste in accordance with the Waste Management Act, 1996 and Regulations made thereunder. The programmes shall be submitted for the consent of the planning authority within one month of commencement of on-site operations. No burning shall occur on site.

Reason: In the interest of proper planning and sustainable development.

24. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or other security to secure the reinstatement, landscaping and final restoration and making safe of the site in accordance with the plans and particulars and the terms and conditions set out in this permission, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of the said works. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to the Board for determination.

Reason: To ensure the satisfactory completion of the development.

25. 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 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.

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.

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

Dated this day of 2007.

Recorded
in
Drafting
7/10/19.

William J. Smyth BE, LLB, MBA, Dip. EIA, C.Eng FIEI
Planning & Strategic Management Consultant to the Extractive Industries
114 Wesbury, Stillorgan, Co. Dublin
E-mail: strategicplanning@mail.com Tel: +353-(0)87-9149749

**Administrative Officer,
An Bord Pleanála,
(Carlow County Section),
64 Marlboro Street,
Dublin 1**

30th September 2019

Re: Term relating to PL01.221741 extractive development at Maplestown, Co. Carlow

Dear Sir or Madam,

Introduction

I write in relation to the above development which is leased by my client, Doyle Concrete (Hugginstown) Co. Kilkenny, from the landowner, Mark Phelan, Maplestown, Rathvilly, Co. Carlow. A query has arisen with regard to the term to be applied to the above development.

The original decision to grant by Carlow County Council was appealed unsuccessfully by a third party to An Bord Pleanála, who granted permission with full revision of conditions on 25th July 2007, see <http://40.127.167.5/casenum/221741.htm>.

Duration

The order of An Bord Pleanála does not contain any condition with regard to the term of the permission, having deleted a condition applied by Carlow County Council limiting the development to 6 years which was clearly at odds with the application.

Having inspected the file at Carlow County Council, I regret that the EIS was not available, but the EIS Non-Technical Summary was clear that output estimates were given that clearly would require a minimum of 10 years plus 2 years for restoration thereafter.

Thus, as Condition 1 requires compliance with the plans and particulars of the Section 34 application, as made to Carlow County Council (PA reference 06/842), there is no fixed term applied for, nor is there strictly one inferable from the EIS (based on the EIS NTS). In the Board's Inspector's Report, see link above at Section 3.0 end of first paragraph, the Inspector deduces from estimated output that a total of 12 years permission is required.

However, the Inspector does not state a term amongst the revised conditions to be issued with the decision to grant, nor did the Board itself add any condition relating to term.

Delay in Completion

All development to date has been within the authorised area. The financial terms of the permission have been complied with, including roadworks benefitting the development. However, further extraction, site clearance and restoration works remain to be undertaken at this date, which will require a number of years to complete.

The permission was granted in 2007 when market demand was at an all-time high, but this was quickly followed in 2008 by a near collapse in demand which has only picked up in the last few years. Therefore, the estimated outputs were not realised for several years, and the development is behind schedule for completion when gauges against the estimated duration given in the EIS NTS. This is common across many forms of development for this time period.

The site has been completely developed and extraction is currently stopped pending this clarification. A further small amount of gravel will become available for extraction when the ESB relocates poles in the coming week, leaving several mounds available which would be incongruous with the ongoing restoration if not removed. Substantial stockpiles of aggregates remain on the site.

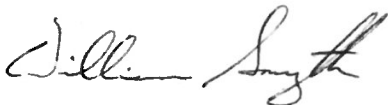
Clarification Requested

It is not completely clear whether (i) the permission provides for an indefinite period to continue to extract aggregates until the site is exhausted and then a further period of two years is available for restoration, or (ii) a total of twelve years is implicit and binding under Condition 1 PL01.221741 (the site would currently be in the grace period of 108 days provided by *Browne v Kerry County Council* [IEHC 552]), or (iii) in the absence of a term being applied by An Bord Pleanála, the default appropriate period of 5 years applies.

Having discussed this issue with Carlow County Council, it was decided that I should write to An Bord Pleanála as the decision maker in this case and seek clarification.

I look forward to your response at your earliest possible convenience as I am keen that my client does not wind up in an unauthorised situation.

Yours sincerely,

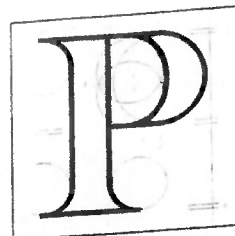


William Smyth

c.c. Carlow County Council Planning Office

AN BORD PLEANÁLA	
04 OCT 2019	
LTR DATED _____	FROM _____
LDG. _____	
ABP. _____	

Your Ref: PL 01.221741
P.A. Ref: 06/842
Your Ref: Doyle Concrete (Hugginstown)



An
Bord
Pleanála

William J. Smyth,
Planning and Strategic Management Consultant,
to the Extractive Industry,
114 Wesbury,
Stillorgan,
Co. Dublin.

1st November, 2019

Appeal re: Extract and process sand and gravel and retain a new entrance and existing sand and gravel pit on site at Maplestown, County Carlow.

Dear Mr. Smyth,

I have been asked by An Bord Pleanála to refer further to your letter received on the 4th October, 2019.

In relation to the matter set out in your letter, you are correct in stating that no fixed term was applied for when the planning application was submitted to Carlow County Council.

Please be advised that the duration of a permission is normally five years however, if permission is granted for more than five years it is specified as a condition in the Board's Order.

Once the Board has made its decision on an appeal, its jurisdiction in the matter is spent and it has no power to review its decision. The Board does not comment further or elaborate beyond its decision as set out in the Order and has no further role in law in respect of a decided case.

T002833

Tel	(01) 858 8100
Glas Aithe	LoCall 1890 275175
Facs	Fax (01) 872 2684
Láithreán Gréasáin	Website www.pleanala.ie
Roinnphost	Email bord@pleanala.ie




84 Sraid Meoilbhríde

64 Marlborough Street
Dublin 1

Please note that powers of enforcement, interpretation and compliance with the terms of the Board Order are entirely matters for the planning authority, in this instance, Carlow County Council. The Board itself has no powers of enforcement. In this regard, the Board cannot intervene in respect of a decided case as this would be outside its remit.

I hope the above is of some help and it is regretted that the Board cannot be of further assistance to you in this matter.

Yours sincerely,


Brid McManus
Executive Officer

CARLOW COUNTY COUNCIL
PLANNING AND DEVELOPMENT ACTS 2000 (AS AMENDED)
NOTIFICATION OF DECISION TO REFUSE

TO: M. Smith Haslage & Sons Ltd
C/o Jim Dowdall
Enviroguide Consulting
Unit 3D Core C Block 71
The Plaza
Park West
Dublin D12F9TN

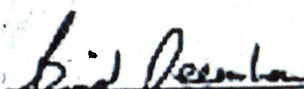
Planning Register Number: 19/603
Valid Application Received: 10/10/2019
Further Information Received Date:

In pursuance of the powers conferred upon them by the above-mentioned Acts, Carlow County Council has by Order dated 4/12/19 decided to **REFUSE TO GRANT PERMISSION** for development of land, namely:-

the importation of clean topsoil and subsoil into the subject site of 13.01 hectares at Maplestown, Rathvilly, Co. Carlow, in order that the site can be restored in compliance with condition 17 of the grant of permission reference number 221741 from An Bord Pleanála. It is proposed to remediate approximately 8.44 ha of the site and it is estimated that this will require approximately 122,218 cubic metres of greenfield, inert soil and stone. This will be carried out over an eight year period with no more than 24,900 tonnes of soil being imported in any one year. The application includes the installation of a weigh bridge, a temporary site office and canteen, wheel wash, portaloo and carry out all ancillary site works. The application relates to an activity requiring a Waste Facility Permit AT Maplestown, Rathvilly, Co. Carlow IN ACCORDANCE WITH THE PLANS SUBMITTED WITH THE APPLICATION.

For the 6 reasons set out in the Schedule hereto.

Signed on behalf of CARLOW COUNTY COUNCIL


for SENIOR EXECUTIVE OFFICER

Date: 4/12/19

An appeal against a decision of a Planning Authority maybe made to An Bord Pleanála.

THE APPLICANT FOR PERMISSION OR ANY OTHER PERSON may appeal within four weeks beginning on the date of the making of the decision by the Planning Authority. Appeals should be addressed to An Bord Pleanála, 64 Marlborough Street, Dublin 1, and be accompanied by a fee of:-

- (a) €4,500 (appeal against a decision of a planning authority on a planning application relating to commercial development, made by the person by whom the planning application was made, where the application includes the retention of development. (€9,000 if EIS or NES involved)
- (b) €1,500 (appeal against a decision of a planning authority on a planning application relating to commercial development, made by the person by whom the planning application was made, other than an appeal mentioned at (a) (€3,000 if EIS or NES involved)
- (c) €660 (in the case of an appeal made by the person by whom the planning application was made, where the application includes the retention of development other than an appeal mentioned at (a) or (b))
- (d) €220 (appeal other than an appeal mentioned at (a), (b) or (c))
- (e) €50 for an oral hearing, submissions or observations.

Appeals submitted without the appropriate fee will be invalid. An appeal by the applicant for permission should be accompanied by this form. In the case of an appeal by any other person, the name of the applicant, particulars of the proposed development or of the structure proposed to be retained and the date of the decision should be stated.

Reasons for Refusal

1. The site of the proposed development comprises an operational quarry development the subject of previous permission reg. ref. 06/842 (An Bord Pleanála Ref. PL 01.221741), the appropriate period of which expired on 24th July 2012. For these reasons, the underlying quarry development comprising the site on which the proposed development would take place is not authorised. Accordingly, the proposed development would represent works to an unauthorised development, would consolidate and facilitate this unauthorised development, and therefore to permit the proposed development would set an undesirable precedent and would not be appropriate having regard to the proper planning and sustainable development of the area.
2. Permission reg. ref. 06/842 (An Bord Pleanála Ref. PL 01.221741), required restoration operations to be carried out in a progressive manner throughout the life of the quarry development by using stockpiles of excavated topsoil generated from phased extraction activities. The importation of material to restore the site was not proposed in the approved plans and particulars for reg. ref. 06/842 (An Bord Pleanála Ref. PL 01.221741), nor was it assessed by the Planning Authority or An Bord Pleanála. The proposed development, comprising the importation of material on the site over an 8 year period to restore the majority of the existing extracted area of the quarry and towards the end of its stated lifetime, does not constitute progressive restoration, would materially contravene condition No. 17 of reg. Ref. 06/842 (An Bord Pleanála Ref. PL 01.221741), would be contrary to Section 3.6 in the DEHLG 'Quarries and Ancillary Activities - Guidelines for Planning Authorities (2004)' which requires that successful restoration steps must be taken at every stage (i.e. design, operation, decommissioning) to ensure that restoration is integrated into the process, would, if permitted, set an undesirable precedent to further such development, and would therefore be contrary to the proper planning and sustainable development of the area.
3. It is considered that the content of the planning application together with the submitted 'Planning and Environmental Report' is inadequate to enable the Planning Authority to make an informed decision regarding the requirement for a sub-threshold EIA pursuant to Class (b) in Paragraph 11 of Part 2 in Schedule 5 of the Planning and Development Regulations 2001 (as amended). Schedules 7 and 7A of the Planning and Development Regulations 2001 (as amended) with regard to screening for environmental impact assessment have not been adequately addressed and together with conflicting details presented regarding the duration of filling activities, traffic numbers, fill depths and absence of assessment of impacts on surface water drainage and potential impacts which may arise due to the presence of flood zones on the landholding negates the carrying out of a thorough assessment of the proposed development including an assessment of the likelihood of significant effects on the environment. To permit the proposed development in the absence of such information would present a risk of significant effects on the environment and would therefore be contrary to the proper planning and sustainable development of the area.

4. It has not been demonstrated due to the submission of insufficient information that the proposed development, individually or in combination with other plans or projects, would not result in potential significant effects on Natura 2000 Network sites, including the River Barrow and River Nore SAC. Having regard to the absence of such information, it is considered that to permit the proposed development would be contrary to the policy (Heritage – Policy 2) of the Carlow County Development Plan 2015-2021 which seeks to “*protect and maintain the favourable conservation status and conservation value of all natural heritage sites designated or proposed for designation in accordance with European and National legislation...and to promote the maintenance and as appropriate the achievement of favourable conservation status of protected habitats and species*”, would be contrary to Article 6(3) of the Habitats Directive, and would therefore be contrary to the proper planning and sustainable development of the area.
5. On the basis of the submitted plans and particulars there is a lack of details regarding proposed surface water drainage on the site, including proposed protective measures to safeguard groundwater and watercourses in the vicinity of the site. In the absence of this information, it is considered that to permit the proposed development would present a risk of pollution to groundwater and surface water, which would be prejudicial to the environment and to public health and would therefore not be in accordance with the proper planning and sustainable development of the area.
6. The northern and southern boundaries of the site are partly within potential flood risk areas. It has not been demonstrated due to the submission of insufficient information, in the form of a site specific flood risk assessment, that the proposed development would not give rise to displacement of flood waters potentially impacting on the amenities of adjoining properties and the ecological integrity of the area. The proposed development would therefore be contrary to the provisions (Heritage – Objective 4) of the Carlow County Development Plan 2015-2021 which seeks “*to ensure that floodplains and wetlands within the plan area are retained for their biodiversity and flood protection value*”, would be contrary to the DoEHL and OPW ‘Planning and Flood Risk Management Guidelines’ 2009, and would therefore be contrary to the proper planning and sustainable development of the area.