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AN BORD PLEANÁLA
LDG- _____
ABP- _____
09 FEB 2022
Fee: € _____ Type: _____
Time: _____ By: hand

An Bord Pleanala,
64 Marlborough Street,
Dublin 1
D01 V902

09th February 2022

Re. Case no. ABP-311893-21 Response to submission by Carlow County Council.

To whom it may concern,

The applicant acknowledges receipt of the submission made by Carlow County Council (CCC) in respect of the application for substitute consent for the Quarry at Maplestown, Co. Carlow. The applicant notes CCC's observations and has instructed Enviroguide Consulting to respond on its behalf as follows.

CCC's submission refers to potential in-combination impacts quoting section 7.1.3 of the rNIS which states *'there are 5 other smaller quarries located approx. within a 1km radius of these sites, however there is no direct link between the Site and the other quarries'*. CCC's submission goes on to state that *'this fails to consider potential in-combination impacts that may have (cumulatively) affected water quality irrespective of the existence of a link(s) between the site and other quarries in the rural area'*. It is understood that each of the 5no. aforementioned quarries has received a grant of planning permission which is contingent upon ensuring that there will be no impact to water quality. In applying for planning permission each of these 5no. quarries would have been required to demonstrate that there was no potential for negative water quality impacts either alone or in-combination with other developments. As each quarry will not have alone or in-combination effects on water quality no potential exists for cumulative effects on water quality.

CCC's submission states that *'it should also be a requirement of the rEIAR and rNIS to consider construction phase impacts as relating to relevant infrastructure on site, including wheelwash, water supply, settlement lagoons, screening and washing plant etc.'*. The aforementioned infrastructure was constructed and installed prior to the expiry of the extant planning permission in 2012. The potential construction phase impacts were assessed under an Environmental Impact Statement provided in support of the 2006 application which resulted in a grant of permission in 2007 following an appeal to An Bord Pleanala. Construction activities did not form part of the unauthorised activities taking place after the expiry in 2012 of the extant planning permission and were therefore not considered in the AA Screening, rNIS and

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rEIAR. Potential operational phase impacts occurring since 2012 during the period of unauthorised activities are addressed in the AA Screening, rNIS and rEIAR.

The report received from Carlow Co. Co's Environment Department refers to an area for which substitute consent is being sought of 4.18ha. The applicant wishes to clarify that as per the recommendation of the Senior Engineer substitute consent is being sought for a total area of 15.21 ha as detailed in the site and newspaper notices and as shown in the revised drawings submitted to An Bord Pleanala on the 6th December 2021 in response to a request for additional information.

CCC's submission states that the Appropriate Assessment (AA) Screening, remedial Natura Impact Statement (rNIS) and remedial Environmental Impact Assessment Report (rEIAR) 'look at an area limited to 4.177ha', as stated above the AA Screening, rNIS and rEIAR consider the unauthorised activities that took place in the entire site area of 15.21ha after expiry of the extant planning permission in 2012.

The applicant notes CCC's recommendations regarding the restoration and remediation of the remainder of the quarry. The applicant is committed to ensuring compliant restoration of the former quarry and will commit to providing a comprehensive Closure, Restoration and Aftercare Management Plan (CRAMP) and obtaining all necessary consents required to facilitate the restoration of the quarry and will comply with any condition of substitute consent in that regard.

The applicant would be satisfied to accept the conditions as recommended by CCC

Yours sincerely,

Colin Lennon
Enviroguide Consulting (for and on behalf of the applicant)

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09th February 2022

Re. Case no. ABP-311893-21 Response to submission by Mr. Gerry Osborne.

To whom it may concern,

The applicant acknowledges receipt of the submission made by Mr. Gerry Osborne in respect of the application for substitute consent for the Quarry at Maplestown, Co. Carlow. The applicant notes the concerns raised in Mr. Osborne's submission and wishes to highlight a fundamental misunderstanding by Mr. Osborne of the nature of substitute consent. Mr. Osborne refers to his wife learning that *'Mark Phelan had applied for substitute consent to keep the Quarry Open'*. Substitute consent is a mechanism which seeks to bring into compliance that which has gone before and has no bearing on future activities at the Site. Any future activities would be the subject of a separate application for planning permission. In its application for substitute consent the applicant is not seeking permission to extend the active life of the quarry, it is seeking to regularise the planning status of the quarry. It is also noted that this application is for Substitute Consent and not leave to apply for Substitute Consent as stated by Mr. Osbourne in his submission.

The applicant has instructed Enviroguide Consulting to issue the following response addressing Mr. Osborne's observations.

Mr. Osborne's submission commences with a statement that his house and farmyard lie approximately 150m from the Quarry at Maplestown, Co. Carlow. Figure 1 provided in response to this claim demonstrates that Mr. Osborne's house and farmyard lie at their closest point 185m to the south of the redline boundary of the area for which substitute consent is being sought.

An enforcement notice under Section 154 of the Planning and Development Act 2000 was issued to the applicant by Carlow County Council on the 12th August 2021 requiring the applicant to:

- *'within 4 weeks from the date of this enforcement notice cease all activity at the quarry site and discontinue all site operations facilitating on site'*

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- *'all works specified under this notice shall be completed by close of business 5pm on 17th September 2021'*

Mr. Osborne contends that following issue of enforcement notice of the 12th August 2021 that activity continued at the Site beyond the 17th September 2021, however, no evidence to support this contention has been provided. The applicant has confirmed in writing in a letter appended to this submission that the enforcement notice was complied with in its entirety with no further activity occurring at the site beyond the 17th September 2021. It is understood at this time that no further action by the Planning Authority is pending.

Mr. Osborne refers to Inspector's Report ABP-306956-20 issued 16th November 2020 pursuant to an inspection of the site undertaken on the 16th June 2020. Mr. Osborne's submission states that the report refers to a conversation between the inspector and the applicant. In referring to the Inspector's report Mr. Osborne states that the inspector cited *'the only mitigating factor was that Mark Phelan told him that he purchased the quarry in 2019 assuming there was planning permission on it'*. The applicant has no recollection of having spoken with the Inspector and there is no reference in the Inspector's report to mitigating factors or to such a conversation having taken place. The Inspector's report presents a factual, measured, and systematic assessment addressing the question of whether the applicant should be granted leave to apply for substitute consent. The report ultimately recommends that the *'Board gives the applicant leave to apply for substitute consent under S.177C(2)b of the 2000 Act, as amended.'*

In his submission Mr. Osborne presents a series of points that in his view the applicant should have done or known, this is simply conjecture on behalf of Mr. Osborne as to what the applicant's actions should have been in this regard and should be dismissed as being wholly immaterial.

Mr. Osbornes submission refers to 25 conditions attached to a grant of planning permission made in July 2007 under planning register reference number 06/842 following appeal to An Bord Pleanala (ABP) under reference number PL 01.221741. It is Mr. Osbornes contention that none of the 25 conditions attached to the grant of planning permission have been complied with. No evidence is presented in support of this wholly inaccurate claim. The above referenced Inspector's report states that *'although the original permission is not operable, there is no evidence on file or observable from my site visit that this is a breach of the extent of the works or limits set out in the original EIA'*.

Mr. Osborne's submission refers to dust, visual and noise nuisance arising from the historical activities at the site, activities that may give rise to nuisance at the site have ceased. The submission presents a litany of perceived dust related impacts however it should be noted that Mr. Osborne's property lies to the south of the Quarry. In the unlikely event that windblown dust nuisance was emanating from the quarry Mr. Osborne's home and farmyard is unlikely to have been impacted except in the uncommon circumstance whereby the prevailing westerly

wind shifted to the North. Any future activities that may give rise to potential nuisance would be subject to a separate application for planning permission and lie entirely outside of the scope of the application for substitute consent currently before the board.

The submission made by Mr. Osborne asserts that the lands quarried extend to double that which were granted permission in the original ABP consent, this assertion is contradicted in the information provided in support of the application for substitute consent and in the Inspector's report which states that based on *'photographs on the previous history files indicating the extent and nature of the works on site at that time'* that the inspector was satisfied from its observations *'that the works have not gone beyond the permitted physical extent'*.

In summary it needs to be stated that Mr. Osborne's concerns arise from a lack of understanding of what this application constitutes and in addition he has made several unfounded allegations that are not supported by the facts.

Yours sincerely,

Colin Lennon
Enviroguide Consulting (for and on behalf of the applicant)

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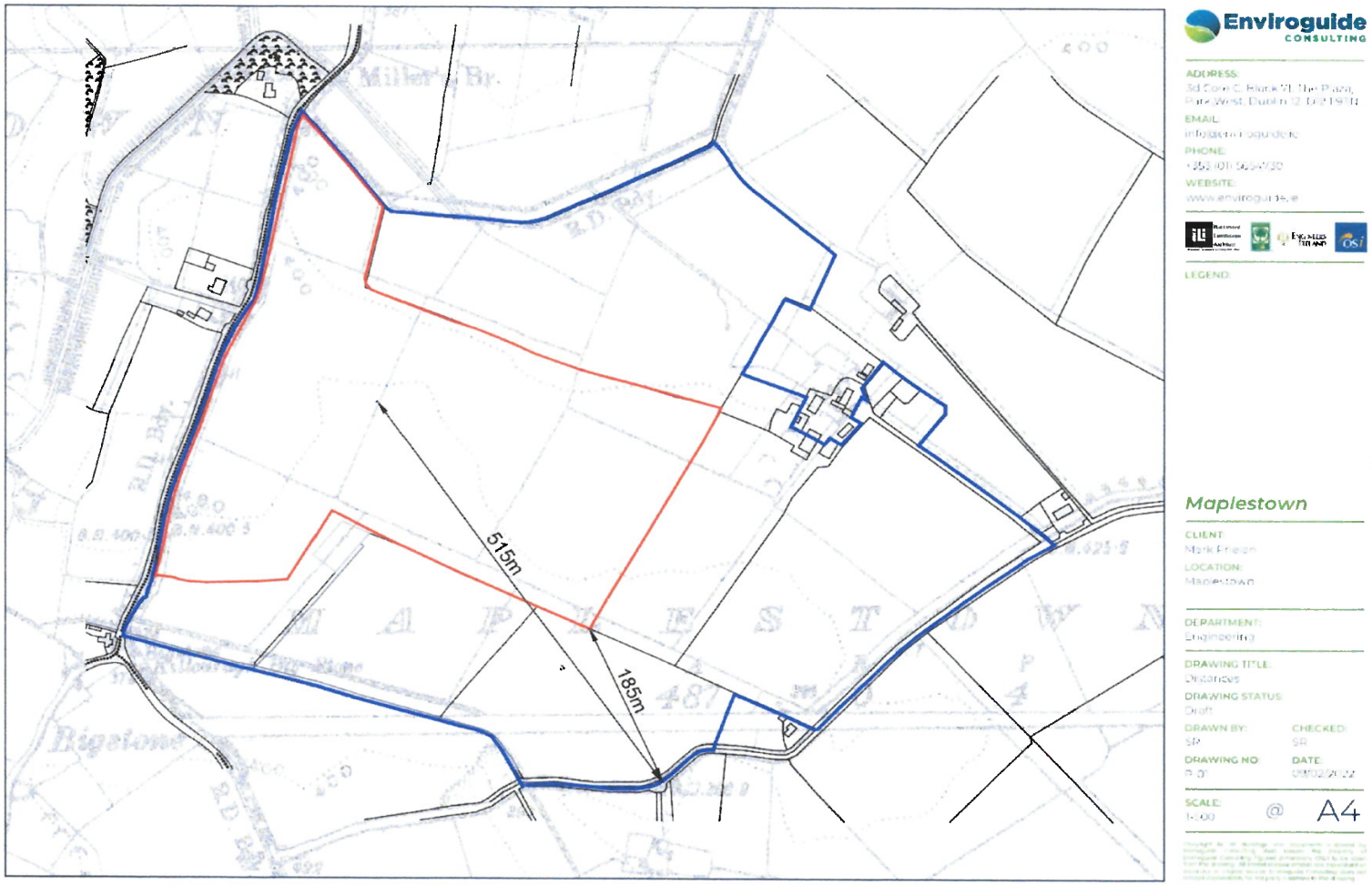

Figure 1 Drawing showing distance between Mr. Osborne's property and the closest point of the red line boundary of the area for which substitute consent is being sough

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Rathvilly,
Co. Carlow.

08th February 2022

Re. Case no. ABP-311893-21 Response to submission by Mr. Gerry Osborne.

To whom it may concern,

An enforcement notice under Section 154 of the Planning and Development Act 2000 was issued by Carlow County Council on the 12th August 2021 requiring:

- *'within 4 weeks from the date of this enforcement notice cease all activity at the quarry site and discontinue all site operations facilitating on site'*
- *'all works specified under this notice shall be completed by close of business 5pm on 17th September 2021'*

I hereby wish to confirm that the requirements of the above referenced enforcement notice have been complied with in full, all activities had ceased by 5pm on the 17th September 2021.

Yours sincerely,

Mark Phelan

Mark Phelan

(The applicant)

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