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CARLOW COUNTY COUNCIL

Oifigí an Chontae,  
Bóthar Átha Í,  
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County Buildings,  
Athy Road,  
Carlow, R93E7R7

T: 059 9170300

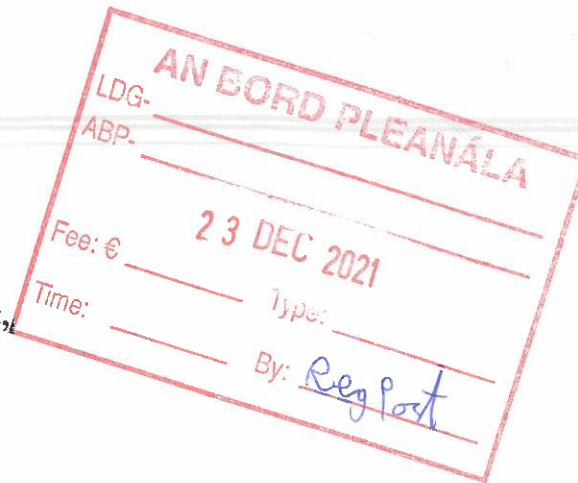
E: See [carlow.ie/contact-us](http://carlow.ie/contact-us)

W: [carlow.ie](http://carlow.ie)

*2nd* December 2021.

**Registered Post**

**Ms. Mary Tucker,  
An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1,  
D01 V902.**



**ABP Planning Reference:  
Development Address:**

**ABP-311893-21  
Maplestown, Co. Carlow.**

Dear Ms. Tucker,

I wish to acknowledge your correspondence in relation to the above dated 26<sup>th</sup> November 2021 and have attached report from planning authority pursuant to Section 177I of the Planning and Development Act 200 (as amended).

Further to my email of the 16<sup>th</sup> December 2021, I have also attached copy of the Quarry file QY12/36 in relation to S261A.

If you have any further queries in relation to this matter, please contact Alison Scanlon at 059-9136229 or [planningdevman@carlowcoco.ie](mailto:planningdevman@carlowcoco.ie).

Yours sincerely,

  
**Alison Scanlon**  
**Administrative Officer**

## Alison Scanlon

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**From:** PlanningDevMan  
**Sent:** Thursday 16 December 2021 11:50  
**To:** Mary Tucker  
**Subject:** RE: ABP-311893-21  
**Attachments:** ABP-311893-21aADMINISTRATIVE RESPONSE.pdf

Mary,

Please note that I forwarded copies of the files for this application on the 2<sup>nd</sup> December. Having reviewed planners report, it has come to my attention that I forwarded the incorrect S261A Quarry file, QY12/18.

I will forward the correct S261 A file QY12/36 with copy of the submission next week.

Please refer this to your inspector.

Thanking you

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**From:** Mary Tucker <M.Tucker@pleanala.ie>  
**Sent:** Wednesday 1 December 2021 15:34  
**To:** PlanningDevMan <planningdevman@carlowcoco.ie>  
**Subject:** RE: ABP-311893-21

Hi Alison,

Please be advised that the appropriate period to submit the report in this instance is within 10 weeks of receipt by the planning authority of the application of substitute consent.

Regards,

Mary

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**From:** PlanningDevMan <planningdevman@carlowcoco.ie>  
**Sent:** Monday 29 November 2021 15:16  
**To:** Mary Tucker <M.Tucker@pleanala.ie>  
**Cc:** Fiona O'Neill <oneillf@carlowcoco.ie>; Brigid Deenihan <bdeenihan@carlowcoco.ie>  
**Subject:** FW: ABP-311893-21

Mary

Further to our conversation, can you clarify if ABP require this submission within 10 weeks or 3 weeks.

Hereunder is a link to the circular letter referenced in the letter from ABP ; in effect it indicates that the report for substitute consent on a quarry is 3 weeks and not 10 weeks for the planning report ([https://www.opr.ie/wp-content/uploads/2019/08/2013-S.261A\\_substitute-consent-Circular-PL8-13-1.pdf](https://www.opr.ie/wp-content/uploads/2019/08/2013-S.261A_substitute-consent-Circular-PL8-13-1.pdf).)

Given the current circumstances arising from planners affected by Covid and Bereavement Leave, it will not be possible to furnish report by today, if indeed the 3 week timeline applies, we will need an extension of time to make submission.



**PLANNING DEPARTMENT**

**Report of the Planning Authority  
Pursuant to Section 177I of the Planning and  
Development Act 2000 (as amended)**

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**Ref. No:** ABP-311893-21 (Application for Substitute Consent)

**Applicant:** Mr. Mark Phelan

**Development:** The development consists of the regularisation of sand and gravel extraction operations and associated ancillary development over an area of 15.21 hectares (ha) to include the extraction of mineral (sand and gravels) and processing activities, the loading of materials and the transportation of the extracted minerals from the site since the expiry of planning permission Reg. PL01.221741 in 2012. In addition, the regularisation of use and/or operation of existing welfare facilities, 3 no. settlement lagoons, one bunded fuel storage tank, a wheel wash and material handling equipment, processing equipment including washing/rinsing plant, a dry screener and the restoration of sections of the exhausted quarry as approved under planning permission ref. Reg. PL01.221741.

**Location:** Maplestown, Co. Carlow

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Notification received on 11/11/2021 from An Bord Pleanála regarding their receipt of an application for substitute consent under Section 177E of the Planning and Development Act 2000 (as amended), hereafter the Act. The notification includes a request from An Bord Pleanála for a report from the Planning Authority in accordance with Section 177I of the Act.

Section 177I sets out the following requirements in relation to the content of the report to be prepared by the Planning Authority:

*177I. - (1) No later than 10 weeks after receipt, under section 177E(5), by a planning authority of a copy of an application for substitute consent and a remedial environmental impact statement or a remedial Natura impact statement or both of those statements, as the case may be, and where section 177E(2A)(b) applies, an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, a planning authority shall submit a report to the Board and the Board shall consider the report.*

*(2) The report referred to in subsection (1) shall include the following:*

*(a) information relating to development (including development other than the development which is the subject of the application for consent) carried out on the site*

place post 03/07/08 without planning permission and appropriate assessment. The 5(a) Notice was the subject of an application for a review to An Bord Pleanála, who subsequently set aside the determination and decision of the Planning Authority, annulling the notice.

13/321: Extension of duration sought for permission reg. ref. 06/842 (PL01.221741). Returned Invalid.

19/312: Application to extend the duration of reg. ref. 06/842 (PL01.221741) returned invalid, as the application was not submitted prior to the expiration of the appropriate period of the permission i.e. expired on 24/07/12.

19/403: Permission refused for 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. There were 6 no. refusal reasons, as follows:

*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. PL01.221741), the appropriate period of which expired on 24<sup>th</sup> 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. PL01.221741), 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. PL01.221741), 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. PL01.221741), 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.*

### Invalid applications

PL19/384 and PL19/312.

### **Enforcement History**

UD 08/71 – Case Closed

UD 21/40: Enforcement Notice issued to cease all activity at the quarry site and discontinue all site operations facilitating same by 17/09/2021. Ongoing works at the quarry were considered in conjunction with there being no live permission in place, as previous permission reg. ref. 06/842 (PL01.221741) had expired on 24/07/12.

### **(c) information regarding the relevant provisions of the development plan and any local area plan as they affect the area of the site and the type of development concerned;**

#### Carlow County Development Plan 2015-2021

##### ***Section 3.5.7 Aggregate Resources, Mining and Extractive Industry***

*Carlow County Council recognises the importance of sand and gravel extractions in the economic life of the county and its importance as a valuable source of employment in parts of the county. However, it is also recognized that exploitation of deposits or mining (open cast or underground) can have significant environmental impacts on the amenities of surrounding areas. The Planning Authority will have regard to the provisions of the DoEHLG's "Quarries and Ancillary Activities; Guidelines for Planning Authorities" in the assessment and determination of development proposals.*

*In relation to mining, a new Minerals Development Bill is currently being drafted which will consolidate existing legislation and bring certain aspects up to date and in line with current best practice.*

*Whether it is a new quarry or an extension to an existing, Carlow County Council must determine the need for the development in terms of national importance and the impact of the development on the local economy whilst maintaining a satisfactory balance between the needs of the building industry and the need to protect the environment. The suitability of any extraction enterprise shall be assessed on the basis of the sensitivity of the local environment to such impacts, the scale of the development proposed and the capacity of the road network in the area to accommodate associated traffic.*

*The requirements to be submitted with planning applications are dealt with further in Chapter 11 of this Development Plan under Extractive Industries.*

##### **Section 3.5.7.1**

##### ***E.D. - Policy 13***

***It is the policy of Carlow County Council to:***

➤ *Provide for quarry and extractive development where it can be demonstrated that the development would not result in a reduction of the visual amenity of designated scenic area, to residential amenities or give rise to potential damage to areas of scientific, geological, botanical, zoological and other natural significance including all designated European Sites*

##### **9.1.11 Geological heritage sites**

*The geology of County Carlow has influenced the landscapes, soils, habitats, economic activities such as quarrying and features of local cultural interest such as stonewalls, limekilns etc. The Local Authority recognises the need to identify sites of geological and geomorphological interest within the county and to protect these sites, or parts of these sites, in*

### **11.16 EXTRACTIVE INDUSTRIES**

*The Planning Authority will have regard to the 2004 provisions of the DECLG's "Quarries and Ancillary Activities; Guidelines for Planning Authorities" in the assessment and determination of development proposals. These Guidelines are also a practical guide to the implementation of Section 261 and Section 261A of the Planning and Development Act, 2000, concerning the control of quarries. The Planning Authority will have regard to these Guidelines when assessing all quarry and mining related proposals. Regard shall also be had to the Waste Management (Management of Waste from Extractive Industries Regulations) 2009, EPA Guidelines for Extractive Industries 2006.*

*Quarry and mine owners and operators will be aware of the public concern to which certain extractive industries can give rise and should therefore take the earliest opportunity to discuss their proposals with the Planning Authority by means of a pre-application consultation. This will facilitate an assessment as to whether the proposed development is in accordance with the relevant policies of the Development Plan for the area, along with other relevant government guidelines and policies.*

*An Environmental Impact Assessment (EIA) may be required for the proposed development, depending on its nature and extent. The relevant thresholds for the requirement of submission of Environmental Impact Statement (EIS) are set out in Schedule 5 of the Planning and Development Regulations 2001-2013 (Part 1, Class 19 and Part 2, Class 2), i.e. development exceeding 5 hectares in area. Where the application is sub-threshold development, the Planning Authority, shall determine the need for an Environmental Impact Assessment with reference to "Guidance for Consent Authorities regarding Sub-threshold Development" (DoEHLG 2003), by virtue of its scale, location and/or impact on the surrounding environment.*

*In assessing an application for development (whether for a new or extension to an existing quarry or mine) the need for the development, the extent of existing authorised quarry or mining supplies available and the impact of the development on the local environment shall also be taken into consideration, together with the following:*

- *Developments, including associated processes, which would have a negative impact on existing / established rights of ways, walking routes or tourist, natural or recreational amenities will not be looked upon favourably*
- *Nature and quantity of aggregate(s) to be extracted, including total and annual tonnage of excavated aggregate(s)*
- *Location – relative to dwellings or other developments, aquifers and groundwater*
- *Environmentally sensitive areas, protected structures, special amenity areas and areas of archaeological potential*
- *Impact on the environment, agriculture, tourism, recreational activities in the area, landscape and residential amenities*
- *Noise generation and control*
- *Dust generation and control*
- *Impact on water table: minimisation of disturbance to the existing surface and subsurface hydrological regime shall be ensured on site and in proximity to the quarry*
- *Ecology; due consideration shall also be given to sites of ecological value and designated species which lie outside designated sites*
- *Transportation arrangements for products and road network in the area*

character area. The landscape type in which the site is located is identified as Farmed Ridges, which transitions to the south to the Farmed Lowland landscape type. Higher levels of visibility can occur in the Farmed Ridges landscape type, for which a landscape sensitivity of 4 (from 1 to 5) is listed.

Page 8 of the Landscape Character Assessment identifies that the capacity of the area to absorb extractive industries is “moderate”.

Landscape policy in relation to extractive industries states that “*Applications for quarrying should be accompanied by a detailed landscape plan setting out mitigation measures with particular reference to land grading and screen planting*”.

**(d) any information that the authority may have concerning -**

**(i) current, anticipated or previous significant effects on the environment, or on a European site associated with the development or the site where the development took place or, where section 177E(2A)(b) applies, is proposed to take place and, if relevant, the area surrounding or near the development or site, or**

**(ii) any remedial measures recommended or undertaken;**

A third-party submission received by the Planning Authority for previous reg. ref. 19/403 identified that the stream adjoining the site is one of the main spawning beds for the River Barrow.

From catchment mapping for the area it is evident that there are a number of watercourses in the area, one flowing along the southern boundary of the site under the public road, one flowing within 6.8m of the northern boundary of the site under Miller’s Bridge, both of which are tributaries of the Graney River, c.170m west of the site. The Graney River is hydrologically linked to the River Barrow and River Nore SAC via the Lerr River flowing through Castledermot, c. 6km west of the site.

Holdenstown Bog SAC in County Wicklow is c. 3.6km east of the site, and the Slaney River Valley SAC (River Slaney) is c. 3.7km east of the site flowing southwards from Baltinglass and past Rathvilly. From catchment mapping for the area there does not appear to be a hydrological link between the application site and the two aforementioned SACs.

It is noted that the Remedial Natura Impact Statement submitted with the substitute consent application indicates in Section 6.2.1.1 ‘*a potential impact on the QI/SCI’s of the of The River Barrow and River Nore SAC was identified as a result of possible discharges of surface waters containing sediment or silt, into the Broadstown stream during the Historic extraction and infill works 150m to the North of the Broadstown stream. Similarly, given that both the Historic Site and Broadstown stream are located on an area of high groundwater vulnerability, there was potential for operational phase activities to lead to contamination of groundwater waterbodies which may have reached the River Barrow and River Nore SAC via the Broadstown stream. A potential reduction in water quality as a result of a worst-case sediment run-off or pollution event could have adversely effected the conservation attributes of Distribution, Habitat Distribution and Habitat Area by reducing the availability, and thus usage of, certain areas of the SAC by the above species, potentially leading to negative impacts on the conservation objectives targets for the SCI in the above SAC*’.

- The overall site consists of approximately 15 ha, shown in redline area of master map submitted. The applicant is requesting substitute consent for an area of 4.18 ha identified in cyan and the applicant notes the area of unauthorised development, which requires Substitute Consent, comprises of an area of quarry and a previously infilled quarry which has been restored for agriculture. The unauthorised quarrying, which continued after 2012, comprised of the extraction of “approximately 192,240 tonnes of material (included in this total figure is 75,060 tonnes of overburden) from an area of approximately 4.18 hectares in the central part of the Site”. The unauthorised quarry area was subsequently restored during 2018 using overburden from the quarried areas. The area is identified as being highlighted in cyan as per map below.



- The text in the attached drawing refers to the area for which substitute consent is required being outlined in cyan (which is the area from which material was extracted after 2012 and later restored 4.18 hectares). The text further notes that the application area is 15 Ha. I note that the appropriate assessment/retrospective screening report does not include examination of what it refers to as having happened in the construction phase, which includes infrastructure such as washing/rinsing plant, a dry screener, one bunded fuel storage tank, a wheel wash, portacabin, chemical toilet, portable generator and water supply (non-drinking water). The initial construction phase also involved the excavation of 3 no. settlement lagoons, stockpiling area, truck and plant parking area and site access. The AA report notes that all of these were installed on site during the valid permitted timelines under the initial permission. Essentially the AA only considers the operational phase of the historic (unauthorised) development on an area of land approximately 4.177ha. The Natura Impact statement also looks at this area and considers this as the development to the exclusion of what is referred again as the construction phase. The rEIAR also looks at the area limited to 4.177ha and does not



### Transportation Department

Report received from Ray Wickham (A/Senior Engineer) which notes the following:

*From a Roads and Transport perspective, this site is located bounding the county boundary between Carlow, Kildare and Wicklow, c.5 km northwest of Rathvilly.*

*Whilst the site itself is located within the jurisdiction of Co. Carlow, the primary haul route serving the development (L8097) is located in Co. Kildare which runs from Kildare to Wicklow, but does not encroach into Carlow.*

*Therefore, it is recommended that Kildare Co. Co. is contacted regarding the application.*

*However, the primary issue relevant in considering this application from a Carlow roads viewpoint is the potential for damage to the road network local to the site within Co. Carlow.*

*Outlined in EIAR Section 4.9, the point made that the primary haul route is the L8097 & L4016 is accepted*

*Having previously assessed the roads local to the site within in Co. Carlow, it is clear that these roads have not been used as haul roads for earlier developments of the site and it is not considered any of the Carlow roads are vulnerable to this development.*

*It should be noted that our records indicate that the L8097 (in Co. Kildare) was previously widened and strengthened, presumably to satisfy earlier developments of this site, in addition to serving the locality.*

In view of the foregoing, the Transportation Department recommend a grant subject to the conditions:

- *That the surface water generated within the site is contained within the site, requiring any soakaways to be designed in accordance with BRE Digest 365 the specification for soakaway design.*  
**Reason: To ensure water does not cross the public road and thereby be a risk to road users.**
- *No materials associated with the development shall be stored or deposited on the public road(s) during the period.*  
**Reason: In the interest of Public Safety.**

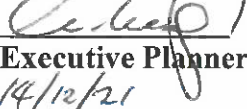
### Municipal District Office

Report received from Pat Harrington (Senior Executive Engineer) which expresses no objection to the development. The report recommends that the application is forwarded for the attention and response of Kildare County Council as the primary haul route serving the development (L8097) is located in Co. Kildare.

### Water Services Department

Report received from Michael O'Toole (A/Senior Executive Planner) which notes that the closest Irish Water asset is the 250mm diameter Trunk Water Export Main to Kildare County Council. At approx. 2km from the quarry site it is considered that the Trunk Water Export Main is not likely to be impacted by the historical development.

- The provision of an aftercare programme, to include details on decommissioning of plant/machinery, maintenance, the implementation of public health and safety measures, and measures to prevent surface and groundwater pollution.
- The provision of a comprehensive closure plan.
- The lodgement of a cash deposit or bond to the Planning Authority to secure the provision and satisfactory restoration of the site.

Signed:   
A/Senior Executive Planner  
Date: 14/12/21

Signed:   
Senior Planner  
Date: 14/12/21.