S. 37

File With Mairead Kenny 22.11.19

SECTION 131 FORM

Appeal NO:_PL 305682

Defer Re O/H ☐

TO:SEO

Having considered the contents of the submission ~~dated~~/ received 13/11/19 from

HGPA I recommend that section 131 of the Planning and Development Act, 2000 be/not be invoked at this stage for the following reason(s):. No new issues raised

E.O.: Allowed **Date:** 20/11/19

To EO:_____

Section 131 not to be invoked at this stage. ☐

Section 131 to be invoked – allow 2/4 weeks for reply. ☐

S.E.O.:_____ **Date:**_____

S.A.O:_____ **Date:**_____

M _____

Please prepare BP _____ **- Section 131 notice enclosing a copy of the attached submission**

to: _____

Allow 2/3/4weeks – BP_____

EO: _____ **Date:** _____

AA: _____ **Date:** _____

S. 37

File With _____

CORRESPONDENCE FORM

Appeal No: PL 305482

M Sultan

Please treat correspondence received on 13/11/19 **as follows:**

1. **Update database with new agent for Applicant/Appellant** _____
2. **Acknowledge with BP** 23
3. Keep copy of Board's Letter ☐

1. **RETURN TO SENDER with BP** _____
2. Keep Envelope: ☐
3. Keep Copy of Board's letter ☐

Amendments/Comments PA response to s. 131

4. Attach to file

(a) R/S ☐ (d) Screening ☐

(b) GIS Processing ☐ (e) Inspectorate ☐

(c) Processing ☐

RETURN TO EO ☐

	Plans Date Stamped ☐ Date Stamped Filled in ☐
EO: A Howard	**AA:** Jennifer Carleton
Date: 20/11/19	**Date:** 22.11.19

Comhairle Contae
Dhún na nGall
Donegal County Council

www.ccdhunnangall.ie www.donegalcoco.ie

Your Ref: ABP-305482-19

Our Ref: UD17187

12th November 2019

An Bord Pleanala
64 Marlborough Street
Dublin 1

AN BORD PLEANÁLA
LDG-
ABP-
13 NOV 2019
Fee: € Type:
Time: 9:25 By: Post

Re: Section 5 Referral - Whether the quarrying of lands is or is not development or is or is not exempted development.

A Chara

I refer to your letter dated 1st November 2019 with regard to the abovementioned case and wish to make the following submission in response to the Harley Planning Consultants Limited's submission dated the 14th of October 2019 in relation to the case.

The Authority notes the points made in said submission including inter alia that; the developers are not quarrying rock, they are carrying out land reclamation, explicit in the definition of quarry is the storage or removal of the minerals for processing, and the development is exempt under Article 8C of the Planning and Development Regulations 2001(as amended).

Fundamentally the Authority is of the opinion that the subject quarrying is, notwithstanding the purpose the quarried material may be used for, a wholly separate and materially different development to any land reclamation project being carried out by the developers.

In this regard the Authority considers that whilst quarried material may be used in land reclamation projects, Article 8C of the Planning and Development Regulations 2001(as amended) cannot be construed as to include quarrying works which produce materials which are in turn used in said land reclamation works. The logical extension of the developer's argument is that any quarrying works (e.g. burrow pits etc) on farmholdings which would in turn produce materials for land reclamation works would come within the scope of Article 8C. Such logic would also dictate that if for example an access road was permitted on a farmholding this would also authorise the quarrying of said lands to produce materials for said road.

Irrespective of the above, the submission also states that the developers ***'hope to reclaim the remaining wet and low lying lands identified as fields B, C,E and F'.*** As the quarried area was in fact previously a rocky hillside this demonstrates that the

Cuir freagra chuig: Áras an Chontae, Leifear, Contae Dhún na nGall, Éire F93 Y622
Please reply to: County House, Lifford, Co. Donegal, Ireland F93 Y622

Guthán/Tel: 074 9153900 | Facs/Fax: 074 9172812 | Ríomhphost/Email: info@donegalcoco.ie

wet and low lying lands which may be reclaimed are in fact distinctly separate from the area which has been quarried and said quarrying works are therefore not part of any re-contouring necessary for said reclamation. The Authority also notes that on the 22nd October 2019 one of the developers William Doherty submitted a planning application for *Ground Works To Reduce The Site Level For Agricultural Shed And Permission For An Agricultural Shed For Wintering Cattle(19/51608)* on the subject site. The proposed shed is located on the quarried area. This fact flatly contradicts the developers' assertion that the purpose of the works was merely for land reclamation.

Indeed irrespective of all of the above even if the developers were to claim that they were also reclaiming the quarried area the Planning Authority would hold that that the scale and extent of the excavation which has occurred is wholly beyond that necessary to reclaim the original hillside for future farming purposes.

Furthermore the submission also claims that the developers are not quarrying rock and suggests that quarrying must include the processing of materials. However on the basis that:

- The 2009 Google Street View photography shows the quarried area to have been previously a rocky hillside and the site inspection photographs submitted with the referral to the board clearly show a large excavated face and large stockpile of quarried materials on the site.
- Section 2 of the Planning and Development Act 2000(as amended) defines a quarry as inter alia '*an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or bore-hole or a well and bore-hole combined.....* and whilst said definition also includes places used for the storage or processing of quarried material etc it does not state that a quarry must include all of the above places to fall within the definition.

The Authority considers that the development falls within the definition of a quarry and it is illogical and irrational to suggest that quarrying has not occurred on the site.

Finally the Authority notes that the separate Land Reclamation works which the developer states are to be carried out; are located in close proximity (140m approx) and hydrologically linked to the North Inishowen Coast Special Area of Conservation (Site Code: 002112), are of a significant scale, would involve the transportation and deposition of a significant amount of rock and necessitate significant ground works. Consequently said land reclamation work may in itself require Appropriate Assessment and if so would be de-exempted pursuant Section 4(4) of the Act.

I trust this clarifies and explains the Authority's position on the above submission.

Mise, le meas

For Carol Margey
Senior Executive Planner
Planning Enforcement Unit