

[REDACTED]

From: Appeals2
Sent: Wednesday 29 July 2020 15:27
To: [REDACTED]
Subject: FW: ABP-307488-20 Response to Third Party Referral
Attachments: ABP-307488-20 HRA Planning Response.pdf

From: Bord <bord@pleanala.ie>
Sent: Wednesday 29 July 2020 14:56
To: Appeals2 <appeals@pleanala.ie>
Subject: FW: ABP-307488-20 Response to Third Party Referral

From: Mary Hughes <[REDACTED]@pleanala.ie>
Sent: Wednesday 29 July 2020 14:50
To: Bord <bord@pleanala.ie>
Subject: ABP-307488-20 Response to Third Party Referral

Dear Sir / Madam

Please find attached a response to your letter of the 07th July 2020, inviting comments on a referral made by Martin Arthur.
I would be very grateful if you would acknowledge receipt of this email.

Yours sincerely,

Mary Hughes MIPI
Director

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Our Ref: 20028/280720/mh

Administrative Officer,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1

By email: bord@pleanala.ie

29th July 2020

**Re: Your Ref: ABP-307488-20
PA Ref No. EX833**

**Whether the alleged unauthorised quarrying activity constitutes
development or is exempted development**

Dear Sir / Madam,

We confirm that we have been retained by Brian Gallivan and KPK Properties to respond to your letter of the 07th July 2020, inviting comments on a referral made by Martin Arthur.

It is submitted to the Board that the question posed by the Querist appears to have been changed throughout the determination period. The Querist states in the appeal submission that he asked the question "*whether the alleged unauthorised quarrying activity constitutes development or is exempted development*". This is not the question that the querist posed to the planning authority. Rather the question posed was "*Does this quarrying activity constitute development or is it exempted development*" with reference made to a photograph of stockpiles of limestone. This was the question posed by the querist and this is the question that the determination must be based on.

It is submitted to the Board that the Section 5 application is devoid of basic information relating to the alleged activity on site. Contrary to the provisions of Section 5(1) of the Planning & Development Act 2000 as amended (the Act) the querist did not provide to the planning authority any information necessary to enable the authority to make its decision on the matter. In the absence of sufficient information and having regard to the question posed by the querist in the first instance, we would submit that the Board that there is currently no quarrying activity on site and therefore no development arises.



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Background Information

The Querist's family previously owned this land and retained an interest in the land until it was acquired by NAMA via a Receiver. In 1995, the Querist owned the land when Kerry County Council blasted rock from the quarry to facilitate construction of the neighbouring Waste Water Treatment Plant and renewal of the main sewage pipework throughout Kenmare. The Council blasted more rock than they required, and this resulted in the existing stockpiles on site. Accordingly, the 'development' comprising quarrying excavation, as shown in the photographs, took place in excess of 25 years ago when the site was in the ownership of the Querist.

Our client subsequently purchased the land from NAMA in late 2018. Earlier this year our client commenced site clearance, in an attempt to ready the site for future development, including the removal of existing stockpiles. To facilitate removal, the client crushed the existing granite on site prior to removal, unbeknownst to the fact that planning permission was required for such processing.

Kerry County Council issued a Warning Notice in February 2020 and following this all crushing on site immediately ceased. An Enforcement Notice was issued by the Council in May 2020 alleging continuing quarrying activity. However, no quarrying (stone crushing) was undertaken on site since February and our client submits that the Enforcement Notice was issued without substance. Around the time that the Enforcement Notice was issued our client used some of the crushed stone on site to repair the existing private roadways within the landholding. In this regard we would note that Class 13 of the Planning & Development Regulations 2001 – 2020 exempts the repair or improvement of any private street or road not exceeding 3m.

Today there remains stockpiles of crushed and uncrushed material, but no quarrying activity currently occurs on site. Further, no material is being removed from the site.

Quarrying Activity

Our client has advised that KPK Properties purchased the lands at Reennagappul, Kenmare, almost two years ago. The property when purchased had an established pre 1964 quarry which has not been actively worked since 1995, with the last excavation from the quarry made by Kerry County Council some 25 years ago. We would submit that the quarry has a pre-1964 authorisation, that the works undertaken in 1995 had pre 1964 authorisation such that the quarry which commenced prior to 1 October 1964 was lawfully completing the quarrying which would have reasonably been envisaged when the quarry commenced.

We acknowledge that the lands in question have not been registered as a quarry under Section 261A of the Act, because at the time of registration all quarrying had ceased and the quarry was no longer active. However, it is submitted to the Board but this does not mean that the historical quarrying activity and its associated stockpiles are unauthorised. We acknowledge that if quarrying activity was to recommence, planning permission would be required. Presently there is no 'quarrying activity' on site.

The Planners Report on file dated 18th June 2020 states that *"it is clear that limestone from the site subject of this referral has been crushed and graded and that stockpiles of processed rock are being stored on the land in question. Thus, it is considered that the use of the site falls under the description of a quarry"*. It must be clarified for the purpose of the Board that the stockpiles have been present on site since 2005 and were generated by authorised quarry activity. We acknowledge that the process of crushing did take place earlier this year, but the process did cease in February 2020 upon receipt of an Enforcement Notice. As the activity has ceased there is no 'development' occurring on the site.

Direction Requested

The Querist requests that the Board direct that the lands be reinstated and made safe.

The Board will be mindful of the fact that it is not the purpose of a Section 5 Determination to direct an action or activity. The function of a Section 5 is purely to determine whether an activity or use is / is not development and is / is not exempted development.

Further it is noted that the Board has no powers of enforcement and so cannot enforce an action

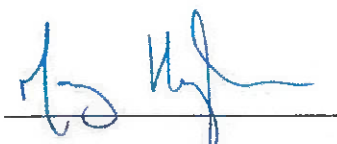
Conclusion

The planning authority's determination is based on the premise that quarrying activity is / has taken place. The Querist's question asks *"Does this quarrying activity constitute development or is it exempted development"* and points to stockpiles of stone. There is currently no quarrying activity on site and the stockpiles were generated at a time when the quarry was authorised and operational.

Accordingly, we would submit to the Board that contrary to the determination of Kerry County Council, there is no activity on site and therefore no development occurs at this time.

We trust that the above clarifies our client's position at this time. Should you require clarification on any issue please do not hesitate to contact us.

Yours sincerely,



Mary Hughes MIPI

Director HRA | Planning chartered town planning consultants DAC

