



COMHAIRLE CHONTAE LAOISE LAOIS COUNTY COUNCIL

10/5

REGISTERED POST

An Bord Pleanála,
64 Marlborough Street,
Dublin 1.

04th December 2020

AN BORD PLEANÁLA
LDG- 033309-20
ABP-
07 DEC 2020
Fee: € 110 Type: PMO
Time: By: Reg Post

**Re: - Section 5 Declaration – Eco Advocacy - Quarrying Activities at
Kilmainham, Mountmellick, Co. Laois**

A Chara,

In accordance with Section 5(4) of the Planning & Development Act 2000, as amended, Laois County Council is seeking a determination from An Bord Pleanála as to whether quarrying activities at Kilmainham, Mountmellick, Co. Laois is development and if so, whether same is exempted development.

A copy of the Section 5 application from Eco Advocacy received on 28th August 2020 and further information received on 8th October 2020 is attached.

I enclose fee, postal order in the amount of €110.00 in relation to this referral.

If you have any further queries in relation to this Section 5(4) referral, please contact the undersigned.

Is mise le meas,

**David O'Hara,
Senior Executive Planner,
Planning Section**

(This matter has been dealt with by Marie Murray, who can be contacted on 057/8664233)

Tá Fáilte Romhat
Gnó a Dhéanamh
as Gaeilge



Midlandsireland.ie

'I bpáirt leis an bpobal'

Arna phrintáil ar pháipéar atá 100% athchúrsáilte – Do Chomhshaoil a chothú



LAOIS COUNTY COUNCIL
SECTION 5 PLANNERS REPORT

Planning Ref:	Section 5 Declaration, Planning and Development Act 2000 as amended
Applicant Name:	Eco Advocacy
Development Description:	Several questions in relation to lands in Kilmainham, Mountmellick.
Development Address:	Kilmainham, Mountmellick.

Please refer to previous report on file and the request for further information.

The applicant has not submitted any technical details in relation to the further information requested. Generally, no site layout map with measurements indicated has been submitted. The applicant has indicated that they are a third party and cannot, therefore, survey the lands. However, in order to determine a section 5 a Planning Authority requires certain information. This has not been submitted. Also the points in the submission use general language. The applicant has submitted photographs of the mound of material which was allegedly removed from the site but not a quantity in tonnes for example. Also photographs have been included to indicate water table. A photograph of water in quarry is not definite indication of the water table.

For clarity the following remain outstanding;

Part 1 Please submit a site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.

Part 2 The application states that the water table "has stood at 78 metres AOD for all winter/spring periods 2012-2020" and that extraction has reached c. 71 AOD.

Please submit the following:

- A site layout map indicating the floor level of the quarry over the referred timeframe.

- A hydro geological survey or other relevant details demonstrating the water table during this period
- Please note that these shall be absolute values and not approximate as outlined in the applicant's question.
- Photos of water is not sufficient to demonstrate position of water table.

Part 3 - Details are required similar to those required in part 2 above.

Part 4 –The following details are required;

- A site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.
- Outline the precise time period for which this land has been used for the storage of vehicles, the type vehicles and any works carried out to the lands to facilitate storage.
- Please indicate if this storage is 24 hours 7 days a week or occasional for the specified period.

Part 5 - The following details are required:

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Part 6 - The following details are required;

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- Please clarify the question – does it refer to the structures, the lands on which they are situate or both.

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- Details of the amount of material which were processed and removed from site (in truck movements and tonnage) and to where this material was brought.
- Clarify what significant means.

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- Further details are required in relation to the meaning of words/phrases like significant, vast, some several metres etc. All areas referred to shall be documented on drawings, maps and sections clearly setting out the dimensions in order to allow for a full assessment.

Conclusions

The applicant in this instance is requesting the council to undertake the survey required to determine this section 5. It is pointed out that they do not have access or the resources to carry out the required survey work. The Planning Authority can only consider the documentation before it in determining a section 5. It is the opinion of the Planning Authority that the information is inadequate in this instance. However, it is noted that the applicant is not able to furnish any further technical details.

It may be appropriate to forward this request to An Bord Pleanala in order for them to determine this section 5.

Recommendation

It is recommended that this application for a declaration as to whether all points in the submission is development or is exempted development should be referred to An Bord Pleanala for determination pursuant to section 5(4) of the Planning and Development Act 2000 as amended.



David O' Hara

SEP

M **ie Murray**

Referred to 18/11
D.O'H
Update referred
1/12/2020

From: Eco Advocacy <info@ecoadvocacy.ie>
Sent: Wednesday 18 November 2020 12:03
To: David O'Hara; Marie Murray
Cc: Pat Delaney
Subject: Section 5 - You're ref. 10/5
Attachments: 2020-11-15-EA to LCC-Reply to questions raised-Section 5.pdf

Your Ref: 10/5
Operator/s: Wisely/Nutgrove
Development Address: Kilmainham, Mountmellick, Co. Laois

Dear Sirs

Please find attached letter in response to yours of the 28th ult re the above referenced file.

With kind regards,

Kieran Cummins, Solis, BSc, Dip LS, Dip Hort.
Executive Director, Eco Advocacy CLG

A:
Trammon, Rathmolyon, Enfield, County Meath, Ireland
E:
info@ecoadvocacy.ie
W:
www.ecoadvocacy.ie
M:
+353(0)86-7853333

Eco Advocacy is an environmental NGO which advocates on principles of sustainability and human rights
Directors: Suzanne Brady, Robert Cosgrave, Damien Harper | Company Secretary: Kieran Cummins
Company Registration No: 612029, Registered charity; CRA No: 20150464

Eco Advocacy
Truth | Justice | Sustainability



Eco Advocacy

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Telephone ref: (057) 86 64000, 057-8664039

Email: planning@laoiscoco.ie

pdelaney@laoiscoco.ie

Planning Department,
LAOIS COUNTY COUNCIL
Áras an Chontae,
JFL Ave.,
Portlaoise,
Co. Laois
R32 EHP9

15th November 2020

For the attention of: -

Mr David O'Hara: dohara@laoiscoco.ie and

Ms. Marie Murray: mmurray@laoiscoco.ie

SECTION 5 referral

Your Ref: 10/5
Operator/s: Wisely/Nutgrove
Development Address: Kilmainham, Mountmellick, Co. Laois.

Dear Sir/ Madam

We refer to the above and to yours of the 28th ult.

It appears that you may have sent your letter in error and to the wrong party?

The letter, which we received, would be more appropriate for the owner of a site/ developer.

Eco Advocacy is neither the developer nor the landowner and does not have access to the site. We are surprised to find ourselves having to repeat this, as that had clearly been stated multiple times in ours of the 6th October last. We are a third-party with no commercial interest whatsoever and seek only to pursue justice together with prosecution of infringements of EU Directives and of Irish law. We sought a S.5 Declaration as to whether stated issues are exempted developments or not and do so in the public interest.

Furthermore, we are well use to preparing sections 5's and do so in a professional manor and in line with the planning acts and take great care and pride in our work. We are a registered charity with limited resources and depend entirely on professionals to give of their precious time on a *pro bono* basis. Significant time has already been invested in firstly preparing the section 5 reference and secondly responding to your initial requests for additional information. To that end we have provided you with a detailed summary of the situation together with several images to assist you. This by the way was not at all necessary or required by section 5 of the planning act, but nonetheless we devoted yet more of our precious time to assist you.

Cont/d.



COMHAIRLE CHONTAE LAOISE LAOIS COUNTY COUNCIL

Comhairle Chontae
Laoise
Áras an Chontae
Port Laoise
Contae Laoise
R32 EHP9

10/5

28th October, 2020

Laois County Council
Áras an Chontae
Portlaoise
County Laois
R32 EHP9

Eco Advocacy,
Trammon,
Rathmolyon,
Enfield,
Co. Meath
A83 PW32.

T: (057) 8664000
F: (057) 8622313
corpaffairs@laoiscoco.ie
www.laois.ie

Re : Section 5 Declaration – Quarrying Activities at Kilmainham, Mountmellick, Co. Laois

Further information - unanswered

A Chara,

I refer to your Section 5 application received in this office on 26th August, 2020 in connection with the above and to the further information received on the 08/10/2020. I wish to advise that the Planning Authority is not in a position to determine this section 5 application as the information received is not adequate. The applicant shall submit the following further information:

Part 1 Please submit a site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.

Part 2 The application states that the water table "has stood at 78 metres AOD for all winter/spring periods 2012-2020" and that extraction has reached c. 71 AOD.

Please submit the following:

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LAOIS COUNTY COUNCIL
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Recommendation

Therefore, a letter should issue to the applicant indicating that the further information has not been addressed as no technical information has been submitted. Also, please re-issue the further information as originally requested.

For clarity I have highlighted in red the outstanding items. *(on the system)*.

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As we understand continuously from 2014 - 2020

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Donal O'Meara
29/10/20

on drawings, maps and sections clearly setting out the dimensions in order to allow for a full assessment.

A handwritten signature in blue ink, appearing to read 'David O'Hara'.

David O'Hara

SEP 27/10/20

LAOIS COUNTY COUNCIL
SECTION 5 PLANNERS REPORT

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Applicant Name:	Eco Advocacy
Development Description:	Several questions in relation to lands in Kilmainham, Mountmellick.
Development Address:	Kilmainham, Mountmellick.

Development Description:

The applicant has sought a Section 5 Declaration for the following works:

Part 1 operations outside of the area permitted under pl ref no. 08/943 and whether this is development.

- No map detailing the precise area referred to in this part has been submitted with the section 5 application.

Part 2 – Breach of Water table. The application states that the water table has stood at 78 metres AOD for all winter/spring periods 2012-2020 and that extraction has reached c. 71AOD.

- No maps/surveys or details setting out the water table and floor level of the quarry have been included in this application.

Part 3 Extraction (to include de-watering) below the permitted level, water table and into an extensive quarry void. The reinstated area has not formed part of planning process and the question arises as to whether this is development or exempted development.

Part 4

Re-purposing of agricultural lands in close proximity to Folio LS2488F to store plant and equipment.

- Whether the use of lands to store and house plant and equipment from 2014-2020 is development or exempted development.
- No map, details of the area in question, or timeframes for this storage has been included.

Part 5 Entrance

2 new entrances were created to access the quarry and a third which is different than the original entrance were opened.

No maps or details of these entrances have been included in the application.

Part 6

Septic Tank

A site office/canteen with septic tank has been installed in or on made up ground and is slipping away. Is this development or exempted development.

No map or drawings of this have been submitted. Also clarification is required in relation to the question, is the structures or the fact that they are located on made up ground the issue.

Part 7 EIA Threshold

The area of the lands is 7.97ha. The EIA sub threshold is 50% of the mandatory EIA threshold. The EIA does not cover the conduct of the developer. Regarding the EIA suitability the council is requested to determine whether this is or is not an exempted development.

- No maps submitted

Part 8 NIA Threshold

Please clarify what NIA is.

Part 9 – Construction and demolition of a significant hard standing to also include drive on/off ramps, an office, canteen & toilet area complete weighbridge.

The above facilities were located to the east of the existing wheel wash and were removed from site. The section 5 application states that these facilities were broken up, processed and removed from site.

No maps or drawings are included for this area. Also details of the amount of material which were processed and removed from site is required. Also clarify what significant means.

Part 10 Exportation of construction waste.

Refers to drive on/off ramps, an office, canteen & toilet area complete weighbridge. The EIA does not address the removal of waste from the property.

Again no drawings maps submitted and clarity is required as to what the question is.

Part 11 Exportation of Topsoil

Topsoil was removed off site by the developer instead of been used for restoration purposes. The EIA does not address the removal of topsoil from the property.

No details have been submitted in relation to the volume of material removed from the site, where it was removed to and during which timeframe.

Part 12A large mound and several other mounds are located on lands to the north which existed from 2009 – 2016 and is therefore not a temporary structure.

Maps, drawings and a volumes of material is required. Also clarification is required as to whether this material is still in place.

Part 13 – Undermining and or removal of boundaries pertaining to Folio LS2488F to include significant lands outside of Folio LS2488F.

- The northern and eastern boundaries have been severely comprised. A vast section of lands along the north west of Folio LS 2488 were wholly removed and extended some several metres into the adjoining lands extending several metres in depth.
- 2 roads to the west of the boundary are made up.
- The EIA does not address any roads, extensive backfilling nor making up of ground.

No maps or sections have been submitted with this part. Also further details are required in relation to the meaning of words like significant, vast, some several metres etc.

Assessment

In general there is a lack of detail in this application. No maps, drawings or factual information is included. Some of the questions use words such as vast or significant. It is therefore not possible to determine whether the developments questioned are development or exempted development.

Recommendation

Further information is required as follows:

The Planning Authority is not in a position to determine this section 5 application as the information received is not adequate. The applicant shall submit the following further information.;

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Part 2 The application states that the water table "has stood at 78 metres AOD for all winter/spring periods 2012-2020" and that extraction has reached c. 71 AOD.

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As we understand continuously from 2014 - 2020

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David O' Hara

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Part 13 – The following details are required;

- A site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.
- Further details are required in relation to the meaning of words/phrases like significant, vast, some several metres etc. All areas referred to shall be documented

on drawings, maps and sections clearly setting out the dimensions in order to allow for a full assessment.

David O' Hara

SEP

10/5

21st September, 2020

Eco Advocacy,
Trammon,
Rathmolyon,
Enfield,
Co. Meath
A83 PW32.

**Re : Section 5 Declaration – Quarrying Activities at Kilmainham, Mountmellick,
Co. Laois**

Further information

A Chara,

I refer to your Section 5 application received in this office on 26th August, 2020 in connection with the above. I wish to advise that the following further information is required;

Part 1 Please submit a site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.

Part 2 The application states that the water table "has stood at 78 metres AOD for all winter/spring periods 2012-2020" and that extraction has reached c. 71 AOD.

Please submit the following:

- A site layout map indicating the floor level of the quarry over the referred timeframe.
- A hydro geological survey or other relevant details demonstrating the water table during this period
- Please note that these shall be absolute values and not approximate as outlined in the applicant's question.

Part 3 - Details are required similar to those required in part 2 above.

Part 4 –The following details are required;

- A site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.
- Outline the precise time period for which this land has been used for the storage of vehicles, the type vehicles and any works carried out to the lands to facilitate storage.
- Please indicate if this storage is 24 hours 7 days a week or occasional for the specified period.

Part 5 - The following details are required:

- A site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.
- Dimensioned drawings and sections of the entrances including any fencing, gates and heights of same.

Part 6 - The following details are required;

- A site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.
- Dimensioned drawings and sections of the structures referred to.
- Please clarify the question – does it refer to the structures, the lands on which they are situate or both.

Part 7 - The following details are required;

- A site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.

Part 9 – The following details are required;

- A site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.
- Dimensioned drawings and sections of the structures referred to.
- Details of the amount of material which were processed and removed from site (in truck movements and tonnage) and to where this material was brought.
- Clarify what significant means.

Part 10 The following details are required;

- A site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.
- Dimensioned drawings and sections of the structures referred to.
- Details of the amount of material which were processed and removed from site (in truck movements and tonnage) and to where this material was brought.
- Clarify what significant means.

Part 11 - The following details are required:

- details in relation to the volume of material removed from the site (in truck movements and tonnage),
- where it was removed to and during which timeframe.

Part 12 - The following details are required;

- a site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.
- Dimensioned drawings and sections of the structures referred to.
- Clarify if this mound still exists on site or whether it was removed in 2016. (Part 1 of the question indicates it is on site while no. 2 suggests it was removed in 2016)

Part 13 – The following details are required;

- A site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.
- Further details are required in relation to the meaning of words/phrases like significant, vast, some several metres etc. All areas referred to shall be documented on drawings, maps and sections clearly setting out the dimensions in order to allow for a full assessment.



Pat Delaney
Administrative Officer
Planning Section

10/5

21st September, 2020

Eco Advocacy,
Trammon,
Rathmolyon,
Enfield,
Co. Meath
A83 PW32.

**Re : Section 5 Declaration – Quarrying Activities at Kilmainham, Mountmellick,
Co. Laois**

Further information

A Chara,

I refer to your Section 5 application received in this office on 28th August, 2020 in connection with the above. I wish to advise that the following further information is required;

Part 1 Please submit a site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.

Part 2 The application states that the water table “has stood at 78 metres AOD for all winter/spring periods 2012-2020” and that extraction has reached c. 71 AOD.

Please submit the following:

- A site layout map indicating the floor level of the quarry over the referred timeframe.
- A hydro geological survey or other relevant details demonstrating the water table during this period
- Please note that these shall be absolute values and not approximate as outlined in the applicant's question.

Part 3 - Details are required similar to those required in part 2 above.

Part 4 –The following details are required;

- A site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.
- Outline the precise time period for which this land has been used for the storage of vehicles, the type vehicles and any works carried out to the lands to facilitate storage.
- Please indicate if this storage is 24 hours 7 days a week or occasional for the specified period.

Part 5 - The following details are required:

- A site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.
- Dimensioned drawings and sections of the entrances including any fencing, gates and heights of same.

Part 6 - The following details are required;

- A site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.
- Dimensioned drawings and sections of the structures referred to.
- Please clarify the question – does it refer to the structures, the lands on which they are situate or both.

Part 7 - The following details are required;

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Part 9 – The following details are required;

- A site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.
- Dimensioned drawings and sections of the structures referred to.
- Details of the amount of material which were processed and removed from site (in truck movements and tonnage) and to where this material was brought.
- Clarify what significant means.

Part 10 The following details are required;

- A site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.
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- Clarify what significant means.

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- details in relation to the volume of material removed from the site (in truck movements and tonnage),
- where it was removed to and during which timeframe.

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- Dimensioned drawings and sections of the structures referred to.
- Clarify if this mound still exists on site or whether it was removed in 2016. (Part 1 of the question indicates it is on site while no. 2 suggests it was removed in 2016)

Part 13 – The following details are required;

- A site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.
- Further details are required in relation to the meaning of words/phrases like significant, vast, some several metres etc. All areas referred to shall be documented on drawings, maps and sections clearly setting out the dimensions in order to allow for a full assessment.

Pat Delaney
Administrative Officer
Planning Section

LAOIS COUNTY COUNCIL
SECTION 5 PLANNERS REPORT

Planning Ref:	Section 5 Declaration, Planning and Development Act 2000 as amended
Applicant Name:	Eco Advocacy
Development Description:	Several questions in relation to lands in Kilmainham, Mountmellick.
Development Address:	Kilmainham, Mountmellick.

Development Description:

The applicant has sought a Section 5 Declaration for the following works:

Part 1 operations outside of the area permitted under pl ref no. 08/943 and whether this is development.

- No map detailing the precise area referred to in this part has been submitted with the section 5 application.

Part 2 – Breach of Water table. The application states that the water table has stood at 78 metres AOD for all winter/spring periods 2012-2020 and that extraction has reached c. 71AOD.

- No maps/surveys or details setting out the water table and floor level of the quarry have been included in this application.

Part 3 Extraction (to include de-watering) below the permitted level, water table and into an extensive quarry void. The reinstated area has not formed part of planning process and the question arises as to whether this is development or exempted development.

Part 4

Re-purposing of agricultural lands in close proximity to Folio LS2488F to store plant and equipment.

- Whether the use of lands to store and house plant and equipment from 2014-2020 is development or exempted development.
- No map, details of the area in question, or timeframes for this storage has been included.

Part 5 Entrance

2 new entrances were created to access the quarry and a third which is different than the original entrance were opened.

No maps or details of these entrances have been included in the application.

Part 6

Septic Tank

A site office/canteen with septic tank has been installed in or on made up ground and is slipping away. Is this development or exempted development.

No map or drawings of this have been submitted. Also clarification is required in relation to the question, is the structures or the fact that they are located on made up ground the issue.

Part 7 EIA Threshold

The area of the lands is 7.97ha. The EIA sub threshold is 50% of the mandatory EIA threshold. The EIA does not cover the conduct of the developer. Regarding the EIA suitability the council is requested to determine whether this is or is not an exempted development.

- No maps submitted

Part 8 NIA Threshold

Please clarify what NIA is.

Part 9 – Construction and demolition of a significant hard standing to also include drive on/off ramps, an office, canteen & toilet area complete weighbridge.

The above facilities were located to the east of the existing wheel wash and were removed from site. The section 5 application states that these facilities were broken up, processed and removed from site.

No maps or drawings are included for this area. Also details of the amount of material which were processed and removed from site is required. Also clarify what significant means.

Part 10 Exportation of construction waste.

Refers to drive on/off ramps, an office, canteen & toilet area complete weighbridge. The EIA does not address the removal of waste from the property.

Again no drawings maps submitted and clarity is required as to what the question is.

Part 11 Exportation of Topsoil

Topsoil was removed off site by the developer instead of been used for restoration purposes. The EIA does not address the removal of topsoil from the property.

No details have been submitted in relation to the volume of material removed from the site, where it was removed to and during which timeframe.

Part 12A large mound and several other mounds are located on lands to the north which existed from 2009 – 2016 and is therefore not a temporary structure.

Maps, drawings and a volumes of material is required. Also clarification is required as to whether this material is still in place.

Part 13 – Undermining and or removal of boundaries pertaining to Folio LS2488F to include significant lands outside of Folio LS2488F.

- The northern and eastern boundaries have been severely comprised. A vast section of lands along the north west of Folio LS 2488 were wholly removed and extended some several metres into the adjoining lands extending several metres in depth.
- 2 roads to the west of the boundary are made up.
- The EIA does not address any roads, extensive backfilling nor making up of ground.

No maps or sections have been submitted with this part. Also further details are required in relation to the meaning of words like significant, vast, some several metres etc.

Assessment

In general there is a lack of detail in this application. No maps, drawings or factual information is included. Some of the questions use words such as vast or significant. It is therefore not possible to determine whether the developments questioned are development or exempted development.

Recommendation

Further information is required as follows:

The Planning Authority is not in a position to determine this section 5 application as the information received is not adequate. The applicant shall submit the following further information.;

Part 1 Please submit a site layout map (1:500) and site location map (1:2500) indicating all areas referred to in this part.

Part 2 The application states that the water table "has stood at 78 metres AOD for all winter/spring periods 2012-2020" and that extraction has reached c. 71 AOD.

Please submit the following:

- A site layout map indicating the floor level of the quarry over the referred timeframe.
- A hydro geological survey or other relevant details demonstrating the water table during this period
- Please note that these shall be absolute values and not approximate as outlined in the applicant's question.

Part 3 - Details are required similar to those required in part 2 above.

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- Please clarify the question – does it refer to the structures, the lands on which they are situated or both.

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David O'Hara

David O' Hara

SEP 21/9/20

Laois County Council
Planning Dept. Cash Office
Araas An Chontae
Portlaoise
Co. Laois

=====

28/08/2020 09:45:33

Receipt No. : L2/0/189777
***** REPRINT *****

ECO ADVOCACY
TRAMMON
RATHMOYLAN
ENFIELD
CO. MEATH
A83 PW32

Other Receipts-Dev Incent&Con	80.00
GOODS	80.00
VAT Exempt/Non-vatable	
SECTION 5	

Total : 80.00 EUR

Tendered :	80.00
Credit Card	
Visa	
3357	
0623	

Change : 0.00

Issued By : Planning Cashier
From : Planning Lodgement Area
Vat reg No.0506615J



Telephone ref: (057) 86 64000, 057-8664039
Email: planning@laoiscoco.ie

Planning Department,
LAOIS COUNTY COUNCIL
Áras an Chontae,
JFL Ave.,
Portlaoise,
Co. Laois
R32 EHP9

25th August 2020

SECTION 5 referral: -

Whether ongoing quarrying activities (specifically extraction below the water table, backfilling, boundary removal, haul road building, making-up ground, demolition and crushing of construction materials, and other developments) on lands at Kilmainham, Mountmellick, County Laois at or are not development and are or are not exempt development.

Operator/s:	Wisely/Nutgrove
Development Address:	Kilmainham, Mountmellick, Co. Laois.
Quarry Register Ref.	QY05/36 & that granted under 08/943
Fee:	€ 80.00

Dear Sir/ Madam

Page one of seven

Laois County Council is requested to declare under *Section 5 of the Planning & Development Act 2000*, (as amended) whether or not the items specified hereunder are or are not exempted developments within the meaning of the planning acts.

Note that there are **13 parts** to this section 5.

Yours faithfully,

Kieran Cummins, Solis, BSc, Dip LS, Dip Hort.
Executive Director, Eco Advocacy CLG

Enclosures: -

1. Cheque in the amount of €80
2. Google Earth Overview Map
3. 2016, 2019 & 2020 Google Earth image of the area

SITE LOCATION and IDENTITY

1. We refer to the above site, which is situated at Kilmainham, Mountmellick, Co. Laois. This site is a quarry and is currently being operated as a quarry.
2. The site would appear to also be the subject lands which are identified Laois County Council as **QY05/36** in its 2012 quarry determination register.
3. ITM Coordinates within the site: 648367, 706699
4. Land Folio reference: **LS2488F** and adjoining unregistered land.
5. Maps: attached.

BRIEF PLANNING HISTORY

1. The Old Kilmainham Quarry rests to the north-west and was operated by Laois County Council as a dump until c. the 1980's.
2. Adjacent land: - **QY05/36** - [Wisely/Nutgrove] made an application, to Laois County Council for quarry registration under Section 261 of the Planning and Development Act 2000. The application was rejected as the Quarry was **not** ever a Quarry prior to 2005.
3. A subsequent planning application 06/1167 was made to Laois County Council to develop a quarry the same area and the remainder of that field. This application was withdrawn.
4. **No** landowner **consent** was ever submitted with that application – confirmed by Laois County Council.
5. The only land owned by Seamus Sherlock at Kilmainham, Mountmellick is Folio **LS2488F**.
6. An application was made to Laois County Council **08/943** for the purpose of seeking planning permission to quarry within Folio **LS2488F**.
7. We do note that **no** landowner **consent**, nor evidence of any ownership was ever submitted with 08/943 (nor was it sought by way of further information, despite Laois County Council being on notice as to ownership and consent issues through application 06/1167), save for the provision of a copy of Folio **LS2488F** and corresponding File Plan.
8. We note that Folio **LS2488F** does **not** include all of the land that effected by the application sought, obtained and granted by Laois County Council, in particular all of the access/egress route serving Folio **LS2488F** and likewise the extensive area utilised as a result of quarrying activities at Kilmainham, Mountmellick, Co. Laois.
9. An EIS was prepared and submitted.
10. We understand that a significant amount of water pumping and discharge must have taken place by virtue of the fact that such an extensive quarry void existed on site. No where did the EIA address and or provide for discharging into or onto any adjacent lands.

11. No landowner consent, nor proof of ownership, appears on the file for any other lands outside of Folio LS2488F despite them forming an integral part of this development
 12. Folio LS2488F merely ever only enjoyed a mere agricultural right of access/egress along the laneway, (which has been significantly enlarged and intensified as a result of operations at Kilmainham. Without the requisite consent of the landowner) leading to Folio LS2488F.
 13. In 2012 operations ceased
 14. We understand that there is no permission for extractive or industrial operations on this site for the lands outside of Folio LS2488F, despite that substantial lands to the north, north-west and to the east being extensively utilised
 15. c. 2016 a significant amount of material was hauled from the land to the north of the laneway for the sole purpose of creating a newly formed entrance and haul road within Folio LS2488F. We understand that no attempts were made to restore these lands save for hauling away material for the purpose of making-up ground that was previously blasted, processed and hauled away from Folio LS2488F.
-

PART 1

OPERATION AT THIS SITE

1. Having regard to the area worked. We are concerned that much of it exceeds (in particular the extent of the reinstatement works that included no less than the construction of very significant haul roads, backfilling an extensive quarry void and making-up a large amount of ground that falls outside of Folio LS2488F along with several other equally significant items) that permitted under 08.943
2. Laois County Council is requested to determine whether this is or is not an exempted development.

not identify

PART 2

BREACH OF WATER TABLE

1. We understand that a very large volume of water existed within Folio LS2488F (covering the entire of the quarry floor and standing above c. 78 meters AOD) or a vast section within during dry periods) and the abutting lands. We believe that it relates to the extraction of material from below the permitted level in places it is known to have reached c. 71 AOD (permitted being c. 77 meters AOD)
2. Extraction constitutes both works and use. The aggregates extracted were blasted, processed, and hauled away from the property. Thus, it follows that such extraction is development and is not exempt development.
3. Extraction from below the water table and permitted level is works 'under land' and so is development. As above, the aggregates extracted were blasted, processed, and hauled away from the property. Moreover, extraction below the water table (and that examined in the context of the EIA submitted) and permitted level requires to be assessed as such activity that could pose a significant impact to the environment, and cannot be screened out using desktop screening; therefore, an EIA is required for such activity, as is accepted practice, and any development which requires EIA cannot be exempt development.
4. An EIA was submitted as part of the planning process; however, it did not address the extensive extraction that occurred below the water table, nor the permitted level and the fact that the high winter water has stood at c. 78 meters AOD for all winter/spring periods 2012-2020.
5. The EIA submitted it did **not** consider nor assess the potential impact of the extensive development on the either the River Barrow and River Nore SAC nor the Mountmellick SAC, both of which are served by the same aquifer and the latter just c. 2km to the north of the vast extraction.
6. Extraction constitutes both works and use. The aggregates extracted are not for use on the landholding for agricultural use or in connection with any current planning permission. Thus, it follows that such extraction is development and is not exempt development.
7. Laois County Council is requested to determine whether extraction from below the water table is or is not an exempted development.

PART 3

EXTRACTION (TO INCLUDE DE-WATERING) BELOW THE PERMITTED LEVEL, WATER TABLE AND INTO AN EXTENSIVE QUARRY VOID

1. Regarding a cross section of ground "reinstated", which we understand has been exposed and extracted below 77 meters AOD (and at least c. 72 meters AOD in places) – to the best of our knowledge, neither the removal nor restoration formed any part of the planning process, nor did the EIA assess any penetration of the water table which appears to serve no less than c. 2 EU NATURA 2000 Sites – the River Barrow & River Nore SAC & the Mountmellick SAC – neither were assessed as a part of the EIA nor the planning process.
2. Laois County Council is requested to determine whether this is or is not an exempted development.

Map indicating the levels.

PART 4

RE-REPURPOSING OF AGRICULTURAL LANDS IN CLOSE PROXIMITY TO FOLIO LS2488F TO STORE PLANT & EQUIPMENT

1. A significant section of neighbouring land (Folio LS25261F) has been used to store and house plant & equipment serving the development from c. 2014 – 2020. *Map please*
2. Laois County Council is requested to determine whether this is or is not an exempted development.

PART 5

ENTRANCE

1. Two new and separate entrances (a third, the current was made c. 2016 and it is further to the east – markedly larger than the original entrance to Folio LS2488F) were made by the developer to access/egress from their quarry operation c. 2009.
2. Laois County Council is requested to determine whether this is or is not an exempted development.

Map.

PART 6

SEPTIC TANK

1. A site office/canteen and toilet complete with septic tank has been installed, in and or upon made-up ground. The ground is clearly subsiding and slipping away. It is sat within Folio LS2488F.
2. Laois County Council is requested to determine whether this is or is not an exempted development.

PART 7

EIA THRESHOLD

1. It is noted that Folio LS2488F on which lands part of this development is situate on is stated by Land Registry to contain an area of 7.97HA.
2. The EIA sub threshold determination level for extractive developments is 50% of the mandatory EIA threshold, i.e. 2.5 hectares. It would appear from observation that the development is almost certainly does not accord with what was conducted on site. Laois County Council will need to establish this as a

matter of fact. It does not appear as though the EIA submitted sufficiently covers the conduct of the developer and thus is entirely unfit for purpose and in-fact ineffective.

3. Regarding the EIA suitability, Laois County Council is requested to determine whether this is or is not an exempted development. *Map*

PART 8

NIA THRESHOLD

what is an NIA

1. Similarly, Laois County Council is requested to determine whether Stage 2 NIA is or is not required as nothing on the site can be exempted development if Stage 2 NIA is required.
2. Laois County Council is requested to determine whether this is or is not an exempted development.

PART 9

CONSTRUCTION AND DEMOLITION OF A SIGNIFICANT HARD STANDING TO ALSO INCLUDE DRIVE ON/OFF RAMPS, AN OFFICE, CANTEEN & TOILET AREA COMPLETE WEIGHBRIDGE

1. A significant hard standing to also include drive on/off ramps, an office, canteen & toilet area complete weighbridge complete with hardcore and ancillary dressing was situate to the east of the existing wheel wash (which falls entirely outside of the lands pertaining to Folio LS2488F and does not appear to have any landowner consent) up until c. 2019. *Map*
2. The developer since has demolished the previous concrete construction, broken-up and processed all construction waste (which was hauled away from the site).
3. The area exists in a severely compromised manner.
4. The planning permission sought, obtained and granted does not address either the building of nor the removal of this construction at Kilmainham.
5. Laois County Council is requested to determine whether this is or is not an exempted development.

PART 10

EXPORTATION OF CONSTRUCTION WASTE

1. As in Part 9 a significant hard standing to include drive on/off ramps, an office, canteen & toilet area complete weighbridge was constructed and is since demolished.
2. Neither the planning application made to Laois County Council nor the EIA address the removal of any construction waste from the property.
3. Laois County Council is requested to determine whether this is or is not an exempted development

PART 11

EXPORTATION OF TOPSOIL

1. Topsoil (up until 2012) having been stripped from the site was systematically exported off the site to various other sites, which the developer sold instead of using it as described in the planning application sought, obtained, and granted.

2. The EIA does not address the removal of topsoil from the property.

Evidence

3. Laois County Council is requested to determine whether this is or is not an exempted development.

PART 12

Overburden

1. There is a large mountainous mound and several other lunar-like mounds around the lands to the north, which existed from c. 2009

Map -

2. Given that the pile existed from 2009 -2016, it is difficult to see how it could be a temporary structure.

3. Laois County Council is requested to determine whether this is or is not an exempted development.

PART 13

UNDERMINING AND OR REMOVAL OF BOUNDARIES PERTAINING TO FOLIO LS2488F TO INCLUDE SIGNIFICANT LANDS OUTSIDE OF FOLIO LS2488F

1. Re the north and eastern boundaries, they appear to have been severely compromised.

2. A vast section of lands along the north west of Folio LS2488 were wholly removed and extended some several meters into the adjoining land (extending several meters in depth).

Map.

3. We were unable to locate any geotechnical assessments confirming the intactness and structural stability of all relevant quarry faces prior to any backfilling taking place.

4. It would appear that all of the material to the west of the eastern boundary of Folio LS2488F was removed and the void extended several meters in depth.

5. We understand that the two roads, which are currently visible to the west of the boundary are made-up. We further understand that neither the removal nor restoration formed any part of the planning process.

6. The EIA does not address the building of any roads, extensive backfilling nor making up of ground at Kilmainham

7. Laois County Council is requested to determine whether this is or is not an exempted development.

We look forward to your determinations in due course.

ENDS