

File With \_\_\_\_\_

## SECTION 131 FORM

Appeal NO: ABP-20884-20

Defer Re O/H



TO: SEO

Having considered the contents of the submission dated 14/01/2021 received fromEco Advocacy I recommend that section 131 of the Planning and Development Act, 2000 ☐ be/not be invoked at this stage for the following reason(s): noneE.O.: [Signature]Date: 12/3/21

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. KelleyPlease prepare BPLL To - Section 131 notice enclosing a copy of the attached submissionto: Parker Task No: 210430-21Allow 2/3 4 weeks – BPLL ToEO: Aisling KellyDate: 12/03/2021EO  
AA: Aisling KellyDate: 15/03/2021

## John Cannon

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**From:** Bord  
**Sent:** Thursday 14 January 2021 12:30  
**To:** Appeals2  
**Subject:** FW: ABP-308844-20  
**Attachments:** 2021-01-11-EA to ABP\_COVER.pdf; Enclosure 1.zip; Enclosure 2.zip; Enclosure 3.zip

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**From:** Eco Advocacy <info@ecoadvocacy.ie>  
**Sent:** Thursday 14 January 2021 12:02  
**To:** Bord <bord@pleanala.ie>  
**Subject:** ABP-308844-20

Dear Sir/ Madam  
Further to yours of 9th December, please find attached

1. Letter or response
2. Enclosures (in 3 zipped files)

Many thanks and kind regards

---

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

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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  
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**Eco Advocacy**  
*Truth | Justice | Sustainability*





Contact Reference: Phone: 01 8588100  
Email: [bord@pleanala.ie](mailto:bord@pleanala.ie)

An Bord Pleanála  
64 Marlborough St,  
Rotunda,  
Dublin 1,  
D01 V902

14<sup>th</sup> January 2021

**Section 5 of the Planning and development Act, 2000 (as amended).**

**Your Case Number: ABP-308844-20**  
**Planning Authority Reference Number: 10/5**  
**Planning Grant Reference: 08/943**  
**Kilmainham, Mountmellick, County Laois**

Dear Sir/ Madam

Further to yours of the 11<sup>th</sup> ult we revert with observations on the contents thereof.

Our attempts to have this section 5 determined by *Laois County Council* were continually frustrated. As stated in our letter to *Laois County Council* on the 15<sup>th</sup> of November 2020, they had more than enough information to decide as to whether the questions asked are or are not exempted development/s and kept asking us for material which was impossible for us to provide and which was in any case not necessary.

We refer you to ours of the 25<sup>th</sup> August 2020 and 6<sup>th</sup> October 2020 together with the enclosures, which would appear not to have been passed on to you; judging by the copy correspondence which was provided to us. We also prepared further material (though some of this is duplication).

This matter could easily have been dealt with at a local level by *Laois County Council* where the planner had the benefit of knowing the site. There was absolutely no need in burdening *An Bord Pleanála* with this referral. Furthermore, by so doing, they have now caused us more work in having to now respond to this referral.

We set out hereunder our responses to this referral and trust that we have provided you with more than enough information to now decide this matter. We have included two additional images from 2021 so as you may see the continuance of issues raised previously. We do look forward to hearing from you in due course. We look forward to hearing from you in due course.

Cont/d.

## Enclosure 1.

### Section 5 – Additional information

#### Part 1

No further explanation required.

#### Part 2

We refer you to the various aerial images provided to LCC that demonstrate significant water encroachment for all years 2012 – 2021 inclusive - application 08/943 nor its final grant did not at any stage address nor provide for any of this. This is 2021 there is no change regarding the presence of exposed water, which has been excavated below that specified in the final grant.



Photo 1. 2021 – image shows the western face [to the west] – this is where the most recent blasting occurred i.e., along the western and south-western faces. Note the construction of a further embankment or another haul road perhaps in front of the canteen, toilet area.



Photo 2. 2021 – the quarry floor continues to be removed some of the most recently blasted areas are currently resting under water.



Development in the context of other notable features in the area

Blue River Barrow

Red River Triogue c. 1km

Orange lines Distances from the development

Yellow tags 2 \* EU NATURA SAC sites

Mountmellick SAC Site Code: 002141 c. 2km

Barrow Nore SAC Site Code: 002162 c. 3km

#### Part 9

No further explanation required.

#### Part 10

No further explanation required.

This area falls outside of Folio LS2488F and is not within the File Plan submitted and resting on file

#### Part 11

No further explanation required.

#### Part 12

No further explanation required.

#### Part 13

No further explanation required.



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

25<sup>th</sup> 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

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 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.

### **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.
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.

### **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

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

Scale 1:20 000



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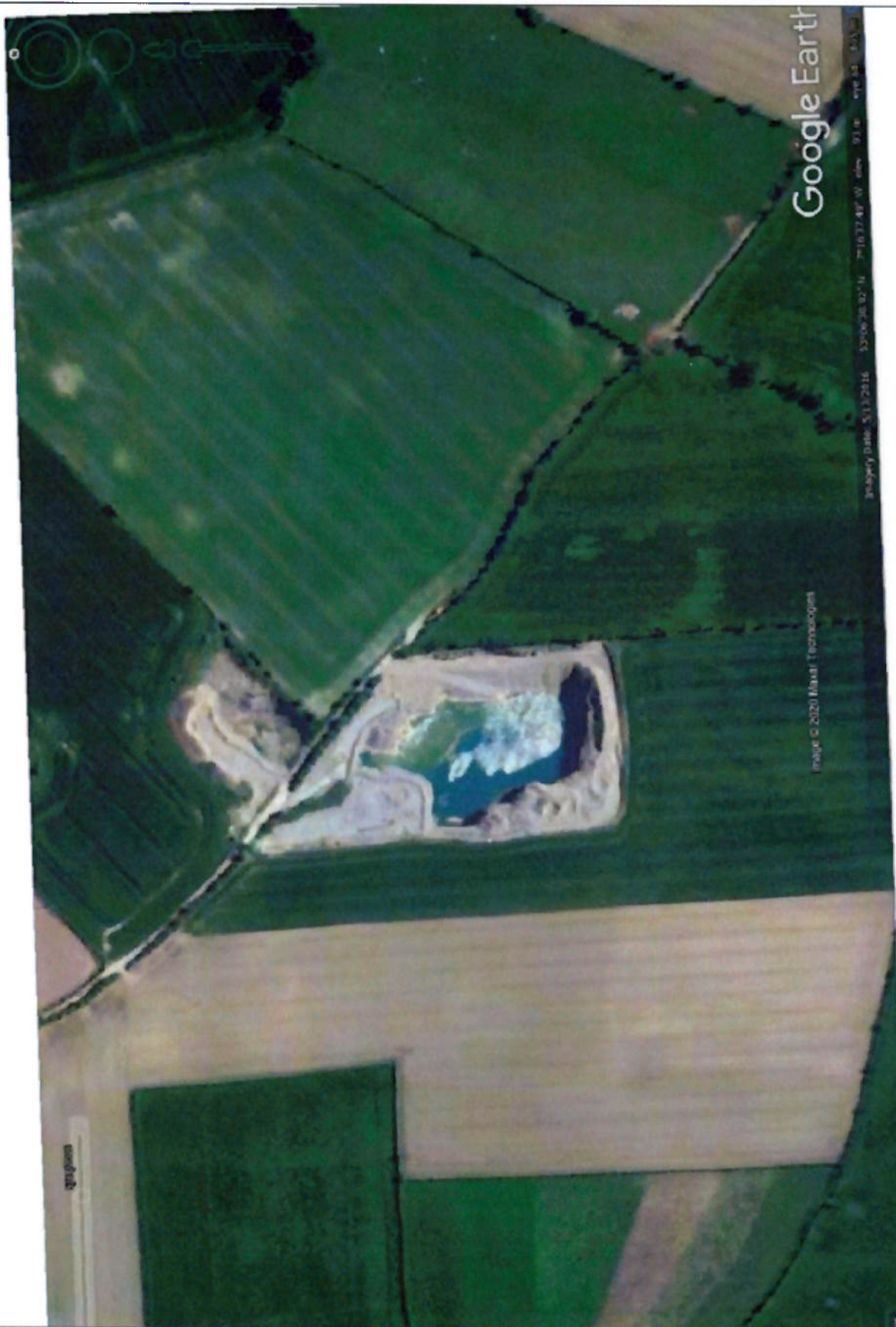
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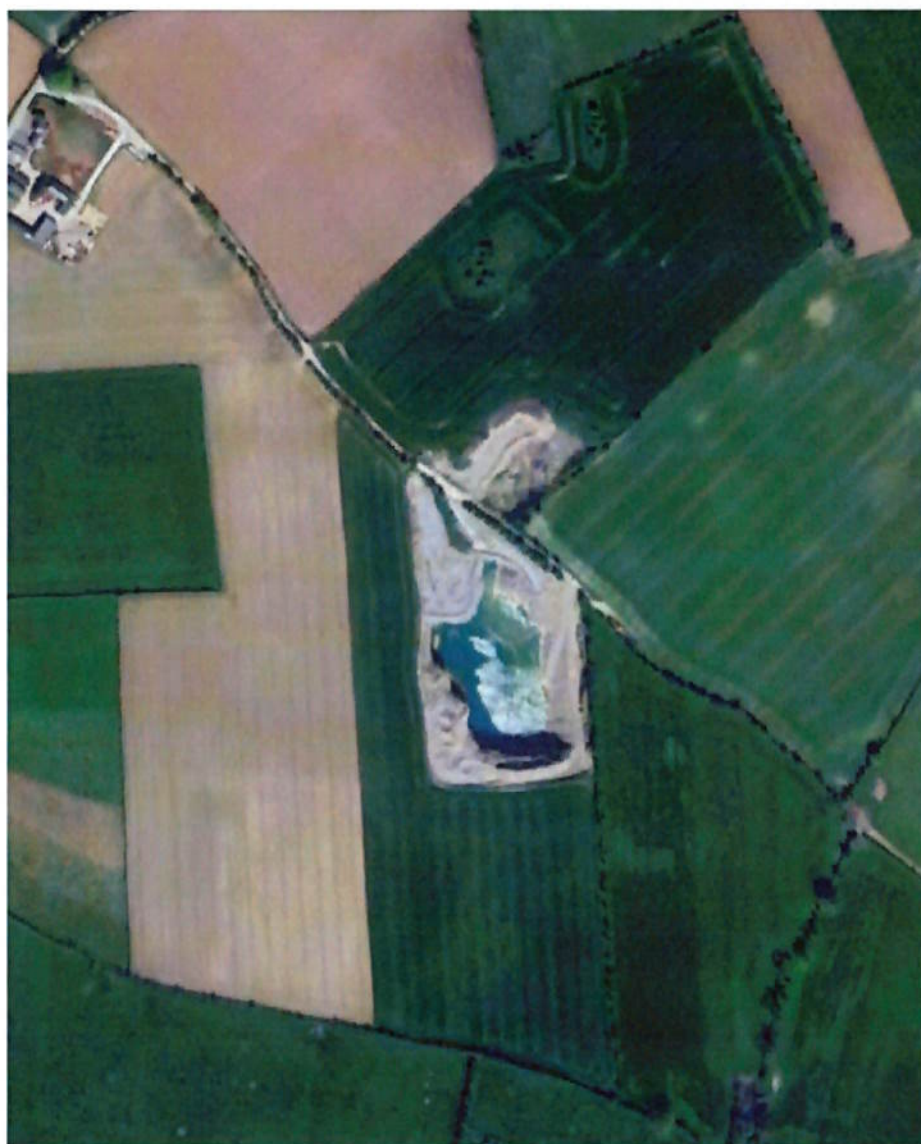


Google Earth

Image © 2020 Maxar Technologies

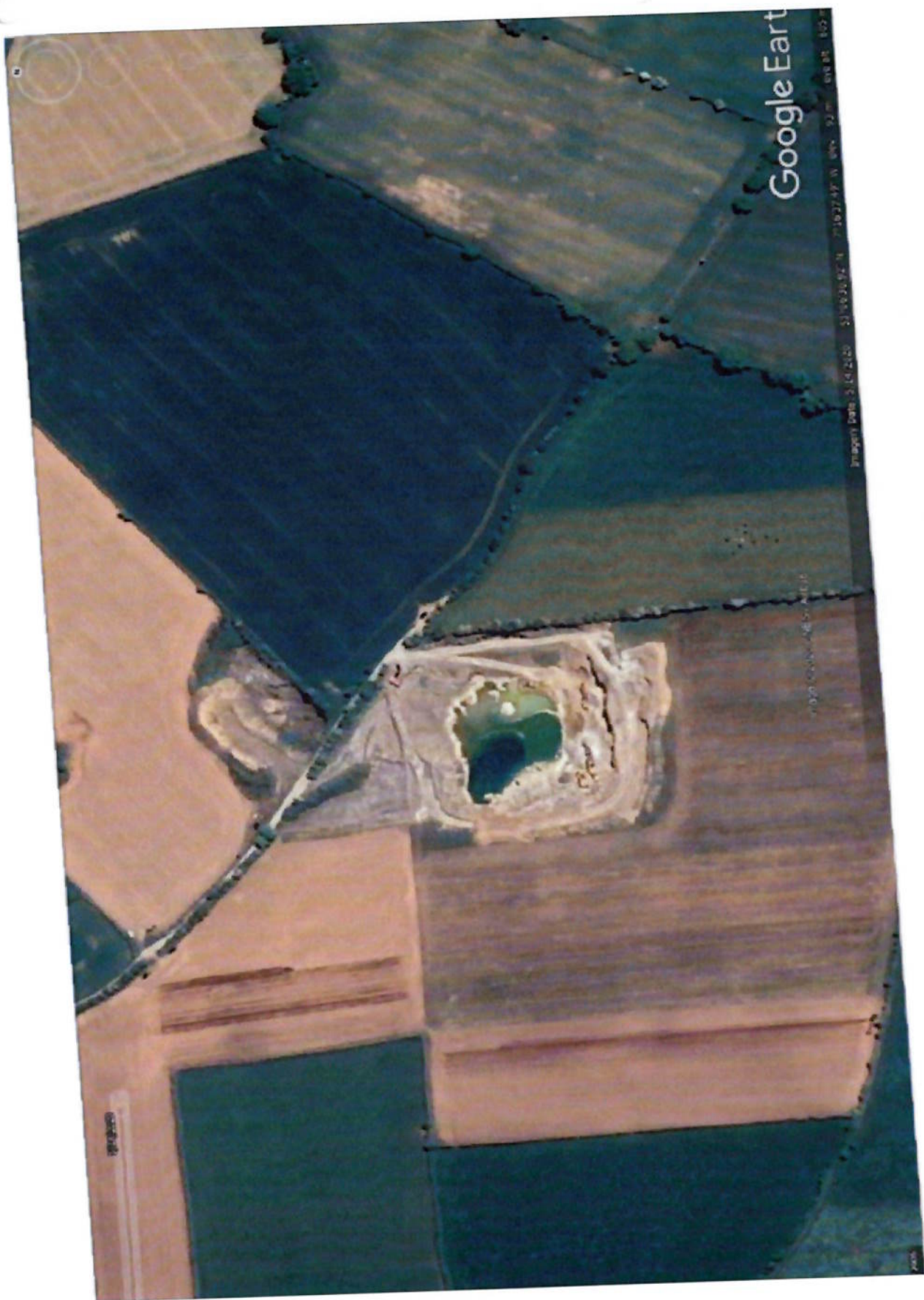
Imagery Date: 5/13/2016 13:00:28 12° 14' 37" N 77° 10' 27" W 93 m eye alt 4.1 km

Google









Google Earth

Prague, Czech Republic, 50° 07' 52" N, 14° 29' 52" E, 500 m, 600 m, 100 m

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Prague, Czech Republic



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Planning Department,  
LAOIS COUNTY COUNCIL  
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Portlaoise,  
Co. Laois  
R32 EHP9

6<sup>th</sup> October 2020

**SECTION 5 referral**

Your Ref:	10/5
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

Further to yours of the 21<sup>st</sup> inst, we respond as follows.  
There are **14 pages** inclusive of the cover page in this document.

Yours faithfully,

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

Enclosures: -

1. OSI Map on a scale of 1:2500



2016 – Approximate overlay – red Folio LS2488F, green approx outline from JSPE site plan (indicating the area to be extracted) and blue is the area that we believe was excavated and removed (several metres deep) backfilled to provide a new entrance and haul roads. The yellow highlighted areas are other areas that have been either partially or wholly backfilled.



2016 – entire quarry floor is covered in water. The image shows the entire area after the creation of a new entrance backfilling. Haul roads are to the eastern side. The image also shows the overburden to the north after it has been partially removed.



2018 – quarry floor is covered in water.



2019 – quarry floor is covered in water. Redline is the approximate location of extents of Folio LS2488F, see the backfilling to the south of the image. Note the presence of digger resting in neighbouring land.

### Part 3

is on public file and we understand that nowhere within does it provide for the extensive excavation, removal of material, and subsequent backfilling that occurred. See 2014, 2016, and 2019 imagery that shows aspects of the backfilling that was necessary to remedy the excavations.

### Part 4

You requested a map at a scale of 1:500. A map to this scale requires a detailed topographical survey. We are NOT the 1<sup>st</sup> or principal party in this reference and as a 3<sup>rd</sup> party we do not have access to the lands to conduct such a survey. To assist you in your query, we do attach a site location map (on OSI mapping at a scale of 1:2500) upon which is marked the approximate location J.

As we understand it the machinery has been stored continuously and extending over many years from 2014-2020 inclusive. See the presence of machinery resting on the neighbouring lands during this period in the images provided.



2019 – Digger in neighbouring land. Note the backfilling in the background and the partially removed stockpile of overburden – it was hauled from to backfill and create the new entrance and haul roads.

#### Part 6

You requested a map at a scale of 1:500. A map to this scale requires a detailed topographical survey. We are NOT the 1<sup>st</sup> or principal party in this reference and as a 3<sup>rd</sup> party we do not have access to the lands to conduct such a survey. To assist you in your query, we do attach a site location map (on OSI mapping at a scale of 1:2500) upon which is marked the approximate location "H".

The question refers to both.

The ground is all made-up, and subsidence is apparent (refer to 2014 images showing that entire of the eastern and northern section i.e. the current entrance and haul roads were excavated, removed, and appear to have been made-up since).

We note the developer and Laois County Council are in consultation regarding a berm haul road see an extract from the public file confirming the same.

#### Comment on Condition 15 (a):

Maintenance scheme in relation to the quarry is a continuous work in progress. Nutgrove Sand & Gravel Ltd have improved on there engagement with Laois County Council in most recent time with reference to stockproof fencing berm haul road, wheel-wash and all agreed with Laois County Council. Nutgrove Sand & Gravel Ltd going forward will continue in their communications with Laois County Council, it is also hoped that in trying to address all these nineteen conditions both parties could meet and implement same in a timely period.



The image shows a toilet, septic tank, and a water tank. Note the unfenced and exposed rock face that is directly abutting the neighbouring land where livestock is frequently kept.

#### Part 7

You requested a map at a scale of 1:500. A map to this scale requires a detailed topographical survey. We are NOT the 1<sup>st</sup> or principal party in this reference and as a 3<sup>rd</sup> party we do not have access to the lands to conduct such a survey. To assist you in your query, we do attach a site location map (on OSI mapping at a scale of 1:2500). It is considered that the question asked is self-explanatory and does not require further information on our part.

#### Part 10

You requested a map at a scale of 1:500. A map to this scale requires a detailed topographical survey. We are NOT the 1<sup>st</sup> or principal party in this reference and as a 3<sup>rd</sup> party we do not have access to the lands to conduct such a survey. To assist you in your query, we do attach a site location map (on OSI mapping at a scale of 1:2500) upon which is marked the approximate location "A" & "B".

As a third party, we are not in a position to confirm or provide the level of information and we are surprised that this was requested from us. This is information that only the developer could provide.

See previous images showing the demolished area before its removal.

Note this area falls outside of Folio LS2488F

#### Part 11

We are NOT the 1<sup>st</sup> or principal party in this reference and as a 3<sup>rd</sup> party we do not have access to the lands to conduct such a survey.

As a third party, we are not in a position to confirm or provide the level of information and we are surprised that this was requested from us.

It appears that all topsoil from within Folio LS2488F before 2012 was removed from Kilmainham see imagery provided there is no sign of it in the 2012 aerial image.

#### Part 12

You requested a map at a scale of 1:500. A map to this scale requires a detailed topographical survey. We are NOT the 1<sup>st</sup> or principal party in this reference and as a 3<sup>rd</sup> party we do not have access to the lands to conduct such a survey. To assist you in your query, we do attach a site location map (on OSI mapping at a scale of 1:2500) upon which is marked the approximate location "C".

See attached images only a part of the overburden was removed in 2014 (to backfill a new entrance into Folio LS2488F), without any remediation being carried out on the lands near "C" beforehand.



2014 Intact mound to the north. This was before the creation of the new entrance and backfilling that occurred within Folio LS2488F.

### Part 13

You requested a map at a scale of 1:500. A map to this scale requires a detailed topographical survey. Please note that we are NOT the 1st or principal party in this reference and as a 3rd party we do not have access to the lands to conduct such a survey. To assist you in your query, we do attach a site location map (on OSI mapping at a scale of 1:2500) upon which is marked the approximate locations "G", "H", "M" & "K"

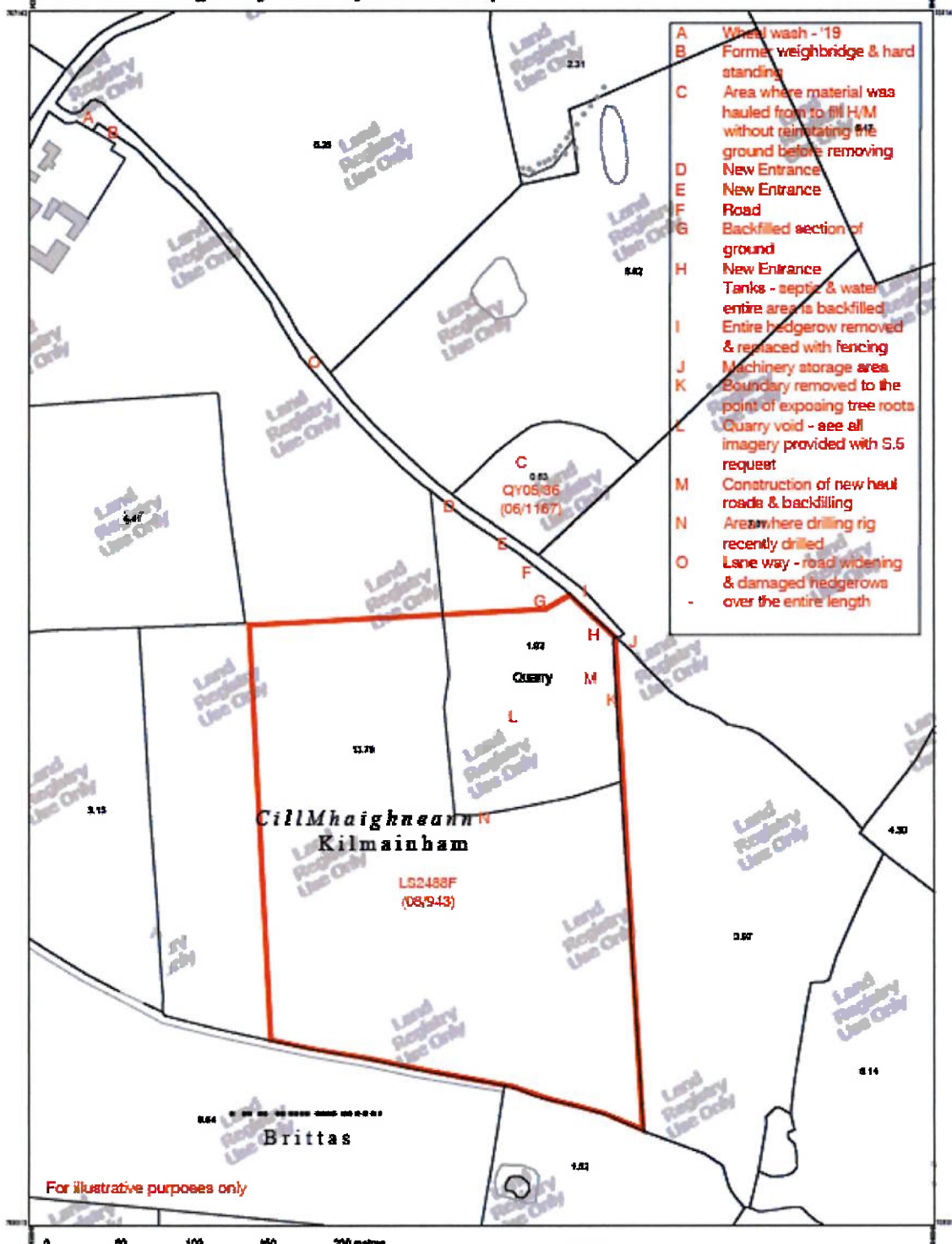


Commencing the backfilling at "G" note the overall depth of the area that was excavated. The backfilling extends right to the entrance (which you can see is being backfilled too in the upper east section of the image)



Backfilling at "G", which now extends right the way across to the entrance. Note quarry floor is covered in water

# Land Registry Compliant Map



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Phoenix Park,  
Dublin 8,  
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