



MICHAEL FRIEL

ARCHITECTS & SURVEYORS LTD.

CREESLOUGH,
Co. DONEGAL, F92 TF60.

PHONE: 074 91 38814
MOBILE: 087 286 9658
EMAIL: michael@mfielarchitects.ie

Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1,
D01 V902.

05/04/2021

RE: Whether the continuation of quarrying, including extraction, processing and sale of material of pre-63 existing quarry at Glenmakee, Carndonagh, Co. Donegal is or is not development and is or is not exempted development ?

Our Client: James Toland

Location: Glenmakee, Carndonagh, Co. Donegal.

A Chara,

Please find attached a response to a section 5 referral on behalf of our client Mr. James Toland in respect to a decision which An Bord Pleanála have been asked to make on the above matter by Donegal County Council.

I trust that this is satisfactory however, should you require any additional information in regards to this matter, please don't hesitate to contact me.

Yours Sincerely,

for MICHAEL FRIEL MRIA

Setting out the Response:

This response is brought about as a result of Donegal County Council seeking a view on “Whether the continuation of Quarrying, including extraction, processing and sale of material of a pre-63 existing Quarry at Glenmakee, Carndonagh, Co. Donegal is or is not development and is or is not exempted development?”

The Council have accepted a number of principles in regards to this Quarry, such as;

- That the Quarry at the location above does constitute it being a proper functioning Quarry.
- That the Quarry has been in existence prior to the year 1963 (prior to Planning permission becoming a necessary practice under the Local Gov. act 1963)
- The Quarry has been registered in 2006 under section 261 of the Planning & Dev act 2000.
- That the Quarry was registered in 2012 under Section 261(A) as per a determination of An Bord Pleanála where it was stated “ *that the scale and nature of operations carried out on this quarry are consistent with, and of a similar nature to , the historical operations at this quarry, which were established prior to coming into operation of the Planning Acts and prior to the introduction of the EIA Directive*”

The Quarry has been in existence and operational since the turn of the 1900's and as part of argument formulated by Mr. Toland when An Bord Pleanála made a determination on the validity of the Quarry being registered under the Section 261(A) process affidavits were produced that testified that a local man, Edward Mc Donald had worked in the Quarry as far back as 1938, another letter from a Locally elected Councillor to Donegal County Council testified that the Councillor, himself, namely Cllr. Michael Doherty had worked at the Quarry in 1958, both of these letters established that the Quarry was in existence prior to 1963.

The Quarry is operating in a small scale and as can be appreciated the amount of building and construction work taking place in such a peripheral part of our Island dictates that the amount of material which will be required into the future will remain on a small scale, therefor it is unlikely (at best) that this development will ever get larger by way of footprint or materials quarried than it currently is and has always been. This Quarry has always been operational and hopefully will continue to be so as to meet the needs of the local people who depend on it for their Stone and fill materials.

Location of Development:

The development is located in the Inishowen Peninsula in an area designated as being a Stronger Rural Area within the Donegal County Development Plan 2018 – 2024, it is also designated as being within a moderate Scenic Amenity. The operator of the development has over the years made every effort to ensure that the Quarry is not visually intrusive from any aspect and ensured that berms which shield the view of the development from all of the approach roads. No blasting takes place at the Quarry and the operator sees himself as being a community based small employer who is both loyal and considerate to the host environment and the local people who reside within the area. The area around the quarry is very sparsely populated and the nearest House to the Quarry is over 350m away and in there is approx. 14 Homes within a 1 km radius of the Quarry.

The development is serviced by a County Road, the L-5561-1 which is in good condition and leads to the R-238 which is located 1250m to the south of the Development. An Engineer who worked with the Council, Mr. Jimmy Mc Laughlin, previously met with the operator and agreement was reached that the Quarry vehicles would where possible use the R-244 road rather than go north to enter the R-238 which is 2,100 m from the Quarry, which would involve passing a moderately built up area. The operator sticks rigidly to this agreement which promotes good neighbourly behaviour and reduces any impact which any operation at the site has on the locality. The operator has an extremely good relationship with the local Community and takes his obligations as a local Quarry operator extremely serious.

Operation at the Quarry:

The development is one which extracts stone from a site, grades the stone and sells it on as a resource to those who require the stone for building or farming purposes. The only process which takes place at this site is the stone is screened, Screening is a process where the stone is segregated according to size, this is carried out by Placing the extracted stone into a Mechanical Screener and it will grade the stone into 3 Grades, in this instance the grades are as follows;

1. Chippy Dust (smallest particles)
2. Small Stone (Usually set to accept 1 – 2 Stone)
3. Larger Stone (all other larger stone types, usually used for fill material)

When the stone is graded it is then ready to be transported to where it is required, be that a site or a farm where the product can be used for various uses from drainage to building. This process has remained exactly as it would have prior to 1963 and as such it cannot be argued or accepted that the operation has increased in its footprint by way of size or its intensification as the operation is as it was pre October 1964, with only a

small number of loads that are leaving the Quarry/development on a weekly basis. It would be reasonable to judge that the works which are now taking place at the development would have been reasonably considered as the same works in the same area as would have been extracted pre 1963, the operation has not ceased at any stage and cannot be termed as the operation ever being considered as an abandonment of use since the development commenced in the early 1900's. The works which are now taking place have not in any way given rise to a material change of use as the use is exactly as it was prior to 1963 and the development is still involved in excavating the same seam of rock within the same footprint as was in existence pre 1963.

Council Input:

Donegal County Council placed a number of conditions on the Quarry in 2012, all of which have been adhered to such as;

- An on-site Wheel wash
- The putting in place of a Weigh scales for Lorries
- The putting in place of settlement ponds for the treatment of water.

The development is operated with best practice put in place for all of the practices, processes and safety of anyone working in mind.

Exempted Development:

Donegal County Council have put it to An Bord Pleanála that they are of the "*view that the continuation of quarrying without the benefit of planning permission comprises development and is not exempted development*", We, like Mr. Toland who operates the development are of the opinion that the continuation of quarrying is development, the same development as was in existence pre 1963, however, this development has been in existence since the early 1900's, did not require planning permission as it was in existence pre 1963, essentially the works commenced pre 1963 and are still being carried out at the same site in the same manner as it was when first initiated. The question is, whether this development has altered in a significant way to give rise to any of the above matters bringing about a material change of the original use, the tests for this are as follows;

Has the footprint or area of development changed?

No. The area which is not being developed through the extraction of rock is the same area as was in existence prior to 1963, this can be seen from the ariel maps which I have appended but also by the decision taken by An Bord Pleanála in granting the Section 261(A) on the 29th of May 2013 where they stated, "*that the scale and nature of operations carried out on this quarry are consistent with and of a similar nature to, the historical operations at this quarry, which were established prior to the coming into operation of the Planning Acts prior to the introduction of the EIA Directive*".

Given that the above has been accepted previously and the footprint has in no way altered since 2013, it is our strong contention that this is not an issue in this matter

Has the Works Intensified creating a material change of use?

No. The development is exactly as it would have been pre-1963 insofar as stone is extracted, graded and sold to local people who require the stone for various building and drainage purposes. There is no doubt that modern machines have added to the ease with which this work can be carried out and it is not as labour intensive as it would have once been but the volume of material being sold has remained steady over the years albeit it would have reduced further during the recessionary years through 2008 – 2015. The development is largely carried out by two workmen and the volume of stone which is sold from the Quarry is quite small. No extra processing of the material takes place at the site, no water is used to process any of the material and nothing is added to the material to make it a resource as the stone is the natural resource in this instance.

Has The Quarry been abandoned to give rise to abandonment of use?

No. This development has been in place and operational since the early 1900's, the site was not closed at any stage for a prolonged period and local people have been working and receiving stone from the Quarry going back generations.

Are there any new Natura 2000 sites which may give rise to a need for an EIA(R)?

No.

The site is located 2,900m from the Trawbrega Bay SPA which is in existence for the protection of

- Barnacle Goose *Branta leucopsis*
- Light bellied Brent Goose *Branta bernicla hrota*
- Chough *Pyrrhocorax pyrrhocorax*
- Wetlands

In addition the site is located approx. 6kms from the primary Chough (*Pyrrhocorax Pyrrhocorax*) habitat. The notice of making of this statutory instrument was published on the 24th July 2012 by the then Minister Jimmy Deenihan T.D which was prior to the 29th May 2013 when An Bord Pleanála made their decision to accept that this site could avail of Section 261(A) quarry registration so therefor, NO new designations have been enacted since the determination was made in 2013 by An Bord Pleanála. In addition to this the area of the Development is 2.07Ha which effectively deems the site to be sub threshold for an EIAR. The fact that this Development has been in operation since the early 1900's and the Natura 2000 site designation was proposed in 2012 and enacted in 2014 shows that this development at this scale at this location is in fact not interfering negatively upon the wetlands habitat or the species which populate it as the bay is a safe and suitable environment for these bird species.

Conclusion:

It is accepted by Donegal County Council that the Quarry is registered as a pre 1963 Development under the Section 261(A) Quarry registration instrument, therefor the question which must now be answered by An Bord Pleanála is whether the development has altered by way of a material change by either intensification, moving to another area/site or if the Area which the development is located has being designated as a European site for the purposes of Environmental protection, the answer to all of the above is No and as such the development is operating as it was pre-1963 and it is fair to arrive at a conclusion that the works which are currently taking place would have been envisaged as being works which would have been carried out by those who initiated the development at the Quarry pre 1963.

No buildings have ever been erected at the development and our client is aware that any proposed works such as the erection of a building would require planning permission as it would constitute development.

I hope and trust that An Bord Pleanála will see fit to allow Mr. Toland, an indigenous member of the Community to continue to extract stone and make it available to local persons who require it so that the tradition which pertains to this site can continue to exist.

