

L. Clark
L. Quinn

Flick Buckley

From: Bord
Sent: Friday 26 November 2021 11:26
To: Appeals2
Subject: FW: Response to ABP-311824-21
Attachments: Response to BORD P for DPH.pdf; Maps for DPH Quarry.pdf; STAT Declaration for Tober Q.pdf

Importance: High

From: Seamus (M Friel Architects) <seamus@mfriearchitects.ie>
Sent: Friday 26 November 2021 09:59
To: Bord <bord@pleanala.ie>
Subject: Response to ABP-311824-21
Importance: High

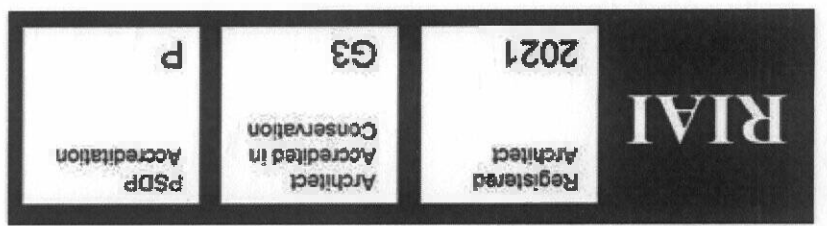
A Chara,

Please find attached 3 No. documents pertaining to a response to case Number ABP-311824-21 on behalf of DPH Groundworks Limited. I would appreciate if you could revert to me to advise that you have received same.

Le meas,

Seamus.

Seamus O Domhnaill,
Michael Friel Architects & Surveyors.
Tel: 086 316 2379
Tel: 074 91 38814



for MICHAEL FRIEL MRAI

Yours Sincerely,
Michael Friel

I trust that the attached is satisfactory, however should you require any further information, please don't hesitate to contact me.

Please see attached a response to a section 5 Referral which has been made, further to Donegal County Council seeking an opinion from An Bord Pleanála in regards to a Pre-63 Quarry located at Tober, Carrigans, Co. Donegal.

A Chara,

Location: Tober, Carrigans, Inishowen, Co. Donegal.

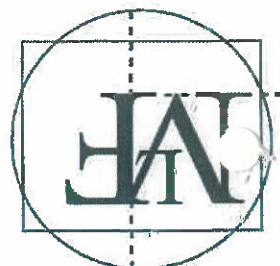
Development: Whether: (i) The continuation of existing quarry operation including extraction, processing and sale of raw and processed material, is operating in accordance with its pre-64 authorisation and is or is not exempted development and (ii) the continuation of quarrying to the extremity of the landholding (18.99ha), is in accordance with its pre-64 authorisation and is or is not exempted development and is or is not exempted development.

Our Clients: DPH Groundworks.

RE: Response to An Bord Pleanála on case No: ABP-311824-24

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

22/11/2021



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CRESSLOUGH,
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Setting out the Response:

This response is brought about as a result of Donegal County Council seeking a view on "Whether (i) the continuation of existing Quarry operation including extraction, processing and sale of raw and processed quarried material, is operating in accordance with its pre-64 authorisation and is or is not development and is or is it not exempted development and (ii) the continuation of quarrying to the extremity of the landholding (18.99ha), is in accordance with its pre-64 authorisation and is or is it not development and is or is it not exempted development.

Location: Tober, Carrigans, Inishowen, Co. Donegal
Client: DPH Groundworks Limited.

In setting out our response to the question which has been raised by Donegal County Council it is a very pertinent point that Donegal County Council in their submission fully accept that the Quarry operation operated by DPH Groundworks Limited and they state " it is accepted by all parties that quarrying commence before the appointed day for the purposes of the local Government Planning and Development Act 1963, i.e 1st October 1964 and therefore also prior to the introduction of the EIA Directive, 1st Feb 1990 and Habitats Directive 26th Feb 1997"

The Council have also 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"

Location of Development:

The development is located in the townland of Tober, Carrigans in County Donegal. This area is designated in the Donegal County Development as being an area under strong urban influence, however there is but 14 houses within a 1km radius with 1 additional House currently under construction.

The area the Quarry is located in, is a strong Agricultural area and is located 6.5 kms from the N-13 which is the main link road between Letterkenny & Derry City. The Quarry is located at a point which is in excess of 6.5kms from the Lough Swilly SAC (site code 004075) and over 4kms from the River Finn SAC (site code 002301). The area of the site is 18.99ha in total, whilst the Quarry was listed as having an area of 33.12ha. when registered in 2006 under 261 of the planning and development act 2000, we do accept that here must have been an error by the applicant or their agents at that time and wish to have it recorded that the actual size of the Quarry is 18.99ha.

Operation at the Quarry:

The Quarry's main product is slate and building stone, the type of rock at the site lends itself to the production of natural slate and building stone which are predominantly used in the local building trade this is in the form of a hard whin stone. The rock is extracted using rock breakers and no blasting takes place at the facility. The bye products that are produced as a result of the processes can be used for the purposes of chippings and clause 804-type material. There has also emerged a market for slate mulch which is used extensively in the landscape market such as Golf courses, play areas and garden areas, this product is normally imported from overseas although an amount of this product is produced in the Counties such as Laois & Clare, there is little to none of this product produced in the Northwest of Ireland other than in Tober Quarry in Carrigans.

The nature of slate is that it must be a hard product and it must be laid in a form that allows for it to be extracted in thin layers, much of the rock formation in Tober Quarry allows for this to happen, however there are certain seams which contain large deposits of soil or rock which is not suitable to be used as a slate product. These seams of rock and soil must be removed and are essentially a by - product so as to allow the operator to access good product for the use in the slate and stone building industry. The Quarry has since pre 1963 had a very large footprint which was brought about as a result of the previous operators taking out stone which was easiest to extract. Modern methods now mean that much of the extracted or spent areas can now be re-visited and further extraction can take place from these areas while keeping inside the original footprint.

The site does not in any way process the extracted stone/rock into any other products and do not add any additives to the product, the stages which occur are as follows;

- Material extracted through Rock breaking
- Material is then graded into Slate products, Building stone or by-product
- The slate is then further graded to decipher if it can be used as a slate for the purpose of roofing or as slabs for footpaths or wall copings or If the Slate is of a quality that it can be used as slate mulch.

- The By-products are used for the purposes of caluse 804-type material as well as chippy dust.

Exempted Development:

Donegal County Council have put it to An Bord Pleanála that they are of the "view that the continuation of quarrying in this case is development and is not exempted development". We, like Mr. Columba Duffy of DPH Groundworks Limited who operates the development are of the opinion that the continuation of quarrying is development, is the same development in size, scale and operation as 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 currently being developed through the extraction of rock is the same area as was in existence prior to 1963, this can be seen from the aerial images which Donegal County Council themselves have supplied to An Bord Pleanála in their correspondence relating to this matter. An Bord Pleanála have taken a previous view that Tober Quarry should be accepted as being a Pre-1963 Quarry and allowed for it to be registered under Section 261(A) on the 1st of December 2013 where they decided that the Quarry was in existence pre-1963, that the operation was permissible and that the Quarry could be registered. As previously stated the current operator is extracting from areas which were previously extracted from, the methods used previously did not allow for harder rock to be removed or because there may have been seams of soil or product not usable for the production of slate or building stone, previous operator moved to virgin grounds, thus increasing the footprint of the Quarry. The current operator is in a position to extract rock from these locations and remove materials which may not be ideal for the production of Slate & building stone so as to allow him to get to seams of good, usable material which is suitable to be used for the purposes of Slate & Stone.

Given that the above has been accepted previously and the footprint has in no way altered since the previous decision by An Bord in 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 slate and stone is extracted, graded and sorted and sold to persons for the purposes of Slate, slate mulch or building stone. There is no doubt that modern machines have added to the ease with which this work can be

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. Duffy, trading as DPH Groundworks 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.

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 persons, the owner and his son and the volume of slate and 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 alter the form of the 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, I have attached two Maps which we have accessed from the OSI which were surveyed between 1829 and 1841 and between 1897 and 1913 which clearly show the presence of a Quarry at this location going back to that point which shows that a Quarry has been present at this location since at least the 1830's. Naturally the footprint of the Quarry would have grown over the intervening 190 years and we are left with the footprint that currently exists.

The need for an EIA at this location?

Given that the footprint of the Quarry is 18.99 ha it is reasonable to assume that an EIA is required for the site, however, it is also worth noting that as the site in its entirety, that is to say 18.99ha was in operation prior to 1963 and that the footprint of the Quarry is identical to what it would have prior to the need for an EIA existed in 1985 when the first EIA Directive was adopted (directive 85/337/EFC) and subsequent amending Directives in 1997, 2003 and 2009. As previously stated the location of the Quarry is in excess of 6.5kms from the Lough Swilly SAC (site code 004075) and over 4kms from the River Finn SAC (site code 002301). The current operator took ownership of the Quarry in 2019 and has advised that if an EIA is required in the opinion of An Bord Pleanála he will get one prepared and offer it as an application for substitute consent to An Bord Pleanála through a formal application, however given the above factors and the longevity of the Quarry at this location, within the existing footprint we question the necessity of same.

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, therefore 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. As

STATUTORY DECLARATION of SAMUEL JAMES DUNCAN
Re Planning

I, SAMUEL JAMES DUNCAN of Tober, Carrigans, Co Donegal aged 21 years and upwards to solemnly and sincerely declare as follows:-

1. I have lived at Tober, Carrigans, County Donegal since I was born in 1953

2. I was the previous owner of lands now owned by Tober Quarry Limited the subject of Dealing No D2007N1L63679T and contained in Folio DL3059 County Donegal

3. The lands have been used as a quarry for all of my life i.e. since 1953

4. I say and believe that I know from my late Father that the lands were used continuously as a

quarry before my birth since before 1930

5. That before making this Declaration the full effect meaning and purport of all such burdens was

explained to me by my Solicitor and I understood the same

I make this Statutory Declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1938, and for the benefit of Paul Duffy and Colin Duffy

DECLARED Before me by SAMUEL JAMES
DUNCAN

who is personally known to
me at *Repsive*
or who is identified to me by

who is personally known to me at
in the County of *Donegal*
this 17th day of *November* 2011
and I know the Declarant

Practising Solicitor

H. G. Wilson

Samuel J. Duncan

