

28th October 2021

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

Re: Section 5 Referral to An Bord Pleanála by Donegal County Council with regard to development at Tober, Carrigans, Inishowen, Co. Donegal

A Chara,

Attachd please find Section 5 referral and fee in the amount of €110

Is mise le meas,



Martin Mc Dermott
Executive Planner
Quarry Compliance Officer
Community, Enterprise and Planning Services
Donegal County Council

AN BORD PLEANÁLA
LDG- 845471-2
ABP- _____
29 OCT 2021 cheque
Fee: € 110 Type: Bank Draft
Time: _____ By: Bank Draft

Section 5 Referral to An Bord Pleanála by Donegal County Council with regard to development at Tober, Carrigans, Inishowen, Co. Donegal

Applicants Name and Address:

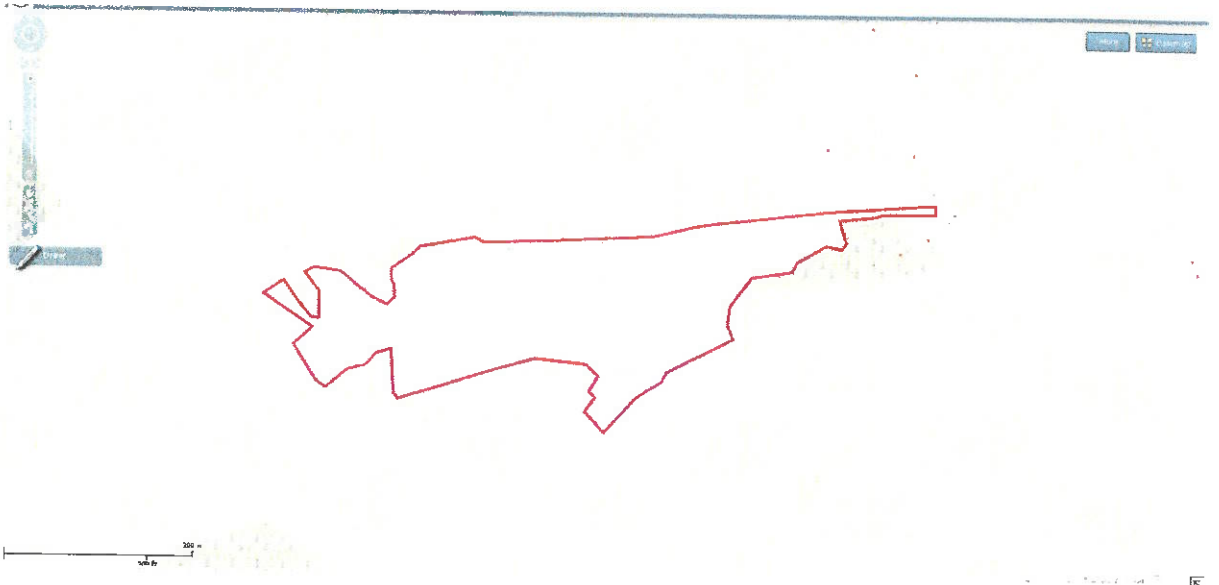
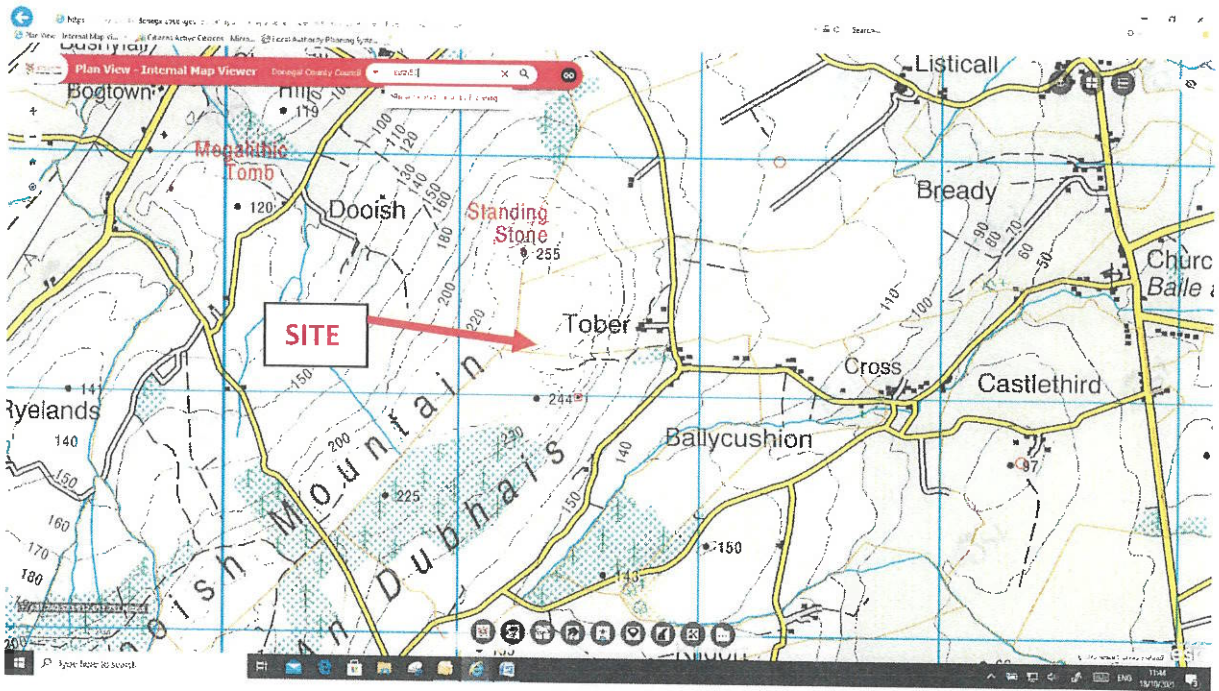
Donegal County Council, County House, Lifford, Co. Donegal

Developers / landowners:

- DPH Groundworks Limited, Lisfannon, Fahan, Co. Donegal

Location of Proposed:

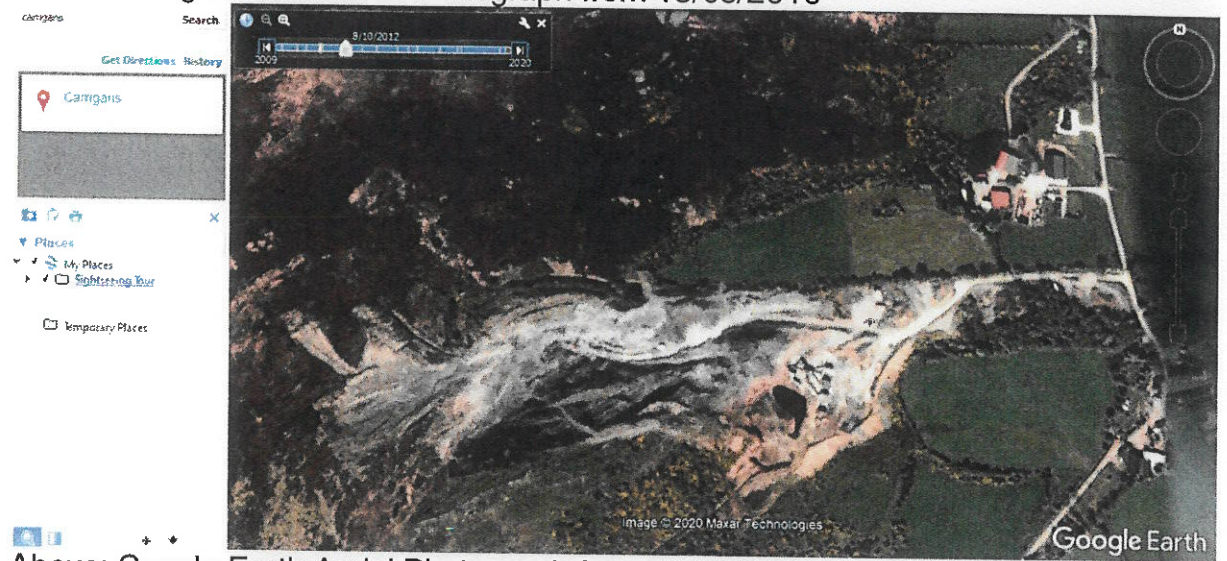
Tober, Carrigans, Inishowen, Co. Donegal (see the quarry site area outlined in red on map and identified in aerial photography below):



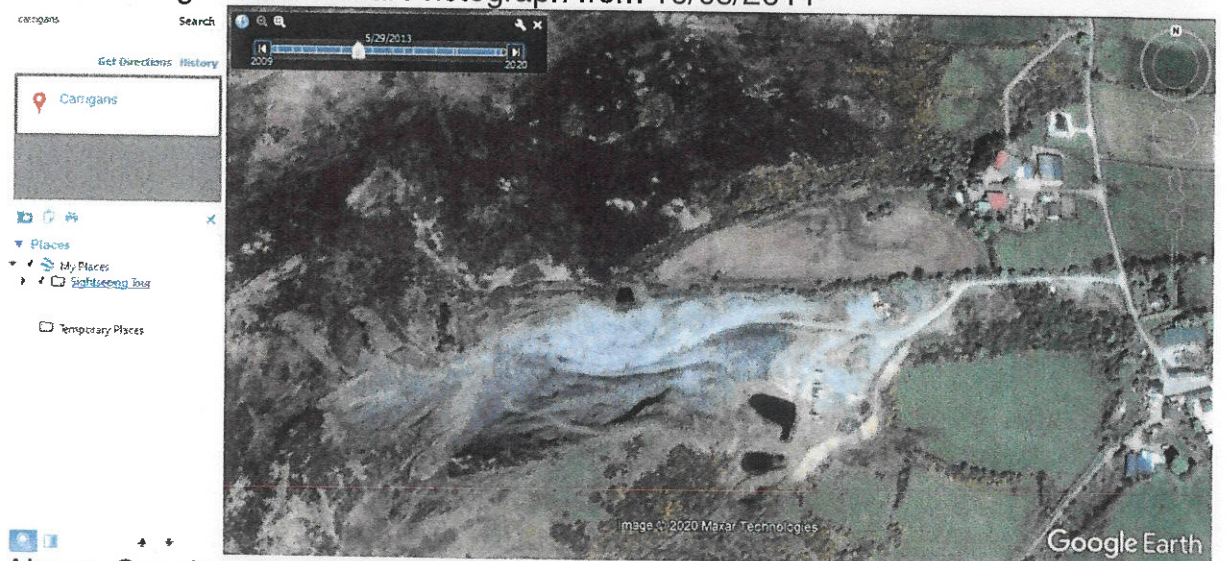
Section 5 Referral regarding pre-64 authorisation to quarry lands at Tober, Carrigans, Inishowen, Co. Donegal.



Above: Google Earth Aerial Photograph from 15/08/2010



Above: Google Earth Aerial Photograph from 10/08/2011



Above: Google Earth Aerial Photograph from 29/05/2013

Section 5 Referral regarding pre-64 authorisation to quarry lands at Tober, Carrigans, Inishowen, Co. Donegal.



Above: Google Earth Aerial Photograph from 01/10/2015



Above: Google Earth Aerial Photograph from 05/05/2017



Above: Google Earth Aerial Photograph from 24/02/2020

Section 5 Referral regarding pre-64 authorisation to quarry lands at Tober, Carrigans, Inishowen, Co. Donegal.



Above: Google Earth Aerial Photograph from 08/08/2020



Above: Google Earth Aerial Photograph from 27/06/2021

Photographs of the quarry taken on the 18/10/2021



Section 5 Referral regarding pre-64 authorisation to quarry lands at Tober, Carrigans, Inishowen, Co. Donegal.



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Section 5 Referral regarding pre-64 authorisation to quarry lands at Tober, Carrigans, Inishowen, Co. Donegal.

Subject matter of referral:

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 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 development and is or is not exempted development.

Grounds of referral and reasons and considerations on which it based:

The development is currently being investigated as an unauthorised development under planning enforcement case reference UD1819.

The definition of a quarry is set out in Section 2 of the Planning and Development Act, 2000 (as amended).

This quarry has no extant planning history, but was registered in 2006 under Section 261 of the Planning and Development Act, 2000 (as amended). The submitted application form for the quarry identified the registered quarry area as 33.12ha, with an area of extraction area of 33.12ha.

A property registration search on Landdirect.ie confirmed that DPH Groundworks Limited are the current registered owner of the overall quarry unit (Folio DL 74248 F) and that the landholding in question extends to 18.99ha (The landholding map is consistent with the map of lands registered under S.261, although the area cited in said application forms is stated as 33.12ha, this may be a simple error on said application form).

This quarry was subsequently one of 187 no. quarries in County Donegal registered under Section 261 (A) Quarry Registration 2012 (Euqy 55 refers).

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 Act, 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 Planning Authority issued a 4(a) Notice of determination dated 22nd August 2012. On 11/12/13 the Board confirmed the Planning Authority's determination under sections 261A(2)(a)(i) and set aside the Planning Authority's decision under 261A(4)(a), however, no 3(a) Notice issued directing the operator to apply for substitute consent on foot of same. Hence the quarry operator was not made aware of the implications of the review of the S. 261(A) determination.

Review of Section 261A determination:

It was accepted by An Bord Pleanala that this quarry was a pre-1964 quarry development, but that development was carried out after 01/02/1990 which development would have required an EIA and / or a determination as to whether or not an EIA was required, but that such an assessment or determination was not carried out.

Other matters:

The Planning Authority issued an Enforcement Notice to the developer(s) on 14th April 2021 in accordance with S.154 of the Planning and Development Act, 2000 (as amended) with respect of the continuation of quarrying.

On the 06/05/2021 the quarry operator's agent Michael Friel Architects & Surveyors Ltd., submitted a response to the Planning Authority contending that the quarry operator is entitled to continue to operate the quarry as a pre-64 authorised quarry subject to certain limitations and referencing a similar quarry related S.5 referral taken by the Planning Authority in a separate case.

The Planning Authority acknowledges case law that pre-64 authorisation for quarries is based on extent of 'ore body' or 'landholding in control of landowner' before the appointed day. However, the Planning Authority is of the opinion if intensification / expansion occurred post 1st Feb 1990, which requires a mandatory EIA or determination for sub-threshold EIA (set out in Articles 92, 103 and 109 and the 7th Schedule of the P & D Regs, 2001 (as amended), then a quarry can no rely solely on pre-64 authorisation.

The Planning Authority recently sought a S.5 Referral in respect of a small quarry (less than 1ha extraction area and 3.71ha overall landholding) operation in Glenmakee, Carndonagh, Co. Donegal (ABP-309662-21 refers), as can be seen therefrom an Bord Pleanála concluded that: *"the continuation of quarrying, including extraction, processing and sale of material of a pre-63 existing quarry at Glenmakee, Carndonagh, County Donegal is development and is exempted development"*. Therefore accepting that quarry is a pre-64 authorised quarry.

However, while acknowledging this outcome, the Planning Authority contends that the current case is materially different in location, scale and nature and cannot rely on the outcome of this previous S.5 referral for the following reasons:

- (i) the current area of active extraction in this case extends to c. 2ha., while the entire operational area of the quarry unit, including surface stripped lands extends to c. 4.5ha., within a potential future quarry area based on the pre-64 landholding, overall landholding / S.261 registered area of c. 19ha., resulting in a material difference in the morphology of the quarry boundaries, its overall scale and footprint, therefore the requirement for consideration of a mandatory EIA or determination for sub-threshold EIA arises under the EIA Directive and
- (ii) the quarry is located c. 3.7km. north west of the closest Natura 2000 site, being Finn River SAC (Site code 002301) and c. 6.5km. southwest of Lough Swilly SPA (Site code 004075) therefore the requirement for consideration of Appropriate Assessment / screening for Appropriated Assessment arises under the Habitats Directive.

There are no other applicable exemptions and the Planning Authority is of the view that the continuation of quarrying without the benefit of planning permission comprises development and is not exempted development. Consequently the Planning Authority is seeking confirmation from An Bord Pleanála that the continuation of quarrying in this case is development and is not exempted development.

