



**Comhairle Contae
Dhún na nGall**
Donegal County Council

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05th November 2021

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

AN BORD PLEANÁLA
LDG- 045765-21
ABP- _____
08 NOV 2021
Fee: € 110 Type: Chama
Time: _____ By: Reg Post

Re: Section 5 Referral to An Bord Pleanala by Donegal County Council with regard to development at Arduns, Gweedore, Co. Donegal

A Chara,

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

Is mise le meas,

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

Cuir freagra chuig: Áras an Chontae, Leifear, Contae Dhún na nGall, Éire F93 Y622
Please reply to: County House, Lifford, Co. Donegal, Ireland F93 Y622



Comhairle Chontae Dhún na nGall
Donegal County Council

County House,
Lifford,
Co. Donegal.
Enquiries 074 9172315/6/8

AN BORD PLEANALA
64 MALBOROUGH STREET
DUBLIN 1
Ireland

REMITTANCE ADVICE / FAISNÉIS ÍOCAÍOCHTA

Cheque No. 213489
Supp ID / Uimh. Aitheantais 393548
Date / Dáta 02/11/2021
Page / Leathanach 1/1

Your Ref/ Bhur dTagairt	Inv Date/ Dáta Sonraisc	Our Ref/ Ár dTagairt	AMOUNT/ SUIM EUR	Payable Iníoctha EUR
Section 5 Fee	29/10/2021	30928371	110.00	110.00
PAGE TOTAL / IOMLÁN AN LEATHANAIGH			EUR	
			110.00	110.00
GRAND TOTAL / MÓRIOMLÁN			EUR	
			110.00	110.00

WH = Withholding Tax CT = Subcontractors Tax RA = Non Resident Landlord
CMP = Late Payment Compensation

Section 5 Referral to An Bord Pleanála by Donegal County Council with regard to development at Arduns, Gweedore, Co. Donegal

Applicants Name and Address:

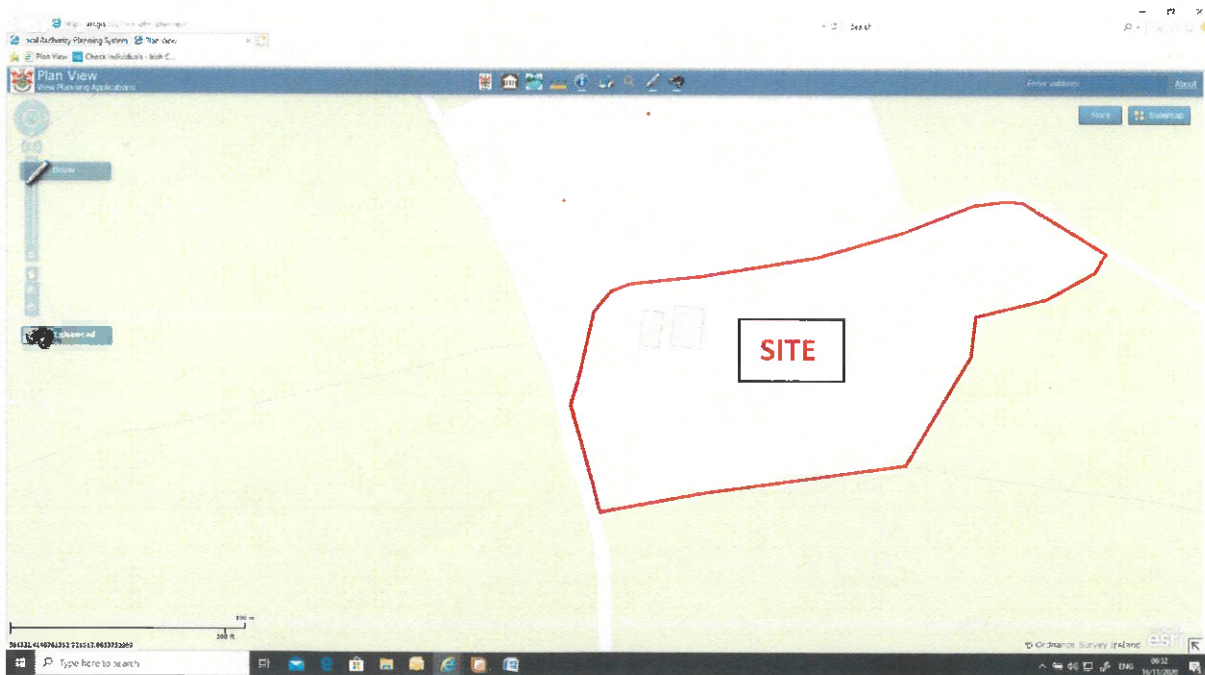
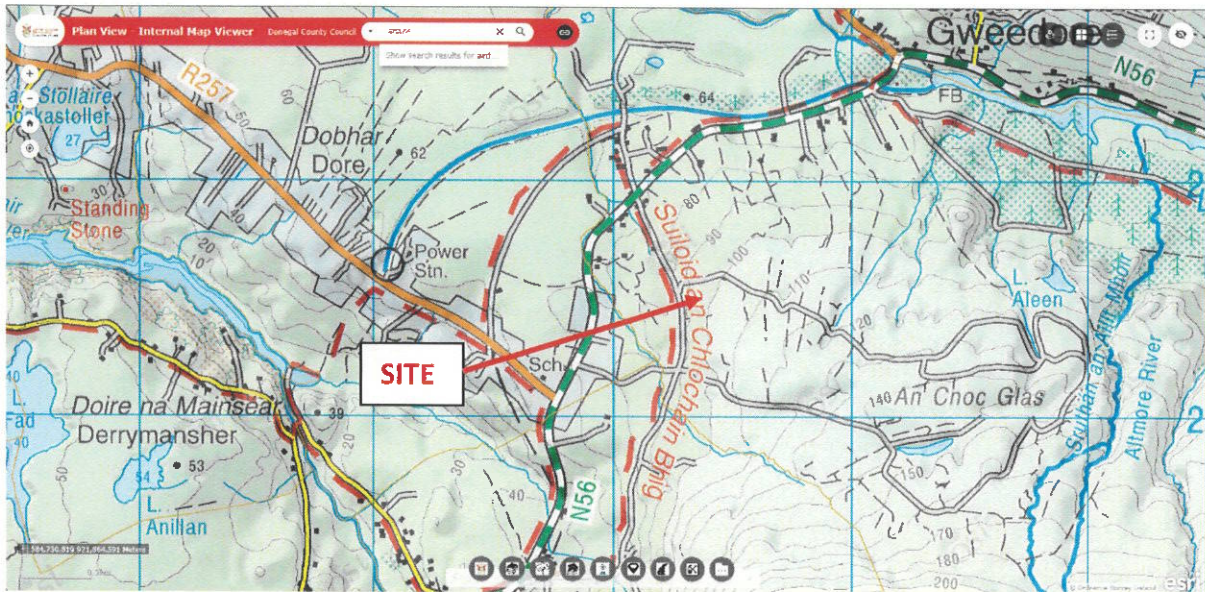
Donegal County Council, County House, Lifford, Co. Donegal

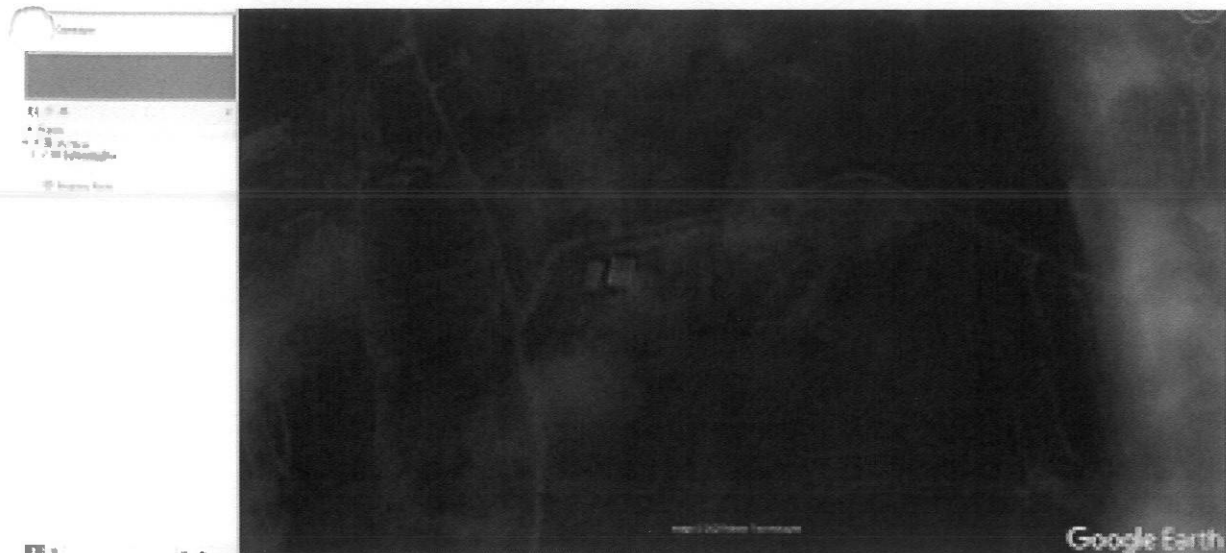
Developers / landowners:

- Bernadette and Eugene O' Neill, Meenaleck, Crolly, Co. Donegal

Location of Proposed:

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





Above: Google Earth Aerial Photograph from 21/03/2009



Above: Google Earth Aerial Photograph from 22/04/2011



Above: Google Earth Aerial Photograph from 28/05/2014



Above: Google Earth Aerial Photograph from 20/09/2019

Photographs of the quarry taken on the 22/10/2021



Section 5 Referral regarding pre-64 authorisation to quarry lands at Arduns, Gweedore, Co. Donegal.



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Section 5 Referral regarding pre-64 authorisation to quarry lands at Arduns, Gweedore, 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 current landholding (2.53ha), abutting a Natura 2000 site, namely Cloghernagore Bog and Glenveagh National Park Special Area of Conservation (Site code 002047), 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 UD20255.

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 2.068ha, with an area of extraction area of 2.0ha. However, the accompanying 1:2,500 scale maps identifies the overall landholding extending to c. 3.5ha. (however this map relates to lands c. 0.3km to the south of the subject site and not the subject site).

A property registration search on Landdirect.ie confirmed that Bernadette O' Neill is the current registered owner of the overall quarry unit (Folio DL 83951 F) and that the landholding in question extends to 2.53ha (0.53ha above the area of extraction identified under S.261). However, Eugene O' Neill has since confirmed that he is the owner and that Bernadette O' Neill holds the lands in trust.

This quarry was subsequently one of 187 no. quarries in County Donegal registered under Section 261 (A) Quarry Registration 2012 (Euqy 78 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 19/04/14 the Board set aside the Planning Authority's determination under sections 261A(2)(a)(i) and 261A(2)(a)(ii).

Review of Section 261A determination:

It was accepted by An Bord Pleanala that this quarry was a pre-1964 quarry development.

Other matters:

The Planning Authority issued an Enforcement Notice to Sinead O' Neill on 27th April 2021 in accordance with S.154 of the Planning and Development Act, 2000 (as

(nended) with respect of the use of land for and all related ancillary activities and the Mr. O' Neill responded on a number of occasions refuting same.

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 that if intensification / expansion occurred post 1st Feb 1990, which development would have required 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 cannot rely solely on pre-64 authorisation. In addition the Planning Authority is of the opinion that if intensification / expansion occurred post 26th Feb 1997, which development would have required having regard to the Habitats Directive, an appropriate assessment, then a quarry cannot 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 Pleanala 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 registered landholding extending to 2.53ha., located outside the adjoining Natura 2000 site, but exceeds both the S.261 registered extraction area of 2.0ha and quarry area of 2.068ha and therefore cannot rely on same and
- (ii) the map submitted with the original S.261 registration (identifying lands c. 0.3km. south of the subject quarry).

There are no other applicable exemptions and the Planning Authority is of the view that the abovementioned 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 Board Pleanala that the continuation of quarrying in both circumstances in this case is development and is not exempted development.

LOTTA 29/10/21

Ex. Pl.