

Bernadette & Eugene O'Neill  
Meenaleck  
Crolly  
County Donegal

Meenaleck, the 25th of January 2022

An Bord Pleanála  
Att.: Lisa Quinn  
Executive Officer  
64 Marlborough Street  
Dublin 1  
D01 V902

AN BORD PLEANÁLA	
LDG-	_____
ABP-	_____
25 JAN 2022	
Fee: €	_____ Type: _____
Time: _____	By: <u>Post Courier</u>

**Re: Your letter dated the 23<sup>rd</sup> of December 2021 / Your Case Number : ABP-311900-21,**

*"Re: 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 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. Arduns, Gweedore, Co. Donegal."*

Dear Ms Quinn,

thank you for your letter dated the 23<sup>rd</sup> of December 2021.

I hereby enclose a copy of my / our submission and observations to the Board according to Section 129 of the Planning and Development Act 2000, ( as amended ). as discussed on the phone.

Furthermore I would like to make An Bord Pleanála aware that there are numerous errors in the records of Land Registry / Property Registration Authority and Donegal County Council which are NOT of my / our making and are probably relating to typing and / or copy and paste errors of the responsible administrative Authorities, Solicitors or Consultants. We cannot be responsible or held liable for such errors.

Please send us an acknowledgement of this letter and our submission by ordinary post and e-mail to:

Bernadette & Eugene O'Neill  
Meenaleck  
Crolly  
County Donegal

E-Mail: \_\_\_\_\_

I am looking forward to hearing from you at your earliest convenience.

Yours sincerely

  
.....  
( Eugene O'Neill )



# Sonraí an cháis / Case Details

Tagairt an cháis / Case Reference : RL05E.311900 Arduns, Gweedore, Co. Donegal.

## Tagairt an cháis: RL05E.311900

311900: Arduns, Gweedore, Co. Donegal.

Comhairle Contae Dhún na nGall

### Cur síos

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.

### Cineál Cáis

Tarchur

### Cinneadh

Case is due to be decided by 22/03/2022

### TMTT

Níl

### RTN

Níl

### Páirtithe

- Donegal County Council (Applicant)
- Bernadette & Eugene O'Neill (Owner Occupier)
- Donegal County Council (Planning Authority) (Active)
- Bernadette & Eugene O'Neill (Owner Occupier)





# SUBMISSION TO AN BORD PLEANALA

**Eugene & Bernadette O'Neill**

**Sonraí an cháis / Case Details**

**Tagairt an cháis / Case Reference : RL05E.311900 Arduns, Gweedore, Co. Donegal.**

**Tagairt an cháis: RL05E.311900**

311900: Arduns, Gweedore, Co. Donegal.

Comhairle Contae Dhún na nGall

## **Cur síos**

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Níl

RTN

Níl

## **Páirtithe**

- Donegal County Council (Applicant)
- Bernadette & Eugene O'Neill (Owner Occupier & Respondent)
- Donegal County Council (Planning Authority) (Active)
- Bernadette & Eugene O'Neill (Owner Occupier & Respondent)



## RECENT OBSERVATIONS & HISTORY:

1. After receiving Donegal County Council's Enforcement Notices by way of service in accordance with Section 250 of the Planning and Development Act 2000 ( as amended ) on the 27<sup>th</sup> of April 2021 and which was addressed to my wife Bernadette and my daughter Sinead O'Neill I contacted the abutting and previously illegal Quarry belonging to Joe Greene and enquired about new fencing costs as required under the Third Schedule , Paragraph 3 requiring me to "*Erect warning signage at every 25 metres interval along the fence referred to in point 2 of this schedule.*" and under point 2 to "*Secure all site boundaries and gate entrance with a perimeter fence, with a minimum height of 1.8 metres to prohibit entry by unauthorised members of the public.*" **( I beg to refer to Exhibit 1, contained under TAB 1 )** When talking to Joe Greene he offered again to buy my Quarry and stated that he would have "no problem obtaining full planning permission for it extending his Quarry."

2. After complying with Donegal County Council's Enforcement Notice in relation to the above under paragraph 1 mentioned security requirements I wrote a letter to request an inspection of the completed and ordered Fence and Signage works in which I raised in great detail my concerns regarding this matter. **The questions contained in this letter have remained unanswered to this very day. ( I beg to refer to Exhibit 2 , contained under TAB 1 )**

Under Paragraph 2 and 3 of the aforementioned letter I stated:" *You stated in your last e-mail that : "As pre previous email and the requirements of the Enforcement Notice including to cease / not recommence quarrying, please ensure that no quarrying activities recommence on site, until authorised to do so. Finally I wish to again reiterate that a decision on whether or not to take a legal prosecution for compliance with the terms of an Enforcement Notice in this case or otherwise has not been taken to date and will not be taken until quarry is again inspected."* I would like *to know on what legal basis you are stopping us quarrying and putting us through a substantial investment in fencing and signage just to shut us down ?*

3. *Furthermore I have travelled the area extensively in recent days and went to every Quarry in the area where I took detailed photographs which I dated and I state hereby very clearly that NONE of the Quarries I visited had / has a 1.8 m high fence with signposts every 25 m. Would you be so kind and let me have a copy of the regulations or by-laws making this necessary and let me know why these requirements are not enforced on any other Quarry in the area ?"*

The content of the exhibited full letter which remains unanswered should bring some clarity into the difficulties and financial burdens an ordinary citizen and his family is facing when dealing with Local Authorities while trying to make a living.

3. Historically, the stringent operating conditions imposed on our Quarry on the 9<sup>th</sup> of March 2007 with the Registration of Quarry pursuant to Section 261 of the Planning and Development Act 2000 (as amended ) and erroneously referred to by Donegal County Council as "*Registration of Quarry pursuant to Section 261 of the of the*



*Planning and Development Act 2000 by Ready Mix ( ROI ) Ltd*”, prevented an operation of our Quarry from providing products as all other Quarries in the area do, being restricted to only produce rough stone. ( **I beg to refer to Exhibit 3 contained in TAB 2** ).

For this reason it will take much longer to empty the quarry contrary to Donegal County Council's stating in their letters not to give us '*infinity*' to empty the Quarry they are actually the cause of it.

In their above mentioned document dated the 9<sup>th</sup> of March 2007 Donegal County Council even got the location of the Quarry wrong when they stated it is in “ARDYBSM GWEEDORE”, a place which doesn't exist. ( **I beg to refer to Exhibit 3 contained in TAB 2** ).

**4. The An Bord Pleanala's Inspector Report , Review of Notice made in respect to Section 261A subsection 6(a) of the Planning and Development Act 2000, ( as amended ) relating to a Site Inspection carried out on the 22<sup>nd</sup> of February 2013 by Inspector Mary Crowley is the only document by a Public Authority which in my humble opinion truthfully and based on facts describes the reality and history of our Quarry correctly in great detail.**  
( **I beg to refer to Exhibit 4 contained in TAB 3** )

5. A review requested by my daughter Sinead O'Neill ( care of Solicitor Eamon Mac Giolla Bhride of Dungloe, County Donegal in regards to the Environmental Impact Assessment Directive after the Determination by Donegal County Council, on the 22<sup>nd</sup> day of August 2012, under subsection (2) (a) (i) and (2) (a) (i) of section 261A of the Planning and Development Act 2000, as amended by the insertion of section 75 of the Planning and Development ( Amendment ) Act 2010 and as further amended by the European Union ( Environmental Impact Assessment and Habitats ) Regulations 2012, which determination was that development was carried out after the 1<sup>st</sup> day of February, 1990, which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment or a determination as to whether an environmental impact assessment was required, and that such an assessment or determination was not carried out, and that development was carried out after the 26<sup>th</sup> day of February, 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment , and that such an assessment was not carried out. The Board of An Bord Pleanala set aside both planning determinations by Donegal County Council. ( **I beg to refer to Exhibit 4 contained in TAB 3** )

#### **The Present Review / Overview :**

6. Even though I am mesmerized that I have to deal with a further planning issue in regards to our Quarry forced upon me and my family by Donegal County Council after An Bord Pleanala already made two major decisions on the subject as clearly outlined above in paragraph 4 and 5 of my submission.



Only on the 16<sup>th</sup> of September 2021 a response to questions asked after a “Special Meeting of Donegal County Council held on the 9<sup>th</sup> July 2021” emerged which clearly outlines the legal maze and mayhem Donegal County Council finds itself in which the answer, numbered as Description of Query 38. clearly demonstrates :  
38. Question: “*Who was responsible for the licensing of quarries in the past and who has current responsibility ?*”

Answer / Reply:

*“ Local Authorities have primary responsibility for the licensing of the Quarry sector. The regulation process is complex for both operators and local authorities as regulators.*

*Quarrying is an activity rather than a development. It is unlike other developments which are regulated by a grant of planning permission, in which the principle for development can be established and remains fairly unchanging.*

*As an activity quarrying results in daily outputs many of which fall within environmental pollution parameters such as the control of noise, dust and water discharge.*

*New significant quarry applications are being granted with up to 25 years duration of permission in accordance with the Quarry Guidelines for Planning Authorities. While the principle of quarry operation activity can be reasonably determined for this length of time, the current planning and enforcement legislation and processes are not sufficiently robust or reactionary to respond to the evolving day to day operations and outputs of the quarry industry.*

*Donegal has the highest number of registered quarries in the state with 186 quarries registering in 2012 under Section 261A.*

*The quarry industry must be regulated to meet the country’s need for a steady supply of quality certifiable material in order to support economic recovery, government capital spend targets and the construction and other sectors. It is also necessary to ensure a level playing field for businesses while ensuring the public good by addressing public health, safety, pollution concerns and quality of materials being produced.*

*In the Irish context, given the number of quarries and the makeup of the sector, consideration should be given to reviewing the legislation and processes regulating the industry, particularly in light of the current complexity, challenge and ineffectiveness that exists. Rather than relying on planning enforcement, which is effective in land use and development regularization, licensing and ongoing monitoring of projected and permitted activity may be a more efficient, effective and reactive means of overseeing the industry.*

*Direct engagements have been undertaken with the relevant government departments to progress the matter and to underline the need for a renewed basis for the regulation of the quarry sector.”*

**( I beg to refer to Exhibit 5 contained in TAB 4 )**

If “Quarrying is an activity rather than a development.” as stated above by Donegal County Council , then I don't know why the Planning and Development Act 2000 , ( as amended ) is being used when in my humble opinion the Regulation of an





Industry should be based on Primary Legislation made by the Oireachtas for specifically that purpose.

7. During my further research into the Regulation of Quarries I came across a 10 year old article by Oran Doyle, titled "Elusive Quarries: A Failure of Regulation (2011) 34 Dublin University Law Journal DULJ". In 10 years since the publication of this in my humble opinion excellent article nothing has changed leaving Quarry Operators and Local Authorities in a maze of Guidelines and Regulations which the Author describes as :"*When one looks at the core substantive elements of the regulation of quarries, it becomes immediately apparent that the Oireachtas and the courts created a system of labyrinthine complexity that does not serve the interest of either quarry operators or the environment.*" ( I beg to refer to **Exhibit 6 contained in TAB 4** )

**8. The Submission by Donegal County Council under An Bord Pleanala Case Number : ABP-311900-21**

**Titled :**

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

a) On the numbered page 1 of said above mentioned document under "*Location of Proposed: Arduns, Gweedore, Co. Donegal ( see the quarry site area outlined in red on map and identified in aerial photography below )*" the site location on the map is accurately identified but the aerial photography referred to as "*below*" and appearing on numbered page 2 and page 3 of said document is **HIGHLY MISLEADING** and in my humble opinion a blatant attempt to oversize our Quarry visually while failing to mention that the Quarry area North of the dividing road , from East to West which leads to the adjoining bog areas, **is a separate Quarry business belonging to Joe Greene and NOT part of our Quarry.**

b) **The first featured "Google Earth Aerial Photograph from 21/03/2009" is only showing a very dark picture with nothing on it which can be identified as anything ! ( Numbered Page 2 )**

c) The second "Google Earth Aerial Photograph from 22/04/2011" is showing 2 Quarries which are two separate businesses as explained and outlined in the aforementioned paragraph a) . ( Numbered Page 2 )

d) The third "Google Earth Aerial Photograph from 28/05/2014" is showing 2 Quarries which are two separate businesses as explained and outlined in the aforementioned paragraph a) . ( Numbered Page 2 )

e) The fourth "Google Earth Aerial Photograph from 20/09/2019" is showing 2 Quarries which are two separate businesses as explained and outlined in the aforementioned paragraph a) . ( Numbered Page 3 )



f) The “Photographs of the quarry taken on 22/10/2021” featuring on Numbered Page 4 to 10 are Photographs from our Quarry where the first top Photograph on Numbered Page 8 shows the Access Road used by the Bog owners of the adjoining lands.

g) *“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.”*

The term *“and processed quarried material”* **IS INCORRECT** since there is no permission to process quarried material as *“the stringent operating conditions imposed on our Quarry on the 9<sup>th</sup> of March 2007 with the Registration of Quarry pursuant to Section 261 of the Planning and Development Act 2000 (as amended) and erroneously referred to by Donegal County Council as “Registration of Quarry pursuant to Section 261 of the of the Planning and Development Act 2000 by Ready Mix (ROI) Ltd”, prevented an operation of our Quarry from providing products as all other Quarries in the area do, being restricted to only produce rough stone.” as mentioned in paragraph 3 of my submission proves beyond reasonable doubt. ( I beg to refer to Exhibit 3 contained in TAB 2 ).*

h) *“Grounds of referral and reasons and considerations on which it is based:”* I categorically state that our Quarry is NOT *“an unauthorized development “under planning enforcement case reference UD20255” and that “The definition of a quarry is set out in Section 2 of the Planning and Development Act 2000 ( as amended ).” is NOT applicable since it clearly states in the “Review of Section 261A determination: It was accepted by An Bord Plenala that this quarry was a pre-1964 quarry development.” as clearly stated by Donegal County Council under the 3<sup>rd</sup> heading on the numbered page 12 of their submission. ( I beg to refer to Exhibit 7 contained in TAB 5 )*

An ex post facto law (from Latin: ex postfacto, lit. 'out of the aftermath') is a law that retroactively changes the legal consequences (or status) of actions that were committed, or relationships that existed, before the enactment of the law.

I state that the Planning and Development Act 2000 ( as amended ) is NOT an ex post facto law and that such laws are not permissible in Common Law Jurisdictions since they would clearly undermine the Legal Certainty Principle on which our Domestic as well as European Law is based on. The aforementioned principles apply also to the Local Government Planning and Development Act 1963 and also to the EIA Directive 1<sup>st</sup> of February 1990 and Habitats Directive 26<sup>th</sup> of February 1997.



i) The Enforcement Notice issued by the Planning Authority Donegal County Council mentioned in their submission on numbered page 12 and 13 under "Other matters:" was not only sent to my daughter Sinead O'Neill but also to my wife Bernadette O'Neill and I confirm that I corresponded with Donegal County Council as the owner of said Quarry since the land the Quarry is located on is held in Trust for me by my wife Bernadette O'Neill of which I made the Planning Authority Donegal County Council fully aware of.

Furthermore a Warning Letter according to Section 152 of the Planning and Development Act 2000 as amended was never received prior to the Enforcement Notice by either my wife Bernadette O'Neill or my daughter Sinead O'Neill making both extremely worried since failure to comply with an enforcement notice is a criminal offence. It is well settled that criminal offences must be defined with clarity and precision so that a person can know whether his or her conduct is or is not a commission of an offence. This was never clarified. ( I beg to refer to Exhibit 8, Exhibit 9 and Exhibit 10 contained in TAB 6 )

j) The numbered page 13 mentions "The Planning Authority sought a S.5 Referral in respect of a small quarry ( less than 1ha extraction area and 3.17ha 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, Cardonagh, County Donegal is development and is exempted development'.

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 above mentioned 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 Pleanala that the continuation of quarrying in both circumstances in this case is development and is not exempted development."

I say that my "current registered landholding extending to 2.53ha , located outside the adjoining Natura 2000 site" is irrelevant to the size of our Quarry since my



family has other landholdings in said area and we have NO intention to quarry these lands without the appropriate Planning Permissions.

Furthermore I can categorically state that the Quarry Area of the Total Area to be Quarried shall NOT exceed 1.968 hectare as set out in detail in our latest Survey by Architectural Services, Meenmore, Dungloe, County Donegal.

The detailed Survey Map is self-explanatory and clearly shows that we shall not exceed the permitted Quarry area of 2ha.

( I beg to refer to Exhibit 11 contained in TAB 7 )

For clarity I have included a copy of a Sealed and Certified Copy Folio (& Filed Plan) from the Property Registration Authority Date Printed : 16/11/2021

( I beg to refer to Exhibit 12 contained in TAB 7 )

Additionally I would like to state that Donegal County Council's statement "*the map submitted with the original S.261 registration (identifying lands c. 0.3km. south of the subject quarry).*", is either an error on their part or they may have the wrong map taking into account that on Donegal County Council's in paragraph 3 of my submission mentioned document dated the 9th of March 2007 with the Registration of Quarry pursuant to Section 261 of the Planning and Development Act 2000 (as amended ) and erroneously referred to by Donegal County Council as "*Registration of Quarry pursuant to Section 261 of the of the Planning and Development Act 2000 by Ready Mix ( ROI ) Ltd*".

( I beg to refer to Exhibit 3 contained in TAB 2 ). And / Or a Typing Error as identified in Consultant's Application Report. ( I beg to refer to Exhibit 13 a ) contained in TAB 7 )

For clarity I have included a copy of the original Registration of Quarry Application pursuant to Section 261 of the of the Planning and Development Act 2000 which includes a map which is not as accurate as today's maps but clearly shows the same Folio.

( I beg to refer to Exhibit 13 and 13 a ) contained in TAB 7 )

k) In Conclusion I would like to state that we have at all times fully complied with the restrictions and regulations imposed on us according to Law and fully intend to do so in future. It is disappointing that myself and my family have been put through a Section 5 Referral to An Board Pleanala again by Donegal County Council when in fact we have complied with everything asked of us. The worry and expense this entails is bordering harassment and this is hopefully the last time we will have to deal with this issue.

Furthermore there are some important legal issues which I would like to bring to the Board's attention and of which you may not be aware of, especially since this matter has already been decided upon twice by An Bord Pleanala.

An issue of Res judicata arises where a State Agency like An Bord Pleanala as in this case has already dealt with an issue of fact and where one of the parties, in this case Donegal County Council as the Applicant revisits the issue already decided upon while providing misleading and factual incorrect information and





The Courts have applied the doctrines of res judicata and collateral estoppel to administrative decisions where an agency was acting in a judicial capacity and resolved disputed issues of fact that were properly before it. See, e.g., *University of Tennessee v. Elliott*, 478 U.S. 788, 799 (1986).

Furthermore it has come to my attention that over 500 Statutes have never been translated into Irish, our first National Language and this concern was raised by Deputy Aengus Ó Snodaigh (TD) for the Dublin South-Central constituency in Dail Eireann in mid March 2021. While laws in draft format do not have to be translated there is a constitutional requirement under Article 25 to make an official translation of all acts within a reasonable amount of time.

21 Years later the Planning and Development Act 2000, ( as amended ), has still not been translated into Irish giving it no proper constitutional footing. Rannóg an Aistriúcháin is responsible for providing official translations once a bill is signed into law by the President but they failed to do so to this very day which is totally unacceptable to all Irish speaking citizens and especially Citizens living in the Gaeltacht areas and according to widespread legal opinion is open to legal constitutional challenge in the Courts.

Finally I hope and pray that An Bord Pleanála will uphold its previous decisions in this case and the continuing operation of our Quarry will be guaranteed.

Meenaleck, the 6<sup>th</sup> of December 2021

Is mise le meas



( Eugene O'Neill )



basically creating an Estoppel in law.

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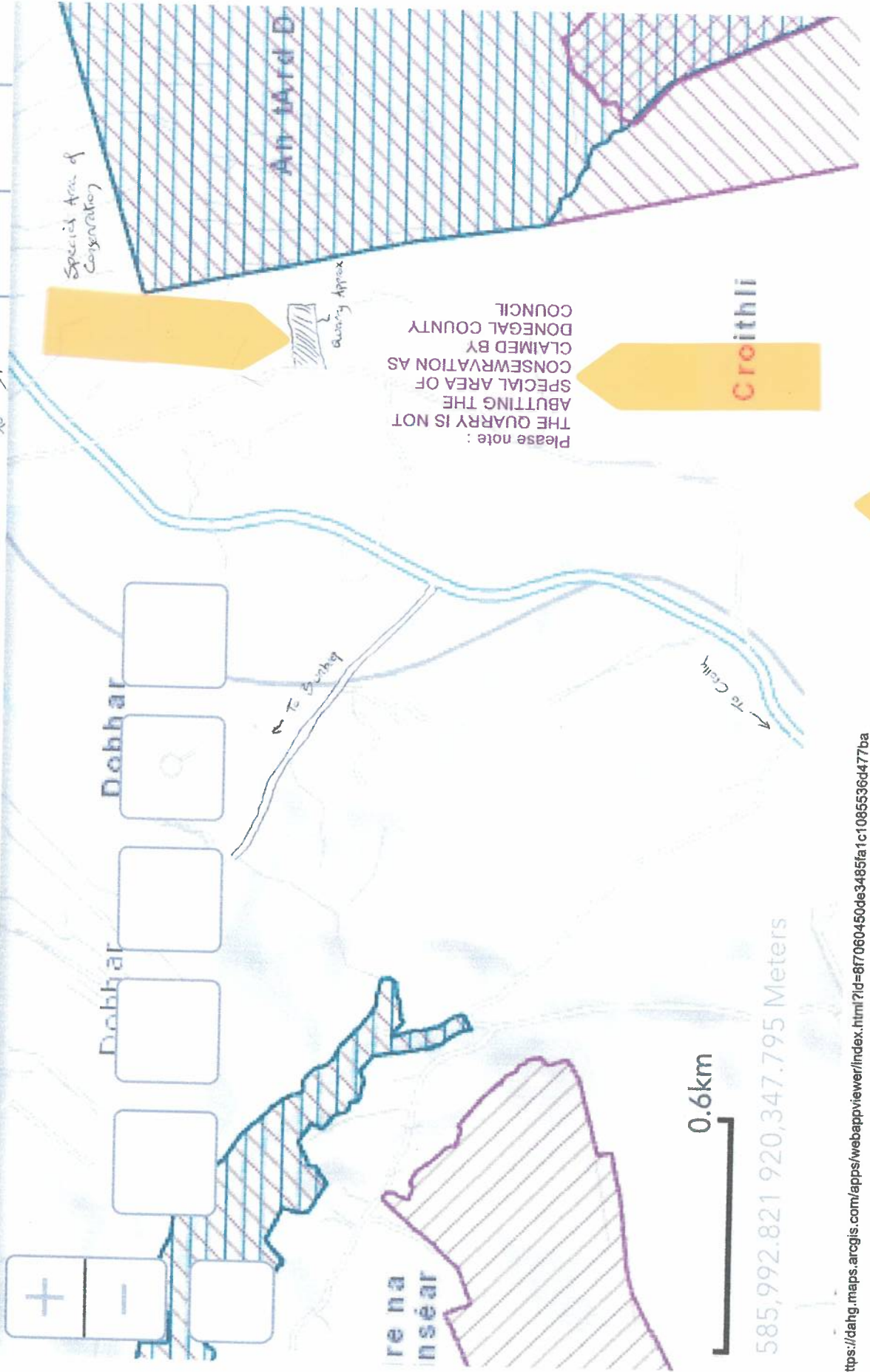
Meenaleck, the 6<sup>th</sup> of December 2021

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( Eugene O'Neill )



# NPWS Designations Viewer





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EXH 1



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

www.ccdhunnangall.ie www.donegalcoco.ie

**Our Ref: UD 20255**

27<sup>th</sup> April 2021

Sinead O'Neill  
Meenaleek  
Crolly  
Co. Donegal.

**Re: Unauthorised development at Arduns, Gweedore.**

A Chara,

I refer to the above and enclose now an Enforcement Notice by way of service in accordance with Section 250 of the Planning and Development Act 2000 (as amended). I draw your attention to the requirements of the Notice and in particular the steps to be taken, the period for compliance and the consequences of non-compliance detailed thereon.

Mise le meas,

**For Carol Margey  
Senior Executive Planner  
Planning Enforcement Unit**

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

Guthán/Tel: 074 9153900 | Facs/Fax: 074 9172812 | Ríomhphost/Email: info@donegalcoco.ie



COMHAIRLE CHONTAE DHUN NA NGALL  
DONEGAL COUNTY COUNCIL

PLANNING AND DEVELOPMENT ACT 2000 (as amended) ("the Act")

SECTION 154

ENFORCEMENT NOTICE

To: Sinead O' Neill  
(Address as detailed on cover letter)

Ref: UD 20255

And

Bernadette O' Neill  
(Address as detailed on cover letter)

**TAKE NOTICE** that the above named Council being the Planning Authority for the County of Donegal hereby –

1. **REFERS** to the lands specified in the First Schedule on which the developments specified in the Second Schedule have been carried out without a grant of planning permission, **AND**
2. **REQUIRES** the said developments to **cease**,
3. **REQUIRES** the steps specified in the Third Schedule hereto be taken within the period of **8 weeks** from the date of service hereof.
4. **WARNS** you that if within the said period or within such extended period as this Council may allow the said steps specified in the Third Schedule hereto are not taken, the Council may enter on the land and take such steps and may recover any expenses reasonably incurred in that behalf.
5. **REQUIRES** you to refund to the Council the costs and expenses reasonably incurred by it in relation to the investigation, detection and issue of this notice (and any warning letter previously issued to you under Section 152 of the Act) including costs incurred in respect of the remuneration and other expenses of employees, consultants and advisers details whereof will be given to you on the other requirements of this Notice being complied with and the Council may recover the costs and expenses so incurred.
6. **FURTHER WARNS** you that if within the said period, or such extended period as the Council may allow, the said steps specified to be carried out by you, in the Third Schedule hereto, are not taken you may be guilty of an offence.



### FIRST SCHEDULE

All those lands at Arduns, Gweedore, Co. Donegal, County Donegal, as outlined in red and annotated with reference number "UD 20255" thereof on the map annexed hereto.

### SECOND SCHEDULE

1. The use of land for quarrying and all related ancillary activities.

### THIRD SCHEDULE

1. Cease / do not recommence use of the land for quarrying.
2. Secure all site boundaries and gate entrance with a perimeter fence, with a minimum height of 1.8 metres, to prohibit entry by unauthorised members of the public.
3. Erect warning signage at every 25 metre interval along the fence referred to in Point 2 of this Schedule.

DATED THIS 24<sup>th</sup> DAY OF APRIL 2021.

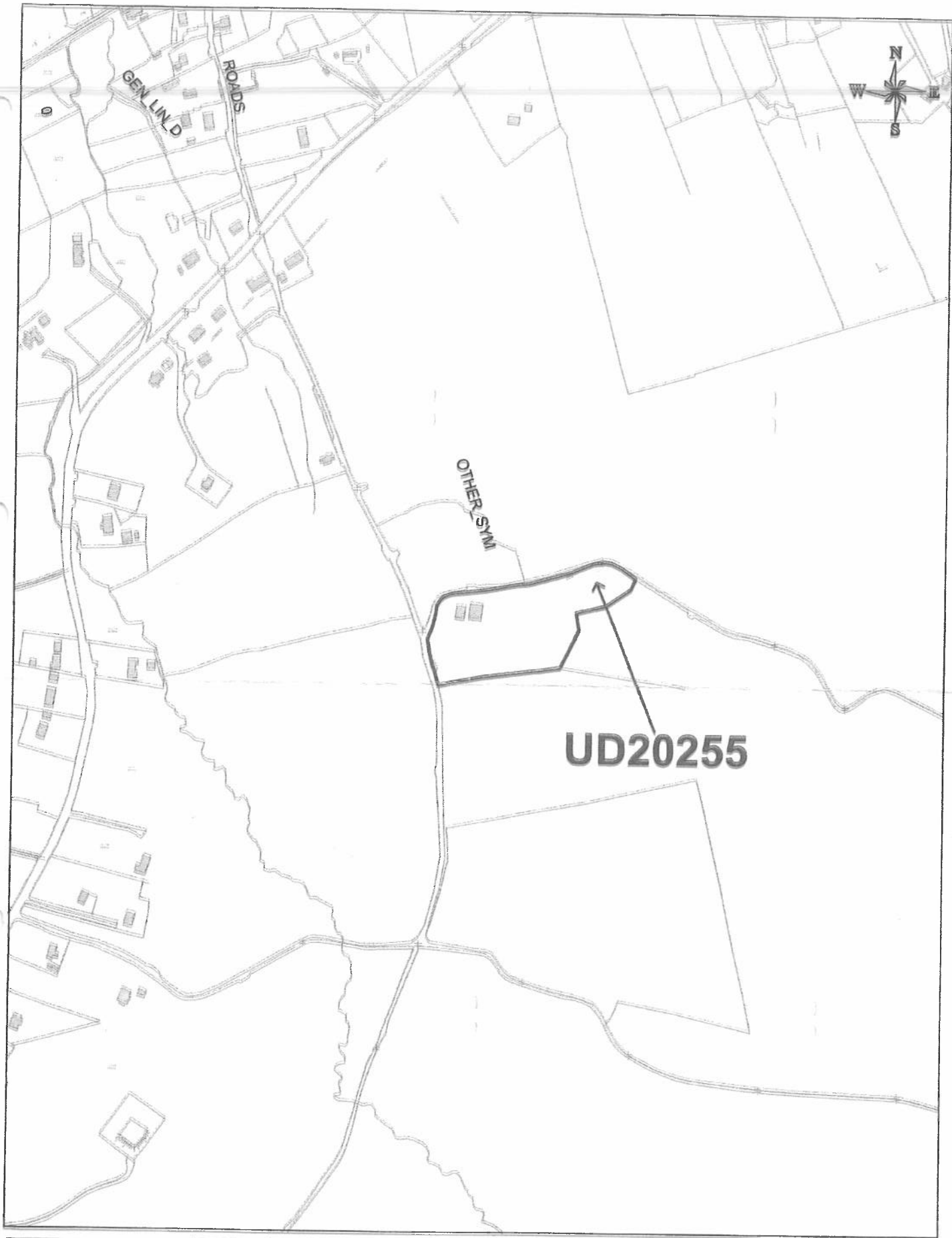
Signed:

*Jude McNally*  
Assistant Staff Officer

#### NOTE -

- (i) This Notice takes effect immediately on the date of service hereof on you.
- (ii) In relation to the costs and expenses above referred to, the Council may recover these from you as a simple contract debt or by charging the lands concerned or where you are the owner thereof by Instrument vesting the ownership of the land in the Council subject to a right of redemption by you within five years (on payment of all the costs and expenses incurred including those further costs associated with the charging/vesting of the land).
- (iii) On conviction for an offence of failing to comply with this Notice you may be liable to fines up to €12.69 million or imprisonment up to two years or both on prosecution on indictment and €5000.00 or imprisonment up to six months or both on summary prosecution.





Comhairle Contae  
Dhún na nGall  
Donegal County Council

## Planning Enforcement - Location Map

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Eugene O'Neill  
Meenaleck  
Crolly  
County Donegal  
Mo

Meenaleck, the 13<sup>th</sup> of July 2021

Donegal County Council  
Planning Enforcement Unit  
e-mail: [planningenforcement@donegalcoco.ie](mailto:planningenforcement@donegalcoco.ie)

**Re: UD20255 - Bernadette O' Neill Quarry Arduns, Gweedore, Co. Donegal**  
**DCC:038000000560**

Dear Madam / Sir,

thank you for your e-mail dated 22<sup>nd</sup> of June 2021. The works of the required perimeter fencing and erected the warning signage have been completed as requested and can be inspected upon appointment. **Please note that for Health, Safety and Insurance reasons I cannot allow unauthorized persons to enter my lands unaccompanied and would appreciate of you letting me know when you intend to inspect the works so I can make sure that either myself or my son can meet you on site.**

The above has caused a lot of worry and distress within my family and for that reason and **I hereby inform you that my wife Bernadette O'Neill holds the Quarry lands in Trust for me and since I am the owner of said lands I am dealing with all legal issues of same from this day forward.**

There are further issues which I would like to address in this letter as follows:

1. I am accustomed when dealing with any Authorities of the State and that includes Local Authorities that their correspondence is signed by natural persons since the Civil Service Code dictates same and it makes it a lot easier to correspond by phone and e-mail if one knows who actually wrote the e-mail which I received from your office.

The Planning Enforcement Notice was not served in Irish and English despite the fact that the first Official Language is Irish according to Article 8 of the 1937 Constitution which states :*"The Irish language as the national language is the first official language. The English language is recognised as a second official language."*

Keeping in mind that I am living with my family in the Gaeltacht Area I would have expected the Notice to be served in both languages according to Law, especially since most of my family are Irish Speakers.

2. You stated in your last e-mail that :*"As pre previous email and the requirements of the Enforcement Notice including to cease / not recommence quarrying, please ensure that no quarrying activities recommence on site, until authorised to do so, Finally I wish to again*



*reiterate that a decision on whether or not to take a legal prosecution for compliance with the terms of an Enforcement Notice in this case or otherwise has not been taken to date and will not be taken until quarry is again inspected."*

**I would like to know on what legal basis you are stopping us quarrying and putting us through a substantial investment in fencing and signage just to shut us down ?**

3. Furthermore I have travelled the area extensively in recent days and went to every Quarry in the area where I took detailed photographs which I dated and I state hereby very clearly that NONE of the Quarries I visited had / has a 1.8 m high fence with signposts every 25 m. Would you be so kind and let me have a copy of the regulations or by-laws making this necessary and let me know why these requirements are not enforced on any other Quarry in the area ?
4. Please note that in 2005, prior to our family's completion of the purchase of the lands and the Quarry, myself and my son Michael O'Neill set up a meeting with Jim Harley, the Senior Planner of Donegal County Council, who we met on site and discussed the legalities of the Quarry site. Jim Harley stated to us very clearly that the Quarry was pre 1964 and did not require Planning Permission. He advised us to fence the entire 2.6 hectares of the Quarry and to insure we would not quarry outside that area since that would require Planning Permission. We took his advice and complied with his wishes.
5. We have been legally quarrying at our Quarry with Permission and according to the Terms and Conditions given to us by Donegal County Council which specified we could only have two lorries per day working the Quarry and works in the Quarry could only be carried out between 8 am and 5 pm weekdays excluding Saturdays and Sundays. I am stating very clearly that Donegal County Council is responsible for the fact that the Quarry has not been empty yet as well as the fact that you denied us our right to crush stones and only to take out rough stones for which there is only a limited market. The formerly 'illegal Quarry' operating next door to us and belonging to Joe Greens was granted Planning Permission even though it was found in Court that Joe Green's Quarry was illegal, Donegal County Council gave him permission to crush stone and building stone making it even more difficult for us to compete.
6. I am advising you that my Quarry in Ardunns of 2.6 Hectares is a fully legally operating Quarry which was proven beyond reasonable doubt in the Irish Courts, as I have researched when the Senior Planner Jim Harley as well as others gave evidence under Oath that the only legal pre 1964 Quarry is my Quarry adjoining Joe Greene's Quarry. The Judge believed that evidence which reflected in his Judgement. I spent some time with Joe Greene on the 10<sup>th</sup> of July 2021 who clearly confirmed that it was Donegal County Council's Senior Planner Jim Harley who swore under Oath that it was my Quarry which existed before 1964 and NOT Joe Greene's Quarry or are you implying that your former employee and Senior Planner Jim Harley and the other witnesses in Court all committed Perjury under Oath ?
7. I would like to remind you that your previous enforcement notice from some time ago was appealed to An Bord Pleanala who investigated the matter and found that my Quarry did exist prior to 1964 and therefore was a legal 2.6 Hectare Quarry.



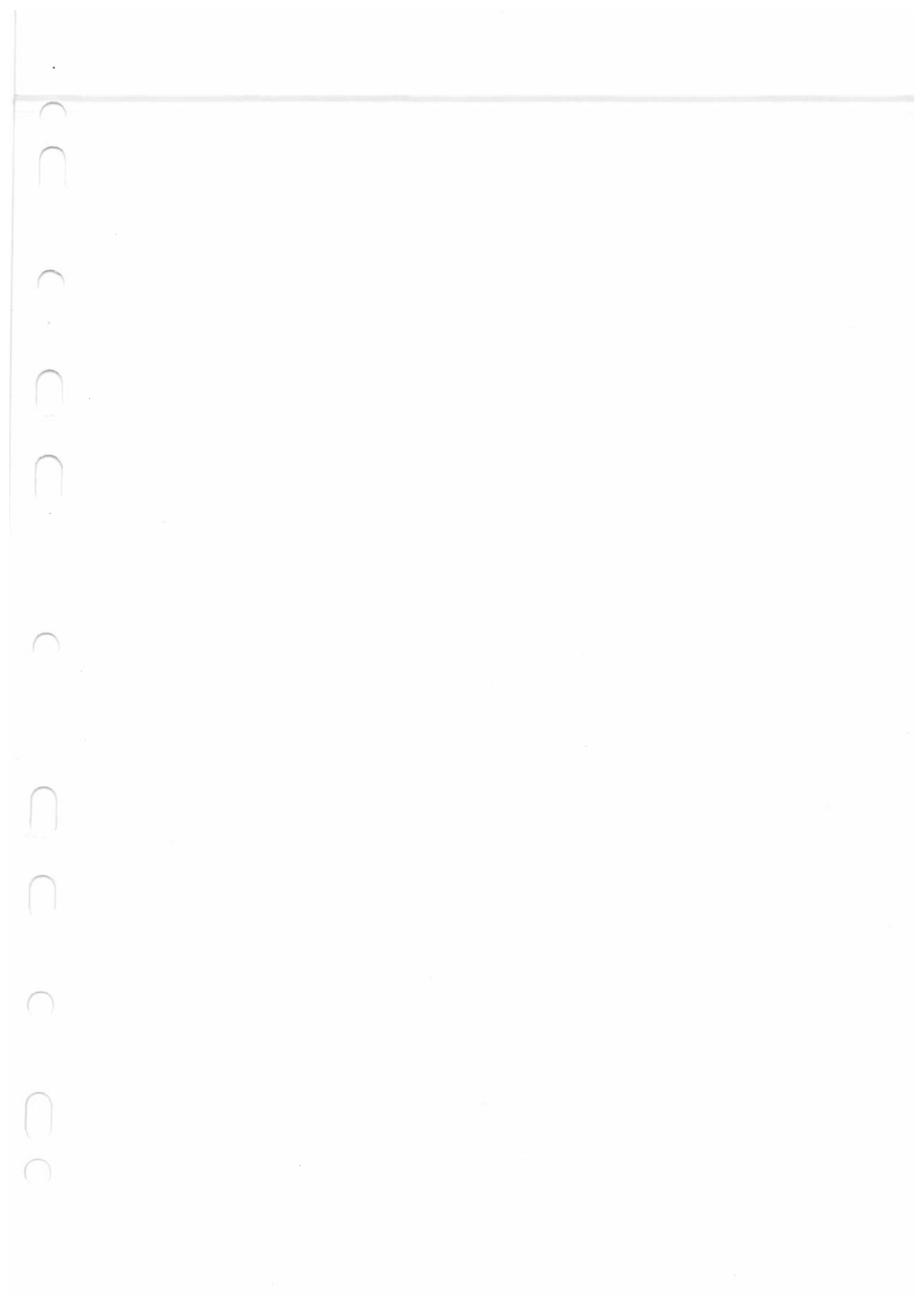
8. As Citizens of Ireland and the European Union we have a Constitutional Right to work and make a living. The State has a general duty to protect our right to work and earn a livelihood from unjust attack. I am considering your Enforcement Notice a breach of same and your previous mentioning that "you did not grant me infinity" to operate the Quarry is a blatant breach of the Legal certainty principle which is recognised by our Domestic as well as the European Courts as one of the general principles of European Union law and "requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail".
  
9. In conclusion I would like you to inspect the fencing and signage works as soon as possible so we can resume quarrying. Please make an appointment for same with me so we can meet on site.
  
10. Furthermore I would like to make you aware that we have delivered over the years a considerable amount of rough stone to a variety of local community projects free of charge.

I am looking forward to hearing from you at your earliest convenience

Yours sincerely

**EUGENE O'NEILL** - electronically signed -











Comhairle Chontae Dhún na nGall  
Donegal County Council

"Serving the people of Donegal"

Tel: (074) 9172222

Fax: (074) 9141205

Web: [www.donegal.ie](http://www.donegal.ie)

County House  
Lifford  
Co. Donegal

*Following our telephone consultation this morning*

*attached please find*

*Letter returned on 14.3.07 marked 'Please Away'*

*together with letter which issued to you*

**With Compliments** *9.3.07*

*J. Smyth*





# Comhairle Chontae Dhún na nGall

## Donegal County Council

Reg Post  
14/3/07  
HT

**QY78**  
**REGISTERED POST**

Our Ref:

Your Ref:

9<sup>th</sup> March, 2007

MS SINEAD O'NEILL  
MEENALECK  
CROLLY  
LETTERKENNY  
CO. DONEGAL



Registration of Quarry pursuant to Section 261 of the Planning and Development Act 2000 by Ready Mix (ROD) Ltd

**LOCATION OF QUARRY:** ARDYBSM GWEEDORE

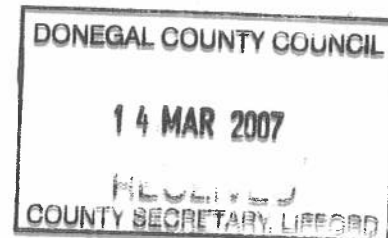
A Chara,

With reference to the above this notice is given to you in accordance with Section 261 (5) of the above Act and **TAKE NOTICE** therefore –

1. That this Council proposes to impose conditions on the operation of the quarry as detailed on the attached Schedule and for the reasons as also set out in the Schedule
2. Submissions/Observations regarding these proposals may be made by you to this Council as the Planning Authority within the period of **six weeks** from the service of this notice
3. Such submissions/observations should be sent **TO DIRECTOR OF SERVICE, PLANNING & ECONOMIC DEVELOPMENT, DONEGAL COUNTY COUNCIL, COUNTY HOUSE, LIFFORD**
4. All submissions/observations received by the Council within the said period will be considered by the Council when performing its functions under Sub-Section (6) of the said Section.

Mise, le meas,

*A. Miller*  
for **DIRECTOR OF SERVICE**  
**Planning & Economic Development**



Please reply to : Planning & Economic Development, County House, Lifford, County Donegal.

Telephone: (074) 9172222 Fax: (074)9142120  
Web Site: [www.donegalcoco.ie](http://www.donegalcoco.ie) E-mail: [planning@donegalcoco.ie](mailto:planning@donegalcoco.ie)





**SCHEDULE**

1. A stock and trespass proof fence shall be erected around the full perimeter of the site and a lockable gate maintained at the site entrance.

**Reason:** *In the interest of orderly development.*

2. No processing operations shall take place in the quarry such as crushing and washing. Only processed rock shall be excavated and removed.

**Reason:** *In order to define the nature of existing development and to protect the environmental amenities of the area and to control water pollution.*

3. All surface water flowing across the quarry area and all waters contaminated by the quarrying operations shall be discharged to settling ponds prior to discharge to any stream. Details shall be agreed in writing with the Planning Authority within two months of the imposition of these conditions.

**Reason:** *In the interest of public health and to ensure a proper standard of development.*

4. No oils or chemicals shall be discharged or allowed to discharge into surface or ground waters on site. Oil interception traps shall be provided on drainage lines serving areas where oil products are stored or used. Details shall be agreed in writing with the Planning Authority within two months of the imposition of these conditions.

**Reason:** *In the interest of public health and to ensure a proper standard of development.*

5. A wheel wash facility shall be provided within the site and signage to it shall be erected on site. All vehicles exiting the site shall egress via the wheel wash facility. Details of the wheel wash facility and signage to it, together with timeframe for its provision, shall be agreed in writing with the Planning Authority within two months of the imposition of these conditions.

**Reason:** *In order to control the emission of dust from the quarry.*

6. Dust deposition shall not exceed 180mg/m<sup>2</sup>/day when measured at the site boundaries and averaged over 30 days. At least three dust-monitoring facilities shall be provided at locations to be agreed with the Planning Authority and the results of monitoring shall be submitted to the Planning Authority at regular intervals in accordance with a monitoring scheme. Details of dust monitoring facilities; location; and monitoring scheme shall be agreed in writing with the Planning Authority within two months of the imposition of these conditions.

**Reason:** *In the interest of public health, pollution control and orderly development.*



**Continuation of Schedule – Order No:2007PH0053**

7. Quarrying operations shall be confined to the hours of 08.30 hours to 18.00 hours, Monday to Friday and no quarrying operation shall be carried out outside these hours or on Saturdays, Sundays or Public Holidays.

**Reason:** *In the interest of residential amenity.*

8. Noise levels emanating from the quarry shall not exceed a Laeq (1 hour) of 55 dB (A) when measured at any residential buildings.

**Reason:** *In the interest of residential amenity.*

9. (a) A bund or bank shall be provided along the boundaries of the quarry area as outlined in red on the plan submitted to the planning Authority on the 27<sup>th</sup> April 2005 except where access is taken on the South-western boundary. Details shall be agreed in writing with the Planning Authority within two months of the imposition of these conditions.

(b) All existing topsoil removed in the course of working shall be separately retained from waste material so that it can be readily spread evenly over exhausted dry areas or back filled waste material to the satisfaction of the Planning Authority.

(c) All sides of the excavation adjacent to land not required for quarrying operations shall be left with a slope not steeper than one vertical to three horizontal.

(d) All restored surfaces shall be free from ponds and standing water and such drainage dykes and ditches as may be necessary to remove surface water shall be constructed.

(e) Progressive restoration of exhausted areas and/or areas where quarrying operations have ceased shall proceed in accordance with a site restoration plan that shall be submitted to the Planning Authority for its approval, in writing within six months of the imposition of these conditions. This plan shall include the following:-

(i) the identification of all items of plant, machinery, scrap metal, stockpiles and waste material to be removed;

(ii) the identification of all areas to be levelled or graded;

(iii) the position of all quarry faces, together with details of measures to be used to ensure that all final faces are left in a safe and stable condition;

(iv) the identification of areas that are liable to flood, together with details of proposed measures to ensure public safety;

(v) details of any additional landscaping measures to be implemented; and

(vi) a timescale for the implementation of the restoration scheme of exhausted areas, and/or areas where quarrying operations have ceased on a phased basis as the quarry progresses.

The restoration scheme shall be implemented in accordance with the approved plans and within the approved timescale. (In the event that agreement is not forthcoming on any issue the Planning Authority shall determine the appropriate restoration measures).

**Reason:** *In order to facilitate reinstatement of the site.*







**Continuation of Schedule – Order No:2007PH0053**

10. (a) No surface water from site shall be permitted to discharge to public road and  
(b) Applicant shall take steps to ensure that no public road water discharges onto site.

**Reason:** *In the interest of traffic safety.*

11. Signage including warning signs and traffic control signs at the entrance to the site shall be provided in accordance with details that shall be agreed in writing with the Planning Authority within two months of the imposition of these conditions.

**Reason:** *In the interest of traffic safety.*

12. The entrance roadway shall be resurfaced using dense bitumen macadam material or similar, approved by the planning authority, between the public road and the wheel wash, which shall be a minimum distance of 8 metres. Details shall be agreed in writing with the Planning Authority within two months of the imposition of these conditions

**Reason:** *In the interest of traffic safety.*

13. Scrap material shall be removed at least annually from the site in accordance with the requirements of the planning authority. Scrap materials shall be deemed to include scrapped trucks, other scrapped vehicles, empty oil barrels, broken or otherwise unusable truck bodies, worn out conveyor belts/chains, worn out batteries, unusable tyres and worn out conveyor/roller shafts.

**Reason:** *To safeguard the amenities of the area.*

14. No blasting shall take place on the site at any time.

**Reason:** *In the interest of residential amenity.*

15. All vehicles used for carrying matter from the site shall be fitted with tailboards or other similar devices to prevent spillages onto the public road.

**Reason:** *In the interest of traffic safety.*

16. Access to/from the site onto the Regional Road shall be gained via the access road network to south of the site.

**Reason:** *In order to control emissions from the quarry in the interests of residential*





of Council documentation relating to Quandy of Sinead  
will at Ardara upon which the decision of the Council  
per notification issued to Sinead O'Neill was based.







# Comhairle Chontae Dhún na nGall

## Donegal County Council

Tel: (074) 91 72222. Fax: (074) 91 41205  
www.donegal.ie

Our Ref: QY78

Your Ref:

26th October, 2007

Sinead O'Neill  
Meenaleck  
Crolly  
Letterkenny  
Co. Donegal

**Re: Section 261 of the Planning and Development Act, 2000  
Provision of information on quarry situate at Arduns, Gweedore**

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A Chara

I refer to information provided by you to the Council as Planning Authority in accordance with the provisions of Section 261 of the Planning and Development Act 2000 (referred to as Registration of Quarries).

This is a statutory registration procedure introduced for certain quarries. All applications by operators of the quarries concerned had to be lodged with the Council within one year of the commencement of the provision i.e. by the 28<sup>th</sup> of April 2005. Failure to do so automatically rendered such quarry unauthorised (Sub-Section (10)) and therefore liable to Enforcement action. The registration was of information provided by each Applicant.

While the Council was entitled to require (and did so in certain cases) the submission of further information, the Section did not allow it to query further or reject the information so provided. It was obliged to register the information received and has done so. As part of the registration procedure Sub-Sections (6) and (7) of the Section permitted the Council within set time limits to take certain steps in respect of particular quarries (imposition of/modifying or adding to existing conditions on the operation of the quarry etc.). The Council had initiated the procedure in that regard in a number of cases but ultimately decided against taking the steps so permitted in any case.

I wish to emphasise that the registration procedure is simply the registration of information submitted and does not confer a planning consent/permission for the continued operation of the quarry. That can only be achieved by successfully applying for planning permission in accordance with the normal



planning process. In your case and every other case where registration has been applied for, where =

- there is no current planning permission authorising the quarry operation and the time limit for enforcement action has not passed,
- and/or there is evidence of abandonment of the previous use of the quarry,
- and/or there is evidence of intensification of the previous use such as of itself to require a separate planning permission.

the Council may take appropriate enforcement action.

The Council intends now to inspect again all registered quarries and where it disagrees with the registered information provided by the Applicant and/or it intends to take enforcement action as aforesaid, operators will be notified accordingly.

If you have any queries arising from the above please put them in writing addressed to Mr Frank Sweeney, Area Manager, Planning & Economic Development, Public Services Centre, Gweedore Road, Dungloe, Co. Donegal.

Mise, le meas

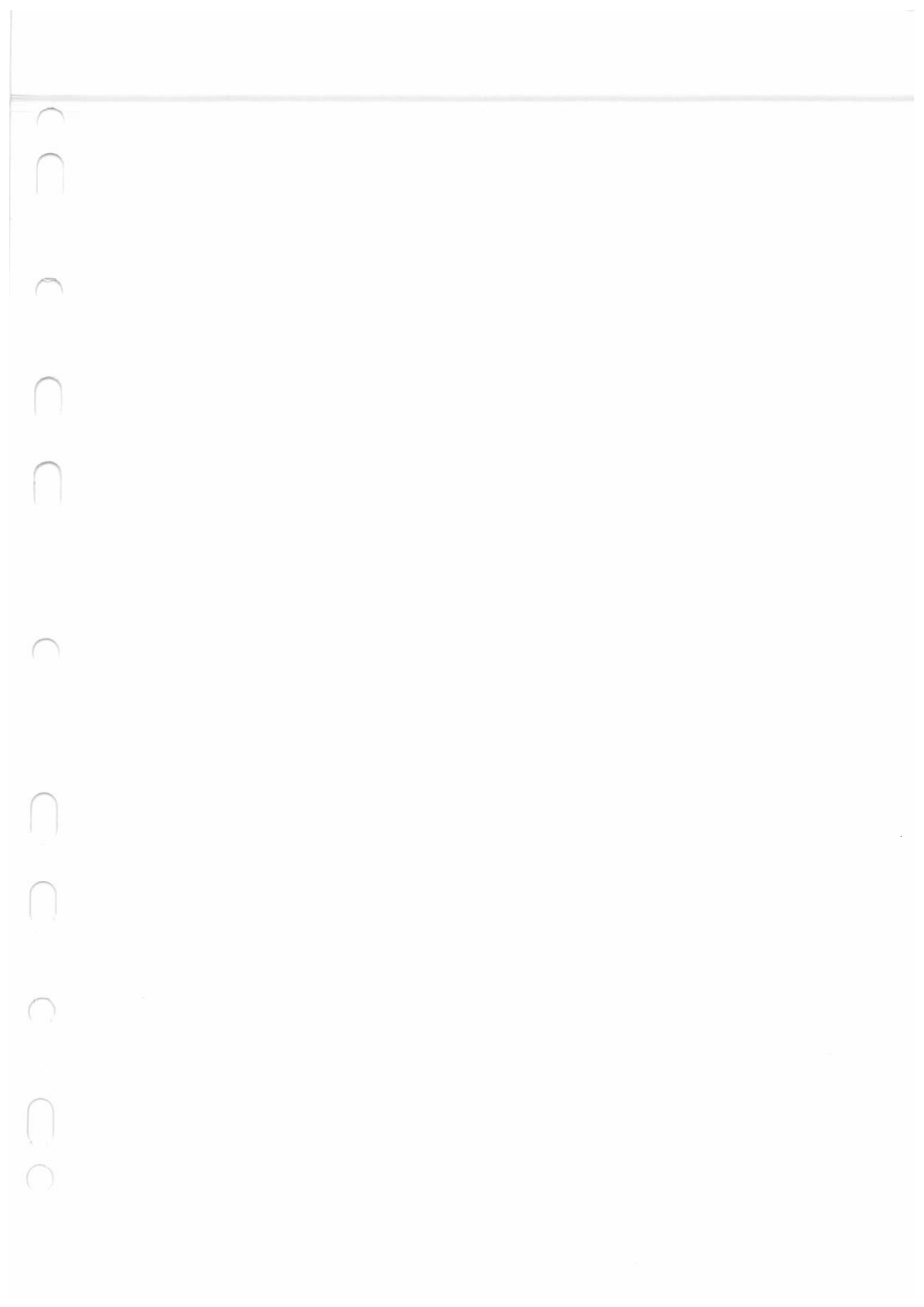


**Denis Kelly**  
**Senior Planner**

/te

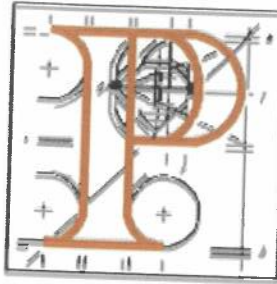








# An Bord Pleanála



## INSPECTOR'S REPORT

**REVIEW OF NOTICE made in respect of SECTION 261A subsection 6(a) of the  
PLANNING and DEVELOPMENT ACT 2000, as amended**

**An Bord Pleanála Ref. QV05E.0189**

**Quarry Address:** Arduns, Gweedore, Co Donegal

### **Application for Review under Section 261A(6)**

**Planning Authority:** Donegal County Council  
**Planning Authority Quarry Ref.:** EUQY78  
**Owner:** Sinead O'Neill  
**Operator:** Sinead O'Neill  
**PA Determination & Decision:** Section 261A(2)(a) and (4)(a)

### **Review**

**Party/Parties Seeking Review:** Sinead O'Neill  
**Observer/s:** None

**Date of Site Inspection:** 22<sup>nd</sup> February 2013

**Inspector:** Mary Crowley



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## **1.0 INTRODUCTION**

1.1 This is an application under Section 261A (6)(a) for a review of a decision made under Section 261A(4)(a) of the Planning and Development Acts 2000-2010 and made by the Owner/Operator of a stone quarry at Arduns, Gweedore, Co Donegal. To assist the Board in its assessment this report is accompanied by photographs taken on day of site visit, copies of aerial photographs from various sources including myplan.ie (Department of Environment, Community and Local Government) and Ordnance Survey Ireland. I also refer the Board to the site and aerial photographs available throughout the review file.

## **2.0 SITE LOCATION AND DESCRIPTION**

2.1 The subject quarry is located to the south of Gweedore and is accessed off the N56 by means of an un-surfaced track that leads north from the regional road to a narrow, un-surfaced country road L7623 which serves the quarry, two agricultural farmyards, a dwelling and the derelict house and outbuildings to the west of the subject quarry. On day of site inspection the main entrance to the quarry was securely fenced off and locked, however access to the quarry area was available off the bog road running along the northern boundary.

2.2 The quarry site is located in north-west Donegal and a short distance to the south of Gweedore. The National Secondary Route, the N56, which connects the coastal areas of Dunfanaghy and Gortahork to the north and Dungloe to the south, passes the site to the west. An un-surfaced, bog road connects the site with the N56 to the north. The site is positioned on the east side of the bog road and is roughly rectangular in shape. The site is bounded to the north and east by an un-surfaced bog road and to the west and south by cut over bogland and extensive heath, which also characterises the wider area. The area is open and exposed with an absence of vegetative screening. It was noted on day of site inspection that there appears to be an operational stone quarry to the north.

2.3 The site comprises a stone and gravel pit, and on the date of site inspection it was also noted that there are two storage sheds within the quarry. No excavation equipment was evident during recent site inspection. Within the quarry there was no evidence of any recent or significant quarrying activity, nor were there any excavation machinery / equipment located therein. No information is available on tonnage per year. Limited vegetation cover has re-established within the quarry and very limited ponding was noted on the quarry floor. Some items of machinery and miscellaneous items were stored on site.

## **3.0 MATTERS CONSIDERED BY THE PLANNING AUTHORITY**

3.1 **Assessment / Determination Report**



- 3.2 According to the planners report at the registration stage the total area of the quarry was identified as 2.068ha. From the 2010 ortho photographs and recent site inspection the total area of the quarry extends to 1.5ha. At registration stage the area of extraction was identified as 2.0ha. However, from the 2010 ortho photographs and recent site inspection it is reported that the excavation / working area within the quarry extends to c4.0ha. A recent land search also confirmed that the overall landholding within which the quarry is located extends to c 4ha.
- 3.3 The planning report states that there is very little information available in relation to the historic activity at this quarry however the operation has fulfilled the requirements of Section 261. It is also reported that the quarry is the subject of planning enforcement investigations (UDGS 04/10 & UDGS 06/31 refers). It is noted that despite issuing Warning Letters to Danny Kearney (previous landowner) and later to Eugene O'Neill and Sinead O'Neil (current owners) it was not possible to advance the investigation and the enforcement investigation files remain open.
- 3.3 The planners report notes that ground water body status is classified as good. It is further reported that the quarry is located within lands which are designated as Donegal margaritifera sensitivity / catchment of Clady SAC populations listed in S.I. 296 of 2009. There is a single watercourse c 0.3km to the west of the quarry, which flows into the Clady river c 0.8km to the north west of the quarry, which is designated as part of the Fawnbog / Lough Nacung SAC (Site code 000140) and which in turn flows into the Gweedore Bay and islands SAC (site code 001141). The quarry is located west of and abutting the closest Natura 2000 site, being Cloghernagore Bog and Glenveagh National Park SAC (Site code 002047).
- 3.4 **Environmental Impact Assessment Criteria**
- 3.5 It is stated that there is no requirement for mandatory EIA as the overall quarry area extending to c 1.5ha falls below the 5 ha threshold. The proposed development was screened against Schedule 7 of the Planning & Development Regulations 2001, as amended. It was noted that there is a potential risk for contamination of ground water, given the proximity of the adjoining watercourse, lack of drainage system within the quarry and given the location of the subject site within the Donegal Margaritifera Sensitive / catchment area of the River Clady.
- 3.6 It was reported that there was no evidence of any recent quarrying activity. However it was considered that quarry activity to date may have had a negative impact on the character of the landscape, on water of surrounding watercourses, the Clady River and Fawnboy Bog / Lough Nacung SAC and that future likely impacts are largely dependent on demand for quarrying of further raw materials from the quarry. It is stated that significant impacts are likely on human beings, traffic flows & management, visual amenity & general landscape character of the area, historical &





archaeological features, noise & vibration, soils and geology, air & climate and ecology. Characteristics of the potential impacts are described as no affect, temporary, highly probable to occur, intermittent depending on economic circumstances, continuous without implementation of mitigation measures and reversible.

### 3.7 **Conclusion**

3.8 The report concludes with a recommendation that a section 261A(4)(a) notice issue.

## 4.0 **DETERMINATION AND DECISION OF THE PLANNING AUTHORITY**

### 4.1 **Determination**

The Planning Authority determined, pursuant to section 261A(2)(a) of the Planning and Development Acts 2000-2011, that:

- Development was carried out after 1 February 1990 which was not authorised by a permission granted under Part IV of the Act of 1963, prior to February 1990, which development would have required, having regard to the Environmental Impact Assessment Directive, an Environmental Impact Assessment or a determination as to whether an Environmental Impact Assessment was required, and that such a determination was not carried out or made and
- Development was carried out after 26 February 1997, which was not authorised by a permission granted under Part IV of the Act prior to 26 February 1997, which development would have required, having regard to the Habitats Directive, an Appropriate Assessment and that such an assessment was not carried out.

The **Reasons for the Determination** are as follows:

- The quarry may have commenced pre 1<sup>st</sup> October 1964, as it has not been possible to substantiate the operators pre 1964 authorisation claim, but no permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963
- Development was carried out after 26<sup>th</sup> February 1997, which was not authorised by a permission granted under Part IV of the Act of 1963 prior to 26<sup>th</sup> February 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, and that such an assessment was not carried out.



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## 4.2 Decision

Following the determination under subsection (2)(a) the Planning Authority decided pursuant to subsection (4)(a) of Section 261A that:

- The quarry commenced operation on or after 1<sup>st</sup> October 1964 and no permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963

4.3 The owner / operator was notified that the Planning Authority intends to issue an Enforcement Notice in relation to the quarry under section 154 of the Planning and Development Acts 2000 – 2011 requiring the cessation of the operation of the quarry and the taking of such steps as the Authority considers appropriate.

## 5.0 GROUNDS OF REVIEW

5.1 The submission by Mac Bride & Co Solicitors on behalf of the quarry operator may be summarised as follows:

5.2 The operator is seeking a review / appeal of the decision of Donegal County Council to *issue an enforcement notice in relation to the quarry under Section 154 of the Planning & Development Acts 2000 – 2011 requesting the cessation of the operation of the quarry and taking such steps as the Authority considers appropriate.*

5.3 It is stated that Donegal County Council has decided that the quarry commenced operation on or after the 1<sup>st</sup> October 1964 but that no permission was granted in respect of the quarry. It is submitted that this decision is an error. In this regard the quarry operator has submitted the following documents / information:

- Affidavits from Gerry Boyle & Joseph Boyle, local persons who reside in the vicinity of the quarry confirming that this quarry was in fact in operation for a considerable period prior to the 1<sup>st</sup> October 1964.
- Affidavit from Eamonn Mac Giolla Bhríde, Solicitor setting out a court case where he represented Joe Greene in Council proceedings on the adjoining quarry. The court Judge made a decision in favour of Donegal County Council and accepted the evidence of the Council witnesses which confirmed that his clients quarry was in operation historically as set out in the affidavits referred to in the affidavit.

5.4 The decision of Donegal County Council that the quarry commenced operation on or after the 1<sup>st</sup> October 1964 is an error which it is submitted is confirmed by both the affidavits enclosed and also by the evidence given on behalf of Donegal County Council in the above mentioned case of Donegal County Council vs Joe Green.



- 5.5 It is submitted that Donegal County Council is not entitled to require the cessation of the operation of this quarry on the basis that the quarry was in regular operation prior to 1<sup>st</sup> October 1964 and accordingly there was a legal entitlement to continue the operation of this quarry after that date.
- 5.6 It is further confirmed that this quarry was registered by Donegal County Council (letter issued by Donegal County Council dated 9<sup>th</sup> March 2007 confirming the registration of the quarry submitted with review). It is stated that the location of the quarry in this document is incorrectly spelt as Ardybsm, Gweedore, that there is no such location and that the location of the quarry should have spelt Arduns.
- 5.7 The quarry operator has complied fully with the condition set out in letter issued by Donegal County Council dated 9<sup>th</sup> March 2007. It is noted that this letter of 9<sup>th</sup> March 2007 stated that no settlement ponds were visible during the site inspection. The quarry operator confirms that there are in fact two settlement ponds located on the quarry. In addition the quarry is fenced in accordance with the Council requirements.
- 5.8 It is confirmed that the quarry operator, Sinead O'Neil, is the legal owner of this quarry as she purchased this quarry from Danny Kearney who purchased the property from Joseph Boyle. Registration of this property in Sinead O'Neil's name is not complete but it is stated that she is the beneficial and legal owner of the property.

## 6.0 PLANNING AUTHORITY'S RESPONSE TO REVIEW

- 6.1 The Planning Authority note in their response that substantial new information has been submitted in respect of this appeal, in relation to substantiating the quarry operators pre 1964 authorisations claim, which could not be substantiated on the basis of the information available as part of the Councils original assessment.
- 6.2 It is accepted that the quarry operator submitted information to the Council under the Section 261 registration process. In addition the points raised in relation to incorrect spelling of the townland as part of the section 261 registration, use of a new reference No Euqy 78 on the quarry register to identify this quarry, and change of ownership of quarry are noted, but are not considered to be material considerations.
- 6.3 The Council wishes to rely on the content of the Executive Planners report, endorsed and signed by the Acting Senior Executive Planner dated 9<sup>th</sup> August 2012 in response to this appeal.
- 6.4 **NOTE:** In the Planning Authority response to a request from the Board requesting information necessary to make a decision in relation to the review included a short note that stated as follows:



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*EUQY78 Arduns Gaoth Dobhair - On the 24<sup>th</sup> of August a Joseph Boyle rang with regard to the above mentioned quarry. Mr Boyle stated that the quarry was alongside his land and whilst Patrick Boyle and Mr Kearney were previously the owners a Sinead O'Neill was now the owner of the quarry.*

## **7.0 OWNER / OPERATOR'S RESPONSE TO PLANNING AUTHORITY'S SUBMISSION**

7.1 The Planning Authority's submission was not circulated. As no new issues were raised it is not considered necessary to recommend the circulation of same. However the Board may wish to consider the submission with a view to circulating the Planning Authority's submission prior to determining this review.

## **8.0 OBSERVERS**

8.1 No observations recorded on file.

## **8.0 PLANNING STATUS**

8.1 There is no evidence of any previous grant of planning permission or planning appeal relating to this site. However there are two previous planning appeals on the adjoining site to the north that may be summarised as follows:

8.2 **PL05B.213902 (Reg Ref 05/2514)** – Donegal County Council decision to refuse permission to Joe Green for the extraction of building stone and associated works at Arduns, Gweedore. Co. Donegal was appealed to An Bord Pleanála. The planning Inspector recommended that permission be granted subject to conditions however the Board refused permission for three reasons relating to (1) traffic safety, (2) noise and dust nuisance and (3) area designated as Landscape Category 3.

8.3 **PL 05B.229914 (Reg Ref 07/31458)** - Donegal County Council decision to refuse permission to Joe Green for the extraction of building stone and associated works at Arduns, Gweedore. Co. Donegal was appealed to An Bord Pleanála. The planning inspector recommended that permission be refused for three reasons similar to the reasons for refusal set out in PL05B.213902 (see above). The Board granted permission subject to 12 conditions. In deciding not to accept the Inspector's recommendation to refuse permission, the Board considered that the scale of development was reduced compared with the previous application, that the traffic movements would be restricted to the southern access junction and taken together with the improved separation distance to local dwellings the quarry could be accommodated without causing serious injury to the visual amenity of the area.

8.4 It is also noted that in 2003 **legal proceedings** were issued against Joe Greene by Donegal County Council requiring that all unauthorised development at Arduns





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including the operation of quarry; the excavation of the land and the extraction of material including rock and stone cease forthwith. A copy of the Notice of Motion (Donegal County Council vs. Joe Green) is available to view on the file.

## **9.0 SECTION 261 REGISTRATION**

9.1 **QY78** (March 2007) – Quarry at Ardybsm, Gweedore registered with 16 conditions (pursuant to Section 261 of the Planning and Development Act 2000).

## **10.0 ASSESSMENT**

10.1 Having visited the site and examined the documentation received from the planning authority including the planning history, the following is my assessment of the review. Due regard is had to the Section 261A Guidelines for Planning Authorities, January 2012 and the Supplementary Guidelines issued in July 2012. In this review, the quarry owner / operator has requested the Board to review the Section 261A(4)(a) decision of Donegal County Council only.

### **10.2 Extent of Quarry Development**

- 10.3 It is confirmed in the Grounds of Review that the quarry operator, Sinead O'Neil, is the legal owner of this quarry as she purchased this quarry from Danny Kearney who purchased the property from Joseph Boyle. It is submitted that registration of this property in Sinead O'Neil's name is not complete. It is stated that she is the beneficial and legal owner of the property.
- 10.4 The quarry owner / operator submits that the quarry was operational prior to 1964 and that the decision of Donegal County Council is an error. The planners report states that there is very little information available in relation to the historic activity at this quarry and it was concluded therefore *that there is not sufficient evidence at this time to substantiate the applicants claim that this quarry has the benefit of pre 1964 authorisation.* However it was noted that there is evidence of activity on the quarry between the years 1995 and 2010. There is no planning permission or authorisation for the existing activity however the operation has fulfilled the requirements of Section 261.
- 10.5 It is submitted that Eamonn Mac Giolla Bhríde (solicitor) acted on behalf of Joe Greene in connection with legal proceedings issued against him by Donegal County Council in connection with a property which adjoins Sinead O'Neill's quarry. In the proceedings between Donegal County Council and Joe Greene, affidavits (available to view on file) were prepared. At the court hearing Donegal County Council together with their witnesses stated that the affidavits did not relate to Joe Green's quarry but were in fact related to the quarry which is owned and operated by Sinead



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O'Neill. The Judge who dealt with the court case accepted the submission of Donegal County Council in this regard.

- 10.6 The owner / operator of the quarry the subject of this review submits, having regard to the foregoing that the decision of Donegal County Council set out in the communication of the 22<sup>nd</sup> August 2012 addressed to Sinead O'Neill stating that "the quarry commenced operation on or after 1<sup>st</sup> October 1964" is clearly incorrect.
- 10.7 The owner / operator in their Grounds of Review submitted the following noteworthy documents / information:
- Affidavits of Gerry Boyle & Joseph Boyle, local persons who reside in the vicinity of the quarry confirming that this quarry was in fact in operation for a considerable period prior to the 1<sup>st</sup> October 1964
  - Affidavit signed by Joseph Boyle on 5<sup>th</sup> September 2012 confirming that the property which was sold to Sinead O'Neill was a quarry and has been used as a quarry on a regular and annual basis since the 1950's
  - Affidavit signed by Gerry Boyle on 5<sup>th</sup> September 2012 confirming that the property which was sold to Sinead O'Neill was a quarry and has been used as a quarry on a regular and annual basis since the 1950's and that the decision of Donegal County Council that the quarry commenced operation on or after the 1<sup>st</sup> October 1964 is incorrect.
  - Affidavit signed by Eamonn Mac Giolla Bhríde, Solicitor on 6<sup>th</sup> September 2012 referring to the letter issued by Donegal County Council dated 22<sup>nd</sup> August 2012 to Sinead O'Neill in which it is stated that the Council decided that Sinead O'Neill's property is a quarry that commenced on or after the 1<sup>st</sup> October 1964.
  - Affidavit signed by Timothy Boyle on 31<sup>st</sup> March 2003 setting out improvement works carried out by Dore Development Committee in or around the years 1995 – 1996. Such works included the construction of a footpath along the main public roadway and the Dore Development Committee *purchased a large quantity of gravel from Joe Boyle of Arduns in order to prepare the base for the footpath.* The affidavit further states that *gravel was taken from Joe Boyle's quarry at Arduns and delivered to the location where the works were being carried out.*
  - Affidavit signed by Owen P. Ferry on 4<sup>th</sup> September 2003 indicating familiarity with the gravel quarry situated at Arduns which was formerly owned by Joe Boyle and now owned by Joe Greene. The affidavit states that Owen P. Ferry *recalls large quantities of gravel being excavated from this quarry on behalf of*



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*Donegal County Council approximately fifty years ago for the purpose of repairing and making roads in the vicinity. It is further stated that the quarry remained open and in use and that approximately ten years ago a local contractor used the quarry regularly for house building and road material until the quarry was sold to Joe Boyle.*

- Affidavit signed by Hugh McBride on 5<sup>th</sup> April 2002 stating that he is familiar with the townland belonging to Joe Boyle on which a quarry is located and that in the 1940's he worked for a number of years for a Patrick Boyle at a location in the vicinity and also had bog land in the area where he cut turf annually off this quarry and *recalls that at that time the quarry was used on a regular basis by many people in the locality and Donegal County Council.* Gravel was initially removed by horse and cart and later by mechanical vehicles and excavators.
  
- Affidavit signed by Eamonn McGee on 8<sup>th</sup> October 2003 stating that he first worked in this quarry in the late 1970's or early 1980's with his father excavating gravel and stone on a regular basis for the purpose of making roads and building houses until his father's death in 1985. From 1985 Eamonn McGee carried on the business and continued to extract stone and gravel on a regular basis until approximately 1997. It is submitted that on average the amount of materials excavated from the quarry would range from fifty to one hundred tonnes per week and that some weeks it could be higher. During the years 1990 to 1991 the quarry was used extensively by a local contractor, Patrick Gallagher.
  
- Affidavit signed by Joe Boyle, retired quarry owner on 29<sup>th</sup> September 2003 states that the quarry operated during the 1950's, 1960's, 1970's, 1980's and 1990's and that numerous local people excavated material from this site during this period. During the period 1994 to 1996 there was a major use of the site by Dore Development Committee and that these works were grant aided by Donegal County Council and supervised by the County Engineer. From the 1990's to the mid 1990's sand, gravel and stone was excavated in significant quantities by a local contractor, Patrick Gallagher. From the mid 1990's Patrick Gallagher operated as a one man operation until Joe Boyle sold the site to Joe Greene. The site has been continuously used, sometimes more intensively than others, but at all times, at least one person was excavating material from the site during the decades comprising the 1960's, 1970's, 1980's and 1990's and that there is no basis for any assertion that the use was abandoned or that the present use is an intensification of the previous use as the use is very similar to that which the site has always been used.



10.8 As per the wording of Section 3.3 of the Guidelines it is important to note that in order to fulfil the requirement in terms of whether the quarry commenced operation prior to 1<sup>st</sup> October 1964 it just has to have commenced prior to 1964. It does not have to be operated under a 'pre-1964 authorisation'. However it is noteworthy that despite the historical standing of the use it is not indicated on any current or historic map of the area. In this regard it is unfortunate that the Guidelines are largely silent on the matter of proving pre-1964 use and do not establish a bar which must be met to verify such an entitlement. Taking into consideration the historical context as set out above and in particular the information provided in relation to Donegal County Council vs. Joe Green it is accepted that the quarry was operational prior to 1964.

## 11.0 CONCLUSIONS

11.1 The subject quarry commenced operation before 1<sup>st</sup> October 1964, planning permission has not been granted under the 1963 or the 2000 Planning Acts (as amended) and the requirements of section 261 of the Planning and Development Act 2000 have been fulfilled. Therefore I do not concur with the Planning Authority's decision to issue an enforcement notice under section 261A(4)(a) of the Planning and Development Acts. It is recommended that the decision of Donegal County Council be set aside.

## 12.0 RECOMMENDATION

12.1 Having regard to the information on file, the grounds of the review received, the responses thereto, a site inspection and the assessment above, I recommend that the Board **SET ASIDE** the planning authority's decision under Section 261A(4)(a)(i) for the following reasons and considerations.

## 13.0 REASONS AND CONSIDERATIONS

(1) Having regard to the documentation on the review file, including the sites planning history and aerial photography it has been demonstrated to the satisfaction of the Board that the quarry commenced operation prior to the 1<sup>st</sup> October, 1964

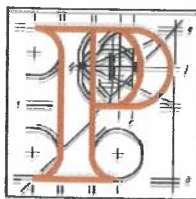
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**Mary Crowley**  
**Inspectorate**  
**June 2013**





# An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2013

**Donegal County**

**Planning Authority Register Reference Number: EUQY78**

An Bord Pleanála Reference Number: 05E.QV.0189

**LOCATION OF QUARRY:** Arduns, Gweedore, County Donegal.

**REVIEW REQUESTED** by Sinead O'Neill care of Eamonn Mac Giolla Bhríde of Dungloe, County Donegal in respect of;

**the determination** by Donegal County Council, on the 22<sup>nd</sup> day of August, 2012, under subsection (2)(a)(i) and (2)(a)(ii) of section 261A of the Planning and Development Act, 2000, as amended by the insertion of section 75 of the Planning and Development (Amendment) Act 2010 and as further amended by the European Union (Environmental Impact Assessment and Habitats) Regulations 2011 and European Union (Environmental Impact Assessment and Habitats) Regulations 2012,

which determination was that development was carried out after the 1<sup>st</sup> day of February, 1990, which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment or a determination as to whether an environmental impact assessment was required, and that such an assessment or determination was not carried out or made, and

that development was carried out after the 26<sup>th</sup> day of February, 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, and that such an assessment was not carried out.



## BOARD DECISION

The Board in exercise of its powers, conferred on it under section 261A of the Planning and Development Act, 2000, as amended, decided:

based on the Reasons and Considerations marked (1) below, to **set aside** the determination of the planning authority in respect of this development made under section 261A(2)(a)(i) of the Planning and Development Act 2000, as amended, and

based on the Reasons and Considerations marked (2) below, to **set aside** the determination of the planning authority in respect of this development made under section 261A(2)(a)(ii) of the Planning and Development Act 2000, as amended.

## MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

## REASONS AND CONSIDERATIONS (1)

Having regard to:

- (a) the provisions of the Planning and Development Acts, 2000 to 2013, and in particular Part XA and section 261A,
- (b) the Regulations pertaining to Environmental Impact Assessment 1989 to 1999 and the Planning and Development Regulations, 2001, as amended, which restates the prescribed classes of development which require an Environmental Impact Assessment (Schedule 5) and which makes provision for a planning authority to require the submission of an Environmental Impact Statement in such cases and the criteria for determining whether the development would or would not be likely to have significant effects on the environment (Schedule 7 thereof),



- (c) the documentation on the review file (planning authority register reference number EUQY78); including the site's planning history, aerial photography, the registration of the quarry in March, 2007 (planning authority register reference number QY78) under section 261 of the Planning and Development Act, 2000, as amended, which registered a total area of 2.068 hectares and the report of the Inspector, and
- (d) the documented historic record of quarrying at this location,

it is considered that the scale and nature of operations carried out on this quarry are consistent with and of a similar nature to the historical operations of this quarry, which was established prior to the coming into operation of the Planning Acts and prior to the introduction of the Environmental Impact Assessment Directive. The Board is, therefore, satisfied that development has not been carried out after the 1<sup>st</sup> day of February, 1990, which development would have required an environmental impact assessment or a determination as to whether an environmental impact assessment was required.

## **REASONS AND CONSIDERATIONS (2)**

Having regard to:

- (e) the provisions of the Planning and Development Acts, 2000 to 2013, and in particular Part XA and section 261A,
- (b) the Department of the Environment, Heritage and Local Government - Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities, 2009/2010,
- (c) the Department of the Environment, Community and Local Government - Section 261A of the Planning and Development Act, 2000 and related provisions, Supplementary Guidelines for Planning Authorities, July 2012,
- (d) the documentation on the review file (planning authority register reference number EUQY78); including the site's planning history, aerial photography, the registration of the quarry in March, 2007 (planning authority register reference number QY78) under section 261 of the Planning and Development Act, 2000, as amended, which registered a total area of 2.068 hectares and the report of the Inspector, and
- (e) the documented historic record of quarrying at this location,



it is considered that the scale and nature of operations carried out on this quarry are consistent with and of a similar nature to the historical operations of this quarry, which was established prior to the coming into operation of the Planning Acts and prior to the introduction of the Habitats Directive. The Board is, therefore, satisfied that development has not been carried out after the 26<sup>th</sup> day of February, 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment.

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**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.**

**Dated this            day of            2014.**









Special Meeting of Donegal County Council held on 9<sup>th</sup> July 2021  
Queries & Responses

No.	Description of Query	Reply
		<p>It is accepted that quarrying has continued on an intermittent basis at this location, in direct contravention of the 2013 Order and the Undertaking given in 2019.</p> <p>These breaches of Court Orders are again before the Circuit Court at this time and further comment is not appropriate until the matter has been dealt with.</p>
36.	Was any action taken by the Council against the offending Quarry?	<p>It is understood that the offending Quarry referenced in this question refers to Cassidy's Quarry in Buncrana.</p> <p>The Council is of the view that the 2017 Expert Panel Report does not establish any clear grounds that could be used as a basis for follow-up action on a supplier. It is noted that Cassidy Bros Concrete Products have in place the Certificates of Factory Production Control required under the Construction Products Regulations (CPR) in relation to their products and aggregates. These certificates were issued by the National Standards Authority of Ireland, who are the Notified Body for the purposes of the CPR, following their own independent assessment of the processes and controls in place at the quarry.</p>
37.	Has there been an update in relation to the second legal opinion sought at the meeting on the 31 <sup>st</sup> May, 2021 on procurement?	A second legal opinion has been provided to the elected members and will be considered when the Adjourned July council meeting reconvenes.
38.	Who was responsible for the licensing of quarries in the past and who has current responsibility?	<p>Local Authorities have primary responsibility for the licensing of the Quarry sector.</p> <p>The regulation process is complex for both operators and local authorities as regulators.</p> <p>Quarrying is an activity rather than a development. It is unlike other developments which are regulated by a grant of planning permission, in which the principle for development can be established and remains fairly unchanging.</p> <p>As an activity quarrying results in daily outputs many of which fall within environmental pollution parameters such as the control of noise, dust and water discharge.</p>

Continued next  
page!



**Special Meeting of Donegal County Council held on 9<sup>th</sup> July 2021  
Queries & Responses**

No.	Description of Query	Reply
		<p>New significant quarry applications are being granted with up to 25 years duration of permission in accordance with the Quarry Guidelines for Planning Authorities.</p> <p>While the principle of quarry operation activity can be reasonably determined for this length of time, the current planning and enforcement legislation and processes are not sufficiently robust or reactionary to respond to the evolving day to day operations and outputs of the quarry industry.</p> <p>Donegal has the highest number of registered quarries in the state with 186 quarries registering in 2012 under Section 261A.</p> <p>The quarry industry must be regulated to meet the country's need for a steady supply of quality certifiable material in order to support economic recovery, government capital spend targets and the construction and other sectors. It is also necessary to ensure a level playing field for businesses while ensuring the public good by addressing public health, safety, pollution concerns and quality of materials being produced.</p> <p>In the Irish context, given the number of quarries and the makeup of the sector, consideration should be given to reviewing the legislation and processes regulating the industry, particularly in light of the current complexity, challenge and ineffectiveness that exists. Rather than relying on planning enforcement, which is effective in land use and development regularization, licensing and ongoing monitoring of projected and permitted activity may be a more efficient, effective and reactive means of overseeing the industry.</p> <p>Direct engagements have been undertaken with the relevant government departments to progress the matter and to underline the need for a renewed basis for the regulation of the quarry sector.</p>



## Elusive Quarries: A Failure of Regulation

### I. INTRODUCTION

Quarries are economically important. Particularly (but not only) in times of economic growth, there is a need for the raw materials provided by quarries for the construction industry. However, quarries - depending on their scale and location - can cause significant environmental impacts. It is therefore necessary to control quarrying activities in order to ensure environmental protection.<sup>1</sup> Quarries have been the subject of regulation under the Local Government (Planning and Development) Acts 1963-1999 and the Planning and Development Acts 2000-2010. Yet quarries have proved resistant to the type of regulation provided under those Acts. The central submission of this Article is that it is time to start afresh. The purpose of this Article is not to provide a comprehensive account of the law relating to quarries. Several of the issues addressed in this Article could each provide material for an Article of greater length than this one.<sup>2</sup> Rather, this Article has three aims. First, it seeks to draw together different aspects of planning law insofar as they apply to quarries. This will provide a structural account of complicated interlocking mechanisms of quarry regulation. Second, the Article offers an analysis and critique of the complexity of this interlocking system of regulation. When one looks at the core substantive elements of the regulation of quarries, it becomes immediately apparent that the Oireachtas and the courts have created a system of labyrinthine complexity that does not serve the interests of either quarry operators or the environment. Third, the Article offers a proposal for reform which, it is contended, could provide a far simpler system of regulation that would benefit both the environment and quarry operators themselves.

### II. THE DIFFICULTIES IN REGULATING QUARRIES

#### II.A Pre-existing quarries

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<sup>1</sup> For an account of these competing concerns, see Department of the Environment, Heritage and Local Government, *Quarries and Ancillary Activities: Guidelines for Planning Authorities* (Stationery Office, 2004).

<sup>2</sup> Readers should refer themselves to the two excellent textbooks in this area: Yvonne Scannell, *Environmental and Land Use Law* (Thomson Round Hall, 2006) and Garrett Simons, *Planning and Development Law* (2<sup>nd</sup> ed, Thomson Round Hall, 2007). In addition, the volumes of the *Irish Planning and Environmental Law Journal* contain many articles providing detailed analysis of legal developments. Reference is made below to a number of specific articles.





Section 24 of the Local Government (Planning and Development) Act 1963 imposed an obligation, enforceable by criminal sanction, to obtain planning permission in respect of any development of land, being neither exempted development *nor development commenced before the appointed day*. Section 3 of the Act provided that development meant “the carrying out of any works on, in, or under land or the making of any material change in the use of any structures or other land.” Section 2 of the Act defined “works” to include “any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.” There was no obligation to obtain planning permission in respect of development that commenced before the “appointed day.” The appointed day was 1 October 1964.<sup>3</sup> This “appointed day” exception was necessary to ensure the constitutionality of section 24. It would have contravened Article 15.5 to render a person liable to criminal sanction for not having obtained planning permission for development that commenced in the past. Even if there were no criminal sanction, however, it might also have contravened the property rights protected by Article 40.3.2° and 43 of the Constitution to require a person to obtain planning permission in order to complete works that had already commenced, at least if no compensation were provided. This constitutional argument is explored in greater detail in section III.A.

For present purposes, it suffices to note that something like this concern underpinned section 24 of the 1963 Act as well as subsequent judicial interpretation of that provision.<sup>4</sup> It ensured that there was no obligation to obtain planning permission in respect of material changes of use or works that “commenced” prior to 1 October 1964. The non-application of the Act to works and material changes of use commenced before 1 October 1964 is largely of historic interest. Most developments commenced before 1 October 1964 were completed shortly after 1 October 1964. However, quarries are a special case. Quarries can only be development if they are either a material change of use or the carrying out of works. However, given the nature of quarries, it is possible that works commenced before 1 October 1964 could still be carried out many years later and therefore could still be immune from any obligation to obtain planning permission.

<sup>3</sup> SI 211/1964 Local Government (Planning and Development) Act, 1963 (Appointed Day) Order 1964.

<sup>4</sup> The exclusion provided by section 24 of the 1963 Act has been taken to be reproduced in the Planning and Development Act 2000, through its definition of “unauthorised development.” See *Roadstone Holdings Ltd v An Bord Pleanála* [2008] IEHC 210.



The Supreme Court addressed this question in *Waterford County Council v John A Wood Ltd*.<sup>5</sup> On 1 October 1964, the respondent's predecessor in title was engaged in the quarrying of limestone on certain lands owned by a Mr Looby. The respondent later took over these operations in 1969 and extended them into adjoining lands leased from Mr Looby. In 1986, the respondent purchased more lands from a Mr Doyle and commenced quarrying there in 1995. Prior to this point, the Doyle lands had been used for purely agricultural purposes. The Doyle and Looby lands were adjacent, although separated by a boithrín. The applicant commenced enforcement proceedings but was refused relief in the Circuit Court. The applicant then appealed to the High Court which stated a case for the Supreme Court:

Whether the quarrying operations being carried out by the respondent on the Doyle lands is development requiring planning permission?

Murphy J, with whom the other members of the Court agreed, first rejected two extreme views put forward by the applicant and respondent. He rejected the argument, based on the *dictum* of Lord Denning MR in *Thomas David Ltd v Penybont RDC*, that every shovelful was a mining operation constituting a material change of use which required planning permission.<sup>6</sup> Such an approach would set at nought the statutory allowance to complete works commenced before the appointed day. On the other hand, he reasoned that section 24 did not establish a general right to continue quarrying, such as to allow a quarry operator extract a seam of rock to completion.

The section merely permits the continuation to completion of the particular works commenced before the appointed day at an identified location. In my view the answer to the question posed by the learned judge of the High Court requires the examination of all of the established facts to ascertain what was or might reasonably have been anticipated at the relevant date as having been involved in the works then taking place. It is clear that in some cases particular factors may be of decisive importance whereas in others those factors may be of little or no consequence.<sup>7</sup>

Murphy J then considered many factors including the extent of the limestone seam, the extent of the original landholding and the presence of the boithrín. In the context of that case, he considered the original landholding of the Respondent's predecessor in title to be

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<sup>5</sup> [1999] 1 IR 556.

<sup>6</sup> [1972] 1 WLR 1526, at 1531.

<sup>7</sup> [1999] 1 IR 556, at 562.



the most relevant factor, concluding that “the proper inference is that the quarrying works on the Doyle lands were a distinct operation or at the very least a different phase from the works which were being carried on when the Act of 1963 came into operation.” The works were not the continuation of the original quarrying operations and therefore did not fall within the exclusion or exempting provisions. Murphy J also commented *obiter* that in his view planning permission would have been required for the works on the extended Looby lands as well.

The actual conclusion of the Supreme Court was quite restrictive, holding that it could not have been the reasonable anticipation of Mr Looby that the quarrying would expand into a separate parcel of his lands still less into lands that he did not own in 1964. However, the approach of the Court rendered the question of whether quarrying works require planning permission a difficult factual question much dependent on context and inferences. In the context of enforcement proceedings, where the onus lies on the applicant (or prosecutor) to establish that development has occurred after the appointed day, it may often be difficult to establish what was reasonably anticipated by the parties nearly 50 years ago.

As is apparent from the above analysis, the interaction between the works exemption and the existence of a material change of use is complex. In *Roadstone Provinces Ltd v An Bord Pleanála*, Finlay Geoghegan J quashed a declaration of the Board to the effect that there had been a material change of use in the operation of a quarry.<sup>8</sup> In that case, the quarry’s operations had extended considerably but the Board had made no finding that there had been a change of use. Accordingly, there was no basis for assessing whether the additional operations were material. Before there can be a “material” change of use, there must be a “change of use.” This question must be decided without regard to any question of planning materiality. This is consistent with the approach of the Supreme Court in *Waterford County Council v John A Wood Ltd*, considered above. Mere extension of a quarry into neighbouring land cannot constitute a material change of use (even though the use of the lands change) as that could deprive an operator of the right to complete works that had commenced prior to the appointed day. In such cases, the question is whether the works now being undertaken were reasonably anticipated by the operator on 1 October 1964. If not, development has occurred post 1964 and planning permission is required. If so, development has not occurred post 1964 and no planning permission is required, subject to the concepts of abandonment of use and intensification of use, considered immediately below.

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<sup>8</sup> [2008] IEHC 210.



## II.B Abandonment of Use

The courts have developed the doctrine of abandonment of use to address situations in which a development ceases and then recommences.<sup>9</sup> In *Westmeath County Council v Quirke & Sons*, Budd J included the physical condition of the land as one of the factors to be taken into account in determining whether there had been an abandonment of use.<sup>10</sup> In deciding whether there had been abandonment of the use of lands for extraction and limestone production, he posed the apparently objective test of whether a reasonable man looking at the converted cattle shed or farm supplies store in the disused-looking quarry would have concluded that the use had been abandoned.

This abandonment test must be taken to overlay the reasonable anticipation test of *John A Wood Ltd*. A person could not be said to be completing works that were reasonably anticipated in 1964 if the use had been abandoned in the interim. As such, the abandonment test is a significant judicial intervention designed to bring quarries (and other developments) back within the scheme of planning control, thereby reducing the scope of exclusion effectively provided by section 24 of the 1963 Act. However, as with the basic interpretation of section 24 offered in *John A Wood Ltd*, this again turns on the assessment of intentions held by people possibly many years previously. Accordingly, both the exclusion provided by section 24 and the effective limitation of that exclusion provided by the abandonment test raise difficult factual questions that have little to do with planning.

## II.C Intensification of use

An intensification of the use of land for a particular purpose can amount to a material change of use. The concept of intensification of use was outlined by Keane J in *Butler v Dublin Corporation* in the following terms:

Although the expression 'intensification of use' is not to be found in our planning code or its English equivalent, the legislatures in both jurisdictions must have envisaged that a particular use could be so altered in character by the volume of activities or

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<sup>9</sup> See *Dublin County Council v Tallaght Block Company Ltd* [1982] ILRM 535.

<sup>10</sup> 23 May 1996 (HC).





operations being carried on that the original use must be regarded as having been materially changed. One man digging up stones in a field and carrying them away in a wheelbarrow for a few hours each week may be succeeded by fleets of bulldozers, J.C.B.s and lorries extracting and carrying away huge volumes of rock from the same site.<sup>11</sup>

The kernel of intensification is that more of the same use can be taken to amount to a change of use, and such a change of use can be material. In *Galway County Council v Lackagh Rock Limited*, Barron J emphasised that an increased or intensified use *per se* does not amount to a material change of use; it must also be established that the intensification gave rise to fresh planning considerations:

The importance of this principle lies not so much in the intensification of use of itself, but in the fact that such use may impose burdens on the local authority or otherwise infringe in a materially different manner upon the proper planning for the area.<sup>12</sup>

Barron J held that there had been no material change of use as, despite an intensification of use, there was no evidence that there were no different matters that the planning authority would take into account in considering an application for planning permission:

The question to be answered is whether or not the actual use is a materially different use from that on the appointed day. In neither case has an application been submitted for a permission. To test whether or not the uses are materially different, it seems to me, that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made either for the use on the appointed day or for the present use. If these matters are materially different, then the nature of the use must equally be materially different. Since no evidence has been adduced to indicate that the applicant would have taken any different matters into consideration in determining an application for planning permission made now rather than on the appointed day, I accept the respondent's contention that there has been no material change of use.<sup>13</sup>

However, in *Monaghan County Council v Brogan*, Keane J distinguished this approach:

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<sup>11</sup> [1999] 1 IR 565.

<sup>12</sup> [1985] IR 120, at 127.

<sup>13</sup> [1985] IR 120, at 127-8.



Whether or not it is so material must be determined by the court as a matter of fact and the absence of any evidence as to the views of the planning authority on the matter is not crucial. It would be strange if it were otherwise, since a person other than the planning authority can set in motion the machinery under s. 27 and there is nothing in the wording of the section to suggest that his right to do so may be stultified simply because the planning authority have taken a view, which may or may not be in law correct, that no material change in use is involved. I do not think it is necessarily the case that Barron J. was indicating a different view of the law in the passage on which Mr. Bradley relied so strongly, but if he were doing so, I would with respect differ from him....

In summary, it may well be that at the time the matter comes before the court under s. 27 there may appear to be no reasons of a planning nature which would lead to an adverse decision in the event of the respondents applying for permission. But that does not absolve the respondents from the necessity of obtaining planning permission if there has been in truth a material change in the use of the land.<sup>14</sup>

More recently, in *Michael Cronin (Readymix) Ltd v An Bord Pleanála* Ryan J took an approach that seems stricter than that of Keane J in quashing a declaration by an Bord Pleanála, pursuant to section 5 of the 2000 Act, to the effect that development had occurred by way of intensification amounting to material change of use. In assessing whether a change of use was material, Ryan J concluded that the Board (and its inspector) had taken into account irrelevant considerations:

The problem is that the inspector then went on to take into account matters that in my view were irrelevant to the issue or that were speculative or confusing and the combination of these inappropriate conclusions and observations with the earlier, legitimate ones contaminated the process and rendered it invalid. Let me be more specific. The visual impact of the development when viewed from surrounding lands is of questionable relevance in this case to the issue of material change of use; the fact that natural regeneration of the site could have occurred if the area was not surfaced is wholly irrelevant - it may be relevant to other aspects of the planning process but I simply cannot see how that matter can affect a decision as to whether there has been a material change of use. The next sentence in the inspector's reasoning deals with

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<sup>14</sup> [1987] IR 333, at 338-9.



changes in surface water flows with “possible” resulting impacts on geology and hydrogeology. The hard surface “would also militate against the development of a habitat which would potentially be of ecological importance”. This includes no more than possible impacts and changes that might potentially be of ecological importance. This is not the language or the thinking that is expected of an expert making an assessment for the purpose of reporting to a statutory body such as the respondent. The inspector’s conclusion could have stood on its own but was fatally undermined and devalued by the inclusion of these irrelevant matters, some of them only on a basis of possible or potential impacts. The inspector’s conclusion on this question as to material change of use must also be invalidated.<sup>15</sup>

In summary, therefore, although it is settled law that intensification of use must be material in order to constitute development, and that materiality must be assessed by reference to proper planning and sustainable development, it remains unclear quite what the threshold of materiality is. Keane J’s approach in *Brogan* may have suggested a permissive standard, allowing the planning implications to be ventilated in the context of an application for planning permission. In contrast, Ryan J’s approach in *Michael Cronin (Readymix) Ltd* suggests that a high level of certainty about likely planning implications is necessary before they can be considered material.

As with the concept of abandonment, the concept of intensification of use effectively reduces the scope of the exclusion provided by section 24 of the 1963 Act. The completion of quarry works reasonably anticipated in 1964 may require planning permission where the method of quarrying changes such that there is an intensification of use amounting to a material change of use. The material change of use here does not derive from a change in the use of the land that has become the quarry, but rather from the fact that the entire quarrying operation on all the land is a material change from what was occurring. Again, however, the scope of this limitation on the exclusion remains unclear given differences in judicial emphasis on how certain and significant changes must be in order to count as material.

## II.D The EU Dimension: Environmental Impact Assessment (EIA)

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<sup>15</sup> [2009] IEHC 533, at [37].



Article 2 of Council Directive 85/337/EEC as amended (the EIA Directive) requires Member States to adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue *inter alia*, of their nature, size or location are made subject to an assessment with regard to their effects.<sup>16</sup> This does not, on its face, impose an obligation to subject projects to consent procedures but rather to ensure that where projects are subject to consent procedures, an EIA is undertaken.<sup>17</sup> Article 4 of the Directive establishes two types of project: those that are subject to mandatory EIA (Annex I) and those that Member States decide to subject to EIA based on their nature, size and location (Annex II). In respect of Annex II projects, Member States may determine thresholds or criteria for EIA generically or on a case-by-case basis. However, in Case C-392/1996 *Commission v Ireland*, the Court of Justice held that it was not open to Member States to establish thresholds solely by reference to the size of the development - their nature and location are also relevant.

Quarries where the surface area of the site exceeds 25 hectares are subject to mandatory EIA, pursuant to Annex I to the Directive. Quarries are also covered by Annex II. Accordingly, development consents for quarries must include EIA where the quarry is likely to have a significant effect on the environment by virtue of its size, nature or location. Ireland responded to Case C-392/1996 by establishing thresholds for all Annex II projects above which EIA would be mandatory but also by requiring planning authorities to undertake case-by-case screening decisions as to whether particular projects would be likely to have significant effects on the environment by reason of their nature, size or location.<sup>18</sup> Schedule 5 of the Planning and Development Regulations 2001 requires EIA in respect of applications for permission for the extraction of stone, gravel, sand or clay, where the area of extraction would be greater than five hectares. However, in respect of sub-threshold applications, regulation 103 requires planning authorities (and the Board on appeal) to require an EIA if they consider that the quarry would be likely to have a significant impact on the environment. Regulation 103(2) requires that this issue must be specifically considered in respect of quarries located on or in certain sites protected under European and/or national

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<sup>16</sup> This Directive is amended by Council Directive 97/11/EC, Directive 2003/35/EC, and Directive 2009/31/EC.

<sup>17</sup> Although see the judgment of the ECJ in Case C-66/06 *Commission v Ireland*, holding that Ireland had failed properly to transpose the terms of the Directive by exempting certain categories of development from the obligation to obtain planning permission even though they might have significant effects on the environment.

<sup>18</sup> Planning and Development Act 2000, section 176 (as amended) and SI 600/2001 Planning and Development Regulations 2001, regulation 103





law. Schedule 7 of the Regulations lists a wide range of criteria, by reference to the characteristics of the proposed development, the location of the development and the characteristics of the potential impacts, which must be considered by the planning authority and the Board in deciding whether an EIA is required. The significance of this is that while all quarries the size of which is greater than five hectares require an EIA, prior to any planning permission being granted, there is a standing possibility that any quarry - irrespective of its size - could require an EIA before it can be granted planning permission. This is not to say that all such quarries will require an EIA - there are guidelines that help determine whether a quarry should be considered as likely to have significant effects on the environment. Once again, however, this means that the application of an important aspect of the regulation of quarries turns on difficult factual evaluations.

#### **II.E Legislative Intervention: Section 261 of the Planning and Development Act 2000**

Section 261 of the 2000 Act established a new regime for the control of quarries that were already in existence when the Planning and Development Act 2000 came into effect. The section applied to two categories of quarries: (a) those which received a planning permission under the Local Government (Planning and Development) Acts more than 5 years before the coming into operation of section 261 (28 April 2004); and (b) those which did not receive such planning permission but which were in operation on or after section 261 comes into force. This latter category included both pre-1964 quarries which may not have required planning permission and quarries illegally operating without planning permission. By 27 April 2005, the owner or operator of any of these quarries was under an obligation to provide certain information relating to the operation of the quarry to the planning authority. The planning authority was then under an obligation to enter the quarry on the planning register under section 7 of the Act within certain time limits. The information to be provided by the operator included information on the hours of operation, the level of traffic generated, the level of dust and noise generated, *etc.* As these are the touchstones of materiality for the intensification of use doctrine, it was thought that the information submitted in 2005 would provide a useful benchmark against which to assess the materiality of an intensification of use in the future. However, as 2005 marked the height of the construction boom (and therefore the busiest time for the use of quarries), it is unlikely that the 2005 figures will be exceeded



for a number of decades. Its use as a benchmark for the materiality of intensification is therefore somewhat diminished.

Where a pre-1964 quarry has an “extracted area” of greater than five hectares *or* is situated on a site which has a special environmental or wildlife designation, *and* its continued operation will be likely to have significant effects on the environment, section 261(7) imposes on the planning authority an obligation to require the owner or operator to make an application for planning permission and submit an environmental impact statement. This provision further reduces the scope of the exclusion originally provided by section 24 of the 1963 Act by subjecting pre-1964 quarries which ought to be subject to EIA to the requirement to obtain planning permission. The criteria here broadly reflect the criteria for when a planning application for a quarry must be accompanied by an EIA.

Section 261(6) authorises a planning authority, following public notification of the registration and following a consultation process with the owner/operator of the quarry, to impose, restate or modify conditions on the operation of the quarry. Section 261(9) allows an owner or operator to appeal to an Bord Pleanála the planning authority’s decision to impose, restate, add to or modify conditions.

In *M&F Quirke and Sons Ltd v An Bord Pleanála*, the High Court considered the jurisdiction of planning authorities and An Bord Pleanála to impose conditions pursuant to section 261(6) in three test cases, which included (a) a condition restricting blasting, (b) a condition restricting depth, (c) a condition restricting surface extent, (d) a condition restricting the number of years for which the quarry could operate.<sup>19</sup> In respect of (b), (c) and (d), the quarry could not operate beyond a certain depth, area or time without first applying for a grant of planning permission. Unless the quarry entered mainstream planning control in this way, the conditions envisaged that quarrying would cease at a particular point in time. The applicants alleged that this went beyond the scope of section 261(6) as it did not relate to a condition *on the operation* of the quarry. O’Neill J rejected this argument holding that the power in section 261(6) included a power to impose conditions such as these. The same range of planning conditions that were open to a planning authority in a planning application under section 24 was open to a planning authority under section 261. The mere fact that an operator might have to make an application for planning permission in circumstances in which it would not previously have had to do so did not affect the legality of the conditions.

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<sup>19</sup> [2009] IEHC 426.



The owner of a quarry that commenced operation post-1964, which was unequivocally subject to the requirement to obtain planning permission but had not done so, was under an obligation to register her quarry under section 261. However, the planning authority did not have any power to impose conditions on such a quarry under section 261(6), or indeed to require it to submit a planning application pursuant to section 261(7).<sup>20</sup> The powers in section 261(6) to impose conditions are limited to quarries which commenced operations prior to 1 October 1964 and to quarries which received planning permission. Galligan has observed that this posed difficulties for planning authorities:

Due to the sheer volumes of quarries being registered at the same time, many planning authorities would have found it practically impossible to ascertain in each case whether the quarries had previously been abandoned or had intensified to such an extent beyond the level of use on October 1, 1964 that they had become unauthorised. Instead of initiating enforcement proceedings, it can be surmised that in many cases planning authorities simply decided to impose conditions on the operation of such quarries.<sup>21</sup>

However, this observation is based on an incorrect assumption that conditions could not be imposed on unauthorised quarries. A quarry “which commenced operation before 1 October 1964” (the phrase in section 261(6)) is not necessarily lawful. If it exceeded the scope of what was reasonably anticipated on 1 October 1964 or materially intensified its use, then it is unlawful. As a quarry that commenced prior to 1 October 1964, it could be the subject of conditions under section 261 while as a quarry that had undergone unauthorised development since 1964, it could be the subject of enforcement action, subject to time limits. Accordingly, enforcement proceedings might be open even though conditions could be imposed under section 261(6).<sup>22</sup> In some cases, quarry operators have subsequently argued that the imposition of conditions was premised on an assumption that the quarry was not unauthorised and therefore amounted to an implicit determination that the quarry was lawful, a

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<sup>20</sup> In some cases, planning authorities have subjected such quarries to the provisions of sections 261(6) or (7). The quarry operators subsequently argued that this amounted to an implicit determination that the quarry was not unauthorised, a determination that could not (by reason of section 50 of the Act) be challenged in subsequent proceedings before a planning authority, an Bord Pleanála or the courts. This argument has been rejected in a number of cases. See, for instance, *Pierson v Keegan Quarries Ltd* [2009] IEHC 550 and *Frank Harrington Ltd v An Bord Pleanála* 23 November 2010 (HC).

<sup>21</sup> Eamon Galligan, “The Impact of Section 261 Registration on Existing Use Rights of Pre-1964 Quarries” (2008) 15 *IPELJ* 18, at XX.

<sup>22</sup> On the other hand, a quarry that had been abandoned could not properly be said to have commenced operation prior to 1 October 1964. In that situation, there is a dichotomy between the availability of enforcement proceedings and the power to impose conditions.



determination that could not (by reason of section 50 of the Act) be challenged in subsequent proceedings before a planning authority, an Bord Pleanála or the courts. This argument has been rejected in a number of cases.<sup>23</sup>

If the intention of the legislator was to exclude unlawful quarries from the scope of section 261 - leaving them open to normal enforcement proceedings - then it appears that the legislator did not understand the potential difference between a quarry that commenced operation prior to 1 October 1964 and a quarry that is lawful. As is apparent from *John A Wood Ltd* a quarry that commenced pre-1964 is not necessarily lawful. Only that portion of the quarry that consists of development carried out in completion of works reasonably anticipated in 1964 is lawful. Those parts of the quarry that consist of development carried out beyond that scope are unlawful. Several developments may occur within one quarry over its lifetime, some of which might have commenced prior to 1 October 1964, others of which might not. The mistake was to use the phrase “a quarry that commenced operation prior to 1 October 1964” where the intention was to capture “a development that commenced prior to 1 October 1964”. As will be seen below, the same mistake - if that is what it is - has been repeated in the Planning and Development (Amendment) Act 2010.

Section 261 of the 2000 Act thus aimed to provide further regulation of quarries that might not adequately be regulated. However, it was framed in a way that both reflected a confused understanding of the basic legal concepts and that has produced further confusion in practice. Although it succeeded in a certain extent in improving environmental controls, it has added yet further complexity to the scheme of regulation under the Acts.

## II.F Retention Permission and the EIA Directive

In Case C-215/06 *Commission v Ireland*, the European Court of Justice held that the facility under section 32(1)(b) of the 2000 Act to apply for retention permission of unauthorised development was in breach of the requirement under the EIA Directive for competent authorities to conduct an EIA in respect of certain types of projects prior to granting development consent. The Court reasoned as follows:

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<sup>23</sup> See, for instance, *Pierson v Keegan Quarries Ltd* [2009] IEHC 550 and *Frank Harrington Ltd v An Bord Pleanála* 23 November 2010 (HC).





57 While Community law cannot preclude the applicable national rules from allowing, in certain cases, the regularization of operations or measures which are unlawful in the light of Community law, such a possibility should be subject to the conditions that it does not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception.

58 A system of regularization, such as that in force in Ireland, may have the effect of encouraging developers to forgo ascertaining whether intended projects satisfy the criteria of Article 2(1) of Directive 85/337 as amended, and consequently, not to undertake the action required for identification of the effects of those projects on the environment and for their prior assessment. The first recital of the preamble to Directive 85/337 however states that it is necessary for the competent authority to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes, the objective being to prevent the creation of pollution or nuisances at source rather than subsequently trying to counteract their effects.  
...

61 It follows from the foregoing that, by giving to retention permission, which can be issued even where no exceptional circumstances are proved, the same effects as those attached to a planning permission preceding the carrying out of works and development, when, pursuant to Articles 2(1) and 4(1) and (2) of Directive 85/337 as amended, projects for which an environmental impact assessment is required must be identified and then - before the grant of development consent and, therefore, necessarily before they are carried out - must be subject to an application for development consent and to such an assessment, Ireland has failed to comply with the requirements of that directive.

As is apparent from the analysis of the Irish case law above, there can be considerable confusion over whether quarries must apply for planning permission. This depends on contestable inferences from facts relating to what was reasonably anticipated on 1 October 1964, whether there was an intention to abandon the development, and whether there has been a material change of use by intensification of use. In those circumstances, the facility to



apply for retention permission was an important fall-back position for quarry operators should they find that the planning authority (or ultimately the courts) took a different view as to whether the development was lawful. Unlawful development could be remedied by an application for retention permission and the development could then continue much as before. It seems likely that some quarry operators, at least, took advantage of this legislative regime to undertake quarrying operations of dubious legality and later apply for retention permission if necessary. At a stroke, the judgment of the ECJ in Case C-215/06 removed this facility. Although the ECJ noted the possibility of exceptional circumstances in some cases, the effect of its judgment was to render the retention permission provisions of the Act inapplicable. The Planning and Development (Amendment) Act 2010 (considered below) which seeks to address this lacuna by providing a more nuanced scheme of retention permission were EIA is at issue. However, these provisions of the Act have not yet been commenced and the lacuna remains. Pending commencement of the Act, applications for retention permission in respect of EIA development can no longer be considered. Unlawful development remains unlawful.

## II.G Exempted Development

Section 4 of the 2000 Act specifies a number of categories of development that are exempt from the obligation to obtain planning permission and also allows the Minister for the Environment to prescribe further classes of exempted development. Section 4(1)(h) of the Act provides that planning permission is not required for the following type of development:

works for the maintenance, improvement or other alteration of a structure which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

This provision was the subject of judicial consideration in *Michael Cronin (Readymix) Ltd v An Bord Pleanála*.<sup>24</sup> On a section 5 reference from Kerry County Council, the Board was asked to determine whether the extension of a yard for concrete block-making within a quarry was exempted development. The Board determined that it was not, reasoning that works by way of extension did not fall within section 4(1)(h). Ryan J held that this approach was incorrect

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<sup>24</sup> [2009] IEHC 553.



in law. He reasoned that all works came within section 4(1)(h) provided that their purpose was maintenance, improvement or other alteration and provided that they would not materially affect the exterior of the structure in the proscribed manner. However, as most (if not all) works would necessarily be for the purpose of altering the structure concerned, the effect of Ryan J's judgment is to recognise a statutory exemption for all works that do not materially affect the external appearance of the structure. Although the case concerned the extension of a yard within a quarry, the interpretation of section 4(1)(h) adopted by the Court would appear to apply a quarry itself.<sup>25</sup> Accordingly, an extension of a quarry would be exempt from the obligation to obtain planning permission provided that it did not materially affect the external appearance of the quarry. Ryan J has certified the interpretation of section 4(1)(h) as a point of law of exceptional public importance for the determination of the Supreme Court. If the Supreme Court upholds the interpretation, it would mean that section 4(1)(h) provides an exemption from planning permission for the extension of all quarries (regardless of whether they commenced lawfully or unlawfully) that far exceeds the power to complete works that commenced prior to 1 October 1964, as interpreted in *Waterford County Council v John A Wood Ltd*.

## II.H Legislative Intervention: The Planning and Development (Amendment) Act 2010

The Planning and Development (Amendment) Act 2010 introduces a number of changes to bring Irish law into line with the judgment of the ECJ in Case C-215/06 *Commission v Ireland*. Section 23(c) of the 2010 Act amends section 34(12) of the 2000 Act, obliging planning authorities to refuse to consider applications for retention permission where the development would have required either an EIA, a determination as to whether an EIA was required, or an appropriate assessment pursuant to the Habitats Directive.<sup>26</sup>

Sections 47 and 48 of the 2010 Act amend sections 157 and 160 of the 2000 Act to provide that development consisting of the operation of a quarry or the extraction of peat carried out not more than seven years prior to the date on which the section comes into operation may

<sup>25</sup> Section 2 of the Act defines "structure" to include "excavation."

<sup>26</sup> Council Directive 92/43/EEC. Article 6(3) of this Directive requires an appropriate assessment of plans or projects likely to have a significant effect on certain nature conservation sites protected under the Directive. The Oireachtas clearly took the (correct) view that the rationale of the ECJ's judgment in Case C-215/06 applies in this context also. However, as Article 6(3) also requires a screening of projects to determine whether an appropriate assessment is necessary, it is unclear why this possibility was not covered by section 261A also.



be the subject of enforcement proceedings at any time. This appears intended to ensure that quarries that already have the benefit of the seven year immunity from enforcement do not lose that immunity. However, in respect of all other quarries, no time limit will apply to such enforcement. It is significant that the section recognises “operation of the quarry” as the development to which the time limit does not apply. This suggests, although it is not entirely clear, that time runs not from the commencement of the works but from any time at which the works occurred. This is different from the standard approach under sections 157 and 160 where, when the development has no planning permission, time runs from the commencement of the development. If this interpretation is correct, it rather reduces the value of the immunity apparently intended for quarries operating seven years prior to the date on which the section came into operation. As such quarries could well be in operation less than seven years before the section comes into operation, even though they may have commenced operation decades ago, then they are liable to enforcement under the new sections even though they would have been immune from enforcement under the old sections.

Section 74 of the 2010 Act makes a number of amendments to the section 261 control system. These provide that it will be unauthorised development (a) to operate a quarry in breach of conditions imposed under section 261(6), (b) to continue to operate a quarry without applying for planning permission if required to do so under section 261(7), (c) to continue to operate a quarry if refused planning permission pursuant to a section 261(7) application, and (d) to operate a quarry in breach of conditions attached to a permission granted after a section 261(7) application. Oddly, section 74(e) deleted the definition of “quarry” from section 261(13). This appears to have been a mistake and will need to be rectified before the provisions of the Act relating to quarries can be commenced.

Section 75 of the 2010 Act introduces a new section 261A into the 2000 Act. Under this section, a planning authority must undertake a review of all quarries in its administrative area and decide in respect of each quarry whether an EIA, a determination as to whether an EIA was required, or an appropriate assessment pursuant to the Habitats Directive should have been undertaken but was not. There are procedures for public participation in respect of this decision. In respect of each quarry, section 261A(2) requires the planning authority to decide (a) whether development was carried out after 1 February 1990 which would have required (but did not have) an EIA or a determination as to whether an EIA was required and (b) whether development was carried out after 26 February 1997 which would have required (but





did not have) an appropriate assessment under the Habitats Directive.<sup>27</sup> In respect of all such quarries, the planning authority must then decide into which of two categories the development falls. Quarries that commenced prior to 1 October 1964 or that received planning permission *and* that complied with the registration requirements under section 261 are permitted to apply to An Bord Pleanála for substitute consent.<sup>28</sup> Conversely planning authorities must issue an enforcement notice under section 154 requiring the cessation of any quarry that commenced operation on or after 1 October 1964 or that did not comply with the registration requirements under section 261 of the 2000 Act.<sup>29</sup> This appears intended to capture a distinction between lawful and unlawful quarries. Of course, as noted above, it follows from *Waterford County Council v John A Wood Ltd* that a quarry that commenced operation before 1 October 1964 may be unauthorised if it has gone beyond what was reasonably anticipated on that date. It is also possible that a quarry commenced before 1 October 1964 may have unlawfully intensified its use without seeking planning permission. Why these classes of unlawful operators should gain the benefit of an automatic right to seek substituted consent while other unlawful operators are condemned to an enforcement notice is unclear.

These provisions are both superseded by section 261A(5), which provides that where development took place after 3 July 2008 (the date of the ECJ decision), the quarry will be subject to an enforcement notice despite the fact that it commenced operation before 1 October 1964 or with the benefit of a planning permission. This ensures that the situation cannot arise in future where operators avoid the need for an EIA prior to the authorisation of the development. Any operator who commenced quarrying after the ECJ judgment will never be able to get a substitute consent. Section 261A(6) allows quarry operators and people who participated in the public consultation process to apply to An Bord Pleanála for a review of any of the planning authority's determinations about the nature, date or lawfulness of the development.

The substitute consent procedure is provided by Part XA of the 2000 Act, as inserted by section 57 of the 2000 Act.<sup>30</sup> An application for substitute consent must be accompanied by a remedial EIS and/or a remedial Natura 2000 impact statement, as appropriate. There is

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<sup>27</sup> These are the dates on which the EIA Directive and the Habitats Directive respectively were transposed into Irish law. It is arguable, however, that section 261A should have fixed on the date on which transposition should have occurred. In respect of each Directive, this was a few years before transposition actually occurred.

<sup>28</sup> Section 261A(3).

<sup>29</sup> Section 261A(4).



provision for public participation and the planning authority must provide a report on the development. Section 177J empowers the Board, when considering the application, to issue a draft direction to the applicant directing her to cease the operation of the quarry. The applicant has an entitlement to make submissions or observations, after which the Board may confirm, vary or withdraw the draft direction. Section 177K empowers the Board to grant substitute consent for the development, with or without conditions, or to refuse substitute consent. Section 177K does not set a test which must be met before substitute consent can be granted, but instead lists a number of matters to which the Board must have regard in deciding whether to grant substitute consent, principally the proper planning and sustainable development of the area and the significant effects on the environment or “European sites” that have occurred or that could occur as a result of the development having been carried out.<sup>31</sup> Unusually, section 177L grants the Board an enforcement function, allowing it to issue directions to cease activities or undertake remedial measures.

If a quarry is not directed to apply for substitute consent, but is instead the subject of an enforcement notice, the operator has three options. First, the quarry can cease operations permanently. Second, the quarry can comply with the enforcement notice and then apply for ordinary, prospective planning permission.<sup>32</sup> Third, the quarry can apply to the Board for leave to seek substitute consent. This is a standard procedure that developments (other than quarries) that should have undertaken EIA but did not must go through if they are to regularise their status. Under section 177D, the Board may grant leave for an application for substitute consent where there are exceptional circumstances. These turn largely on the *bona fides* of the Applicant, whether the development prejudiced the objectives of the EIA Directive or the Habitats Directive and whether regularisation of the development would now prejudice the objectives of the EIA Directive or the Habitats Directive.

The decision of the ECJ in Case C-215/06 raised a number of difficult issues. It cast a whole range of development into a state of illegality which could not, on the existing law, be remedied. The Court made some allowance for this problem, noting that Community law

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<sup>30</sup> For a comprehensive analysis of this procedure, see Niall Handy, “Substitute Consent: the New Form of Retention Permission for EIA Development” (2011) 18 *IPELJ* 15.

<sup>31</sup> European sites are defined by the Act to include all sites designated pursuant to the Habitats Directive and the Birds Directive. The failure of section 177K to preclude the Board from granting substitute consent where the proposed development would adversely affect the integrity of a European site is a failure to transpose properly the requirements of the Habitats Directive. The Board should read the requirements of Article 6(3) of the Directive into section 177K to ensure compliance with EU law.

<sup>32</sup> However, if the application site included the existing quarry this might be classified as, in substance, a retention permission that could not be considered.



could not preclude national law from allowing, in certain cases, the regularisation of operations or measures which were unlawful in the light of Community law. However, the Court emphasised that such a possibility should be subject to the conditions that it did not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception.<sup>33</sup> Section 261A and the connected substitute consent procedure in Part XA are an attempt on the part of Ireland to provide such an exceptional system. Nevertheless, there are several grounds for concern about whether this attempt has been successful.

First, it is unclear why quarries should be treated differently from all other classes of development. Certain classes of quarry are generically allowed to apply for substituted consent without showing exceptional circumstances. It is questionable whether this is consistent with the view of the ECJ that any regularisation process should remain an exception. Section 261A(5) does importantly ensure that this process cannot be used in the future. However, it is unclear why operators of unlawful quarries (whether by reason of intensification or expansion beyond what was reasonably anticipated in 1964) should be allowed to avail themselves automatically of substitute consent. It could be argued that unclear laws were the reason why some quarry operators found themselves in legal difficulties and that allowance should be made for this. However, to make a generic allowance for all quarry operators, in contradistinction to other developers, on this basis does not seem consistent with the tenor of the ECJ's judgment in Case C-215/06. Second, the way in which section 261A fixes on the dates on which the EIA Directive and Habitats Directive were transposed, rather than the dates by which they should have been transposed, raises further doubts about the compatibility of the section with EU law. Third, the fact that Part XA allows substituted consent to be granted for development that has adversely affected the integrity of European sites is also problematic. Under section 177K(2)(d), the Board, in deciding whether to grant a substitute consent, is required only to have regard to the significant effects on the environment, or on a European site, which have occurred or which are occurring or could reasonably be expected to occur because the development concerned was carried out. This cannot amount to adequate transposition of Article 6(3) of the Habitats Directive, which requires that an authorisation can only be granted where there would not be an adverse effect on the habitat site unless the specific exceptions in Article 6(4) apply.

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<sup>33</sup> Case C-215/05 *Commission v Ireland*, at [57].



Fourth, section 261A is exceptionally complicated.<sup>34</sup> It incorporates all of the concepts that have proved so problematic to date in the regulation of quarries: reasonable anticipation, abandonment, intensification. Section 261A introduces further complication by attributing a far greater significance to the commencement of a quarry prior to 1 October 1964 than was the case in the general regulation of development, albeit that this approach was also taken in section 261 of the 2000 Act. This appears to be based on the legislator mistakenly believing that a quarry that commenced operations prior to 1 October 1964 is necessarily lawful. As explained above, a quarry that commenced prior to 1 October 1964 may be lawful, but discrete acts of development within the quarry may not be lawful if they went beyond what was reasonably anticipated on 1 October 1964, or if there was abandonment, or if there was a material change of use by way of intensification. If the Act had instead focused on development that occurred after 1 October 1964, this would have aligned itself with the existing concepts of reasonable anticipation, abandonment and intensification. Its failure to do so is puzzling and again appears to reflect a misunderstanding on the part of the legislative drafters of the core legal concepts.

The complexity of the sections and the doubt over their compatibility with EU law combine to produce a situation where planning authorities and the Board will have to make hugely complicated factual assessments, by reference to legal concepts that are being used inconsistently, all the time knowing that the whole process may be found to be in breach of EU law. This will provide a field day for both planning consultants and lawyers. Whether it is in the legitimate interests of quarry operators or best serves the needs of environmental protection is to be seriously doubted.

### III. REASONS FOR THE DIFFICULTIES WITH REGULATING QUARRIES

Quarries have proven difficult to regulate for two reasons. First, the issue has been haunted by a constitutional concern over the legitimacy of restricting or abolishing existing use rights. Second, the concepts employed by the Planning Acts since 1963 have proven singularly inappropriate for encompassing the factual reality of quarrying. In this Part of the Article, I shall address each of these reasons. I shall argue that whatever constitutional concerns may have applied in 1963, it is permissible to restrict or abolish existing use rights and that the

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<sup>34</sup> Handy comments that the interoperability between section 261A and Part XA might be described as cumbersome. Handy, note Error: Reference source not found, at 25.





conceptual morass can only be avoided through a move to a new form of regulation. Although these two concerns are separate, the responses are interconnected. I argue in section IV that we should respond to the conceptual problems by introducing a new regime for the regulation of quarries. However, in practical terms, it seems most unlikely that the Oireachtas would enact such a new regime if compensation had to be provided to quarry operators for any deterioration in their position as a result of the change. If it is the case, therefore, that quarry operators have a constitutional right to be compensated for any limitation on a putative right to complete quarrying works reasonably anticipated on 1 October 1964, then the likelihood is that we all be forced to muddle on with the existing system of regulation. Both the constitutional concerns and conceptual problems must therefore be kept in mind at the same time.

### III.A Constitutional Concerns over the Abrogation of Existing Use Rights

The reason why section 24 of the Local Government (Planning and Development) Act 1963 did not require planning permission to be obtained for works commenced prior to 1 October 1964 was to ensure compliance with Articles 15.5, 40.3 and 43 of the Constitution. Article 15.5 provides that the Oireachtas shall not declare acts to be infringements of the law which were not so at date of their commission. Clearly this provision would not prohibit a law making it unlawful to complete works after the enactment of that law. The crucial question then is whether the fact that a person was exercising a right to quarry on lands prior to 1 October 1964 means that it would be *prima facie* unconstitutional to restrict that person's right to quarry nearly 50 years. There are three reasons to believe that this is not the case.

First, the establishment of what laws constitute a *prima facie* restriction on private property is fraught with uncertainty because our sense of what constitutes private property rights is in the first instance very much determined by laws. For instance, no-one maintains that private property rights entitle one to cause a nuisance to others. But why is the law on nuisance not considered to be a restriction on private property? Presumably because the laws relating to nuisance are so entrenched that they are seen as an aspect of what private property is rather than a restriction on an extant and broader notion of private property. In the almost 50 years since the first enactment of planning controls, it is arguable that the courts have moved from a position where they see planning controls as restricting private property rights to a position



where they see individual authorisations under the planning code as enhancing property rights. This shift can be seen most clearly by contrasting the judgment of Kenny J in *Central Dublin Development Association Ltd v Attorney General* and the judgment of the Supreme Court in *re Article 26 and Part V of the Planning and Development Bill 1999*. In *Central Dublin*, Kenny J upheld the constitutionality of the obligation to obtain planning permission in the following terms:

[Article 43.2.1°] does not require that the exercise of the rights of property must in all cases be regulated by the principles of social justice. It recognises that the exercise of these rights ought to be regulated by these principles and that the State *accordingly* may delimit (which I think means restrict) by law the exercise of the said rights with a view to reconciling it with the exigencies of the common good. If there is to be planning of development, someone must decide whether new or altered buildings are to be allowed in a specified place and whether land should be retained as an unbuilt space. The very nature of town and regional planning requires restriction in the sense that building in a particular area may not be appropriate or that the proposed buildings are not suitable or that buildings may not be used for some purposes. Town and Regional planning is an attempt to reconcile the exercise of property rights with the demands of the common good and Part IV defends and vindicates as far as is practicable the rights of the citizens and is not an unjust attack on their property rights.<sup>35</sup>

Kenny J conceived of the grant of planning permission as restricting, albeit legitimately, the right of a person to use her property as she saw fit. In contrast, in the *Planning and Development Bill case*, the Court focused on the benefits that accrue to property owners from the system of planning control:

Planning legislation of the nature now under consideration is of general application and has been a feature of our law ever since the enactment of the Town and Regional Planning Act, 1934, although it did not take its modern, comprehensive form until the enactment of the Act of 1963. Every person who acquires or inherits land takes it subject to any restrictions which the general law of planning imposes on the use of the property in the public interest. Inevitably, the fact that permission for a particular type of development may not be available for the land will, in certain circumstances,

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<sup>35</sup> (1975) 109 ILTR 69, at 90.



depreciate the value in the open market of that land. Conversely, where the person obtains a permission for a particular development the value of the land in the open market may be enhanced.<sup>36</sup>

It is possible to read this passage in a restrictive fashion as relating not to the restriction of property rights, *per se*, but rather to the calculation of compensation: compensation at less than market value is permissible where market value is itself the product of the planning code and the restrictions it places on others. Donal O'Donnell, writing before his appointment to the Supreme Court, has made this argument.<sup>37</sup> However, even this interpretation of the Court's position depends in some way on the normalisation of planning restrictions as part of what is constitutionally protected property as it takes the scheme of restrictions as reducing the extent of the property right which must be compensated. In effect, it is only the property right to use for agriculture that receives protection - there is taken to be an inbuilt restriction on the uses to which land can be put. O'Donnell himself detected a shift in the constitutional understanding based on the absence of any challenge to the virtual removal of the entitlement to compensation introduced by the Local Government (Planning and Development) (Amendment) Act 1990:

It is, perhaps, dangerous to read too much into the absence of any subsequent constitutional challenge, but one consideration may have been that it was increasingly difficult to argue that there was some inherent right protected by the Constitution to develop land and extract from it any particular value.<sup>38</sup>

If this is a correct understanding of the law, it follows that there is no right to complete all quarrying works that were reasonably anticipated on 1 October 1964.

Second, a number of cases specifically suggest that there is no constitutional right to continue using land for the same purpose. In *Hanrahan Farms Ltd v Environmental Protection Agency*, Smyth J rejected a challenge to the constitutionality of section 83 of the Environmental Protection Agency Act 1992.<sup>39</sup> Section 82 of that Act required a person to have a licence in order to operate a piggery; section 83 dealt with the basis for granting licences. The applicant had previously operated the piggery but was awarded a licence subject to a

<sup>36</sup> [2000] 2 IR 321, at 353.

<sup>37</sup> Donal O'Donnell, "Property Rights in the Irish Constitution" in Eoin Carolan and Oran Doyle eds, *The Irish Constitution: Governance and Values* (Round Hall, 2008) 412, at 425.

<sup>38</sup> *Ibid*, at 426.

<sup>39</sup> [2006] 1 ILRM 275.



condition that it reduce the number of stock in the piggery in order to control emissions from the piggery. Smyth J upheld the validity of the conditions and the constitutionality of the sections of the Act, on the basis that they were clearly justified by the exigencies of the common good and did not constitute a disproportionate restriction of the property rights of the applicants. Subsequently, in *M&F Quirke and Sons Ltd v An Bord Pleanála*, considering a challenge to conditions imposed by An Bord Pleanála on the operation of quarries under section 261(6) of the 2000 Act, O'Neill J offered the following analysis:

[T]he first two cases involve existing use rights predating the 1<sup>st</sup> October, 1964, and in the third case stemming from a planning permission granted in 1983. Inevitably, over the years, changes will have taken place in the lands quarried, in the surrounding area and in science and technology. Any argument to the effect that because a quarry was being operated in a certain way over forty years ago, that it should continue in the same manner must be untenable. For example, in the third set of proceedings several of the conditions imposed treat of matters that could not have been addressed in 1983 when planning permission was first granted for example, the fact that the nearby River Blackwater was designated as a special area of conservation in the 1990s. Over the years the area in which a quarry is located may change significantly, so that the effects of the quarrying operations on the surrounding area may be very different to the effects in 1964. Developments in environmental science may now make apparent environmental damage from quarrying which was not known in 1964. Apart from statutory provision, the law of nuisance has long recognised that activity carried out on land may be restrained where that activity causes deleterious effects to escape which cause damage to adjoining property. It could never be said that there was an unrestricted right to use property for any activity, including quarrying, regardless of the effects that activity had on the enjoyment of other persons of their lives, health and properties. Many activities are regulated and restricted in a variety of statutory codes in the interest of the common good. I see no difference in principle or in substance between these statutory regulatory regimes and the type of regulation provided for in s.261(6). In all cases the activity restricted by statute would have been unregulated or unrestricted before the enactment of that type of legislation.<sup>40</sup>

This would suggest that there are circumstances in which it may be permissible for legislation to abrogate existing use rights. However, it should be noted that O'Neill J considered that

<sup>40</sup> [2009] IEHC426, at [7.16].





were planning permission later to be refused for such a quarry and no compensation granted, that might raise a question as to whether a condition imposed pursuant to section 261(6) could bring about a cessation of quarrying. As O'Neill J was not required to decide that point, it remains open for argument in a later case. Nevertheless, *Hanrahan Farms* and (arguably) *M&F Quirke* are consistent with O'Donnell's sense that there may be no constitutional right to develop land and extract value from it.

Third, even if there is a constitutional right to complete quarrying works that were reasonably anticipated on 1 October 1964, which right led to the enactment of section 24(2) and informed its subsequent interpretation, it is questionable whether any quarries still in operation really are completing what was reasonably anticipated nearly 50 years ago. Could anyone in 1964 reasonably have anticipated the amount of quarrying necessary to support the construction industry between 1995 and 2007? Although it can be difficult to prove in particular enforcement proceedings that an extension of quarrying was not reasonably anticipated in 1964 (a difficulty that is increased by the absence of reliable witnesses), regard can surely be had to the common sense reality that little, if any, of current quarrying can reasonably have been anticipated 50 years ago.

For all of these reasons, it is probably constitutionally permissible to require planning permission for all future quarry operations and for there to be no entitlement to compensation where planning permission is refused. With more confidence, it is suggested that it is possible to enact legislation that alters the onus of proof and methods for calculation of compensation in a manner that reflects the unlikely and highly attenuated form of any property right to work out a pre-1964 quarry. Such an approach would leave open a possibility of compensation, thereby protecting the legislation against a constitutional challenge, while imposing an onus on the quarry operator to establish the pre-1964 use and that there was an actual loss of income, in accordance with the compensation principles laid down by the Supreme Court in *re Part V of the Planning and Development Bill 1999*. The acceptance of either of these constitutional positions is crucial to the feasibility of adopting an alternative approach to the regulation of quarries.

### III.B The Conceptual Morass



As noted at the outset, the Planning Acts regulate development and identify two types of development: the carrying out of works and material change of use. Each of these categories of acts refers most obviously to a relatively discrete action or set of actions. The paradigm of works is probably where one building (a house, say) is demolished and replaced with another building of the same type (thus, no change of use). This involves the carrying out of works, but there is a clear start-point and end-point to the works involved. The paradigm of material change of use is probably where one building (a house, say) is changed to another use (an office, say). Again, there is a discrete act of development: the material change of use but no works. The development is not the use but the material *change* from one use to another. A grant of planning permission does not, strictly speaking, authorise a use. What is authorised is the *change* from one use to another. Of course, the carrying out of works and a material change of use may often overlap.

Quarrying does not fall neatly into either of these categories. It is really an amalgam of works and use. It uses the land for ongoing works which, uniquely, have the effect of eating up the land on which the works take place, with the result that the zone of works is ever-increasing, whether downwards or outwards. It is the attempt to misplace quarries within the Acts' conceptual categories of works and material change of use that has produced anomalous results and rendered quarries subject to uncertain regulatory control. The first anomalous result is the most significant. The exclusion from the Acts' remit of works that commenced prior to 1 October 1964 makes perfect sense in respect of discrete works that have a completion date, but little sense in respect of potentially endless works that may never be completed.

This leads to the second anomalous result: the apparently material change in the use of the land from agricultural to quarrying cannot be recognised as such, because to do so might infringe on the right of quarry operators, under the Acts, to carry out their works to completion. Were it not for the statutory exception for works commenced prior to the appointed day, the courts could have taken the opposite approach and treated all acts of quarrying as a material change of use of the land. However, this is also a less than ideal fit for other reasons. It leaves open the question as to whether every shovelful materially changes the use of the land in the shovel (from land to raw material) or whether it is the surface expansion of the quarry that changes the use of the land (from agricultural to quarry). If one opts for the former characterisation, it would seem to follow that each shovelful constitutes an act of development that requires planning permission. If one opts for the latter



approach, it appears to follow that downward extraction (potentially the most environmentally damaging of all) does not constitute development at all. Above all, the material change of use concept fails to account for the way in which quarrying is an ongoing operation.

This conceptual morass is what led the Supreme Court in *Waterford County Council v John A Wood* to establish a test for the completion of works which focused so heavily on the objectively ascertained state of mind of the quarry operator in 1964. However, where the burden of proof is on the party seeking to establish that there has been unauthorised development and where there are fewer and fewer people with a clear recollection of quarrying activities in 1964, it has become very difficult to establish what was happening in 1964, let alone whether current works have exceeded what was reasonably anticipated in 1964. This all contributes to legal uncertainty on the core question of whether development is lawful or not. The judicially developed doctrines - abandonment of use and intensification of use - are both attempts to bring within the system of planning control activities that might fall outside it on account of the exception for works and uses ongoing on the appointed day. Although intended to improve environmental regulation, these doctrines turn on yet more contested factual questions (intention to abandon, materiality of intensification), thereby creating yet more layers of complexity and legal uncertainty. The judicial doctrines were grafted onto the legislation and now further legislation - section 261 of the 2000 Act and the many provisions introduced by the 2010 Act - have been grafted onto the judicial doctrines but in a way that does not fully understand those doctrines. This adds yet more dimensions of complexity, inconsistency and uncertainty.

In the past, this lack of legal certainty has been of most advantage to quarry operators and most detrimental to the interests of environmental protection. The sheer difficulty of establishing whether a quarry was lawful or not, combined with the facility to apply for retention permission, created incentives for quarry operators not to worry about the lawful status of their quarries. The judgment of the European Court of Justice in Case C-215/06 has reversed this calculus. Now quarry operators who may in good faith have misjudged the lawfulness of their quarrying operations find themselves shut out from applying for retention permission and subject, at best, to the new substitute consent procedure, which itself may transpire to be in breach of EU law.



The core suggestion of this Article is that a fresh start is required. The mess that is the regulation of quarries will not be solved for so long as the issues are framed in terms of the core categories of development under the Planning Acts: the carrying out of works and material change of use. It is the attempt to shoehorn quarries into those statutory concepts that is the root cause of the problem.

#### IV. PROPOSAL FOR REFORM

The failure of regulation in respect of quarries is attributable to two causes: a constitutional concern over existing use rights and the conceptual morass caused by shoehorning quarries into the categories of development regulated by the planning code. I have argued that the constitutional concern is, at best, attenuated and that the conceptual morass can only be avoided through a fresh start. Quarries should be regulated through a system of ongoing licensing under which all quarries require licences to continue to operate. Quarrying is an ongoing activity and is therefore better regulated in an ongoing way rather than through the normal system of planning control with its conceptual categories of discrete works and changes of use. This ongoing activity requires an ongoing relationship between the regulator and the quarry operator for as long as the quarrying continues. A licensing system would allow for the following features: automatic review of the activity at the expiry of the licence (a period of five years might be appropriate); ongoing supervision of the quarrying activity through powers of inspection; a power to review or modify licences where circumstances change (eg, the discovery of a new protected habitat). As quarrying is a matter of land use, albeit one with significant environmental concerns, it would be appropriate for planning authorities to have responsibility for licensing, with a right of appeal to An Bord Pleanála. Licences could take account of the intermittent nature of quarrying by requiring a simple notification to the planning authority when quarrying activity commences and ceases. *De minimis* criteria could be established to allow some minor quarrying activity to avoid the full rigours of the licensing regime. In this regard, a system of registration and certification similar to that which applies in respect of some waste facilities under the Waste Management (Facility Permit and Registration) Regulations 2007-2008 might be appropriate. In the case of large quarries, which might be subject to integrated pollution prevention and control licensing (IPPC) by the EPA, the IPPC licence should be sufficient to authorise all aspects of the quarry.





All quarries should become subject to this regime, irrespective of whether they might have been in operation prior to 1964 or have a planning permission. However, it would be appropriate to provide a lead-in time so that quarries with a planning permission could continue to operate without immediately seeking a licence. If the standard length of a licence is to be five years, it would be appropriate to allow existing permitted quarries to operate for a further five years on foot of their permission before requiring a licence. This would both avoid the administrative difficulties posed by a deluge of applications and allow quarry operators a legitimate opportunity to plan their business affairs.

For the reasons advanced above, I do not believe that there is a constitutionally protected right to continue to operate pre-1964 quarries. However, it might well be appropriate to take steps to insulate the new licensing regime from constitutional challenge insofar as is possible. This could best be achieved by introducing a residual compensation scheme. If a quarry operator who is refused a licence can demonstrate that the current quarry falls within what was reasonably anticipated on 1 October 1964, the quarry operator would be entitled to compensation. Crucially, this shifts the burden onto the quarry operator to establish the existing use rights. This approach is somewhat similar to that taken by section 48 of the Planning and Development (Strategic Infrastructure) Act 2006, which inserts a new Rule 17 into section 2 of the Acquisition of Land (Assessment of Compensation) Act 1919. Rule 17 provides that the value of any land lying more than 10m below the surface shall be taken to be nil unless it is shown to be of greater value by the claimant. This approach is fair, given the improbability that any such land would have an economic value. Similarly with quarries, placing the onus of proof on the operator would be warranted given the sheer improbability that any currently operating quarry fell within what was reasonably anticipated nearly 50 years ago.<sup>41</sup> To the extent that fading memories make it difficult to establish this one way or the other, this necessarily attenuates any property right involved: why should one have a property right to complete something that no-one can remember starting? It is therefore appropriate for quarry operators - rather than environmental protection - to suffer from the evidential difficulties.

The next question is the measure of the compensation. In this regard, a sophisticated approach to the assessment of market value should be taken, similar to the interpretation of

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<sup>41</sup> While such land might have value due to mineral rights or the use of voids for storing carbon, such value would not be reduced by reason of a prohibition on quarrying. In any event, it would remain open to the quarry operator in any particular case to establish that there was a reduction in value attributable to a prohibition on quarrying.



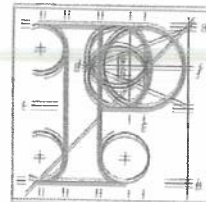
the *Planning and Development Bill* case offered by O'Donnell. A quarry owner should not be compensated by reference to the current market value of the quarry because that market value is hugely increased by reason of the fact that quarries generally require authorisation, thereby reducing the supply of quarry material. It would be fundamentally unjust for a quarry operator to receive compensation for a restriction that is artificially inflated on account of that very scheme of restrictions. As such, the quarry operator should only be compensated for the estimated value of the quarry material if there were a limitless supply of other quarries. As with Rule 17 for compensation of the acquisition of land, this should be taken to be nil unless the quarry operator can establish otherwise. Although there is something unappealing about allowing a theoretical right to compensation while subjecting it to so many restrictions, this may be the necessary price to pay to secure the introduction of a new, more appropriate scheme of quarry regulation.

This new approach to the regulation of quarries has three signal advantages over the current legislative mess. First, by avoiding the conceptual morass of the existing legislation, it would greatly increase legal certainty. This would benefit quarry operators by reducing the transaction costs of seeking to operate quarries. Second, the new scheme would lead to coherence of environmental protection and fairness in the market by ensuring that all quarries are regulated. Third, the new scheme would automatically ensure compliance with the judgment of the ECJ in Case C-115/06 insofar as it relates to quarries. Unlike section 261A, however, the new scheme would ensure compliance in a way that would allow most quarry operators to continue to operate, provided that all concerns over environmental impacts can be addressed. As such, it provides a far preferable way of resolving the competing interests of the economic necessity of quarries and the environmental necessity of proper regulation.









Bernadette & Eugene O'Neill  
Meenaleck  
Crolly  
Co. Donegal

Date: 12 November 2021

Re: 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.  
Arduns, Gweedore, Co. Donegal.

Dear Sir / Madam,

Enclosed is a copy of a referral under the Planning and Development Act, 2000, (as amended).

In accordance with section 129 of the Planning and Development Act, 2000, (as amended), you may make submissions or observations in writing to the Board in relation to the referral within a period of 4 weeks beginning on the date of this letter.

Any submissions or observations received by the Board outside of that period shall not be considered and where none have been validly received, the Board may determine the referral without further notice to you.

Please quote the above referral number in any further correspondence.

Yours faithfully,

Mark Lawlor  
Administrative Assistant  
Direct Line: 01-8737155

BPRL05

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05<sup>th</sup> November 2021

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

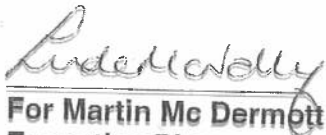
<b>AN BORD PLEANÁLA</b>	
LDG- <u>045765-21</u>	
ABP- _____	
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Fee: € <u>110</u>	Type: <u>Cherá</u>
Time: _____	By: <u>Reg Post</u>

**Re: Section 5 Referral to An Bord Pleanála 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**





Comhairle Chontae Dhún na nGall  
Donegal County Council

County Hous  
Lifford  
Co. Donega  
Enquiries 074 9172315/6/

REMITTANCE ADVICE / FAISNÉIS ÍOCAÍOCHTA

AN BORD PLEANALA  
64 MALBOROUGH STREET  
DUBLIN 1  
Ireland

Cheque No.	213489
Supp ID / Uimh. Aitheantais	393548
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Your Ref/ Bhur dTagairt	Inv Date/ Dáta Sonraise	Our Ref/ Ár dTagairt	AMOUNT/ SUIM EUR	Payable Iníoctha EUR
Section 5 Fee	29/10/2021	30928371	110.00	110.00
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<b>GRAND TOTAL / MÓRIOMLÁN</b>			<b>EUR</b>	
			110.00	110.00
			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:**

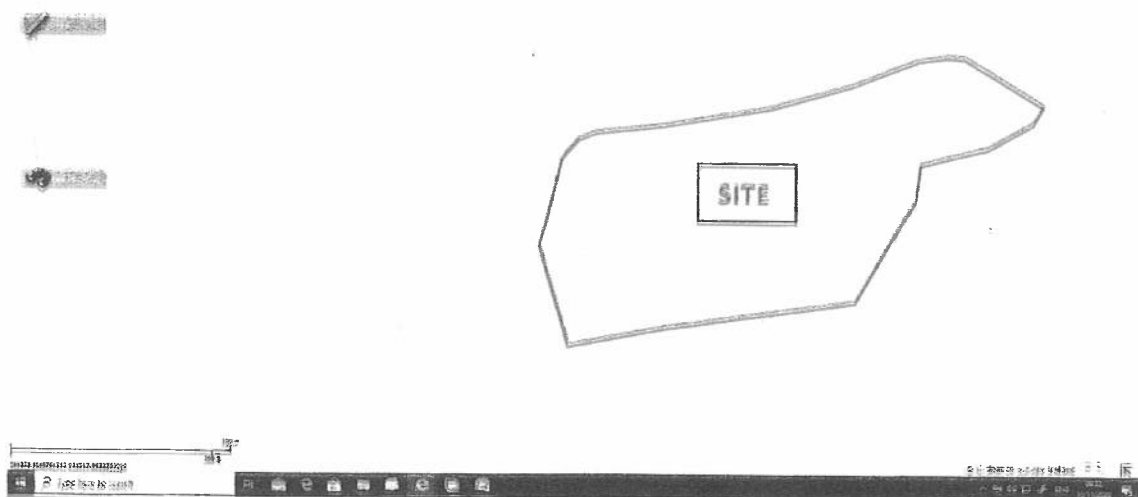
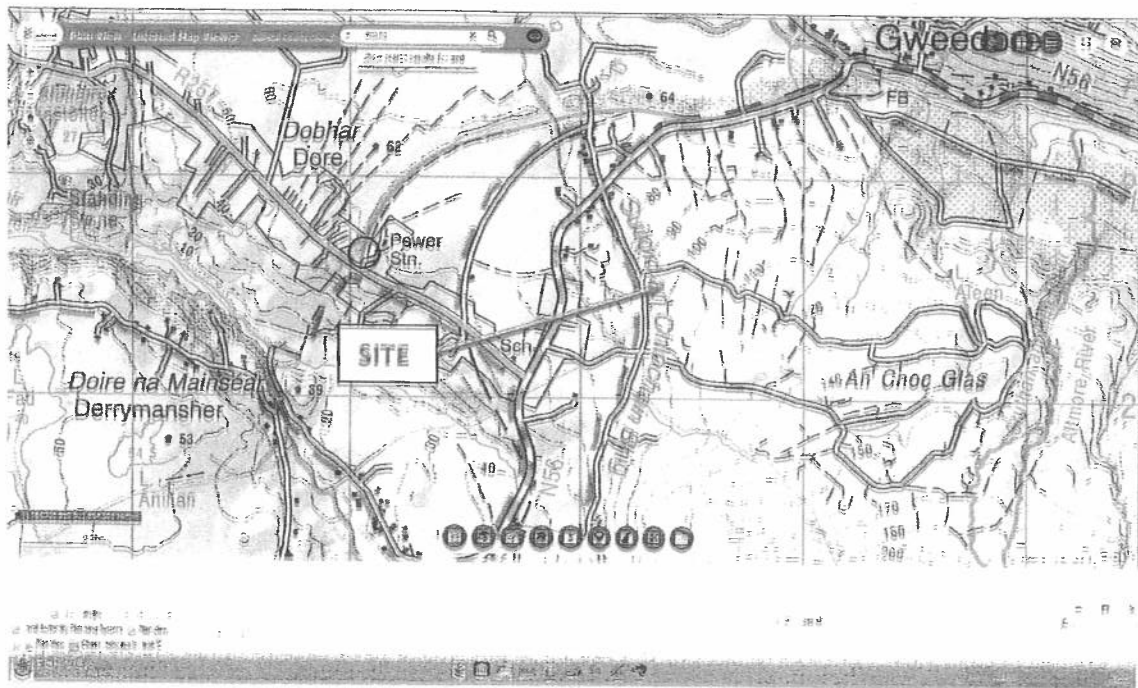
Donegal County Council, County House, Lifford, Co. Donegal

**Developers / landowners:**

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

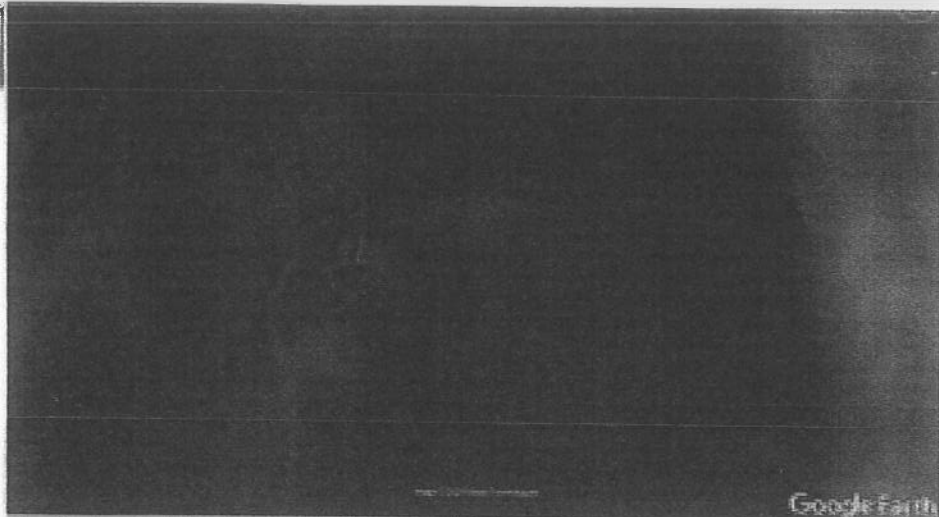
**Location of Proposed:**

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

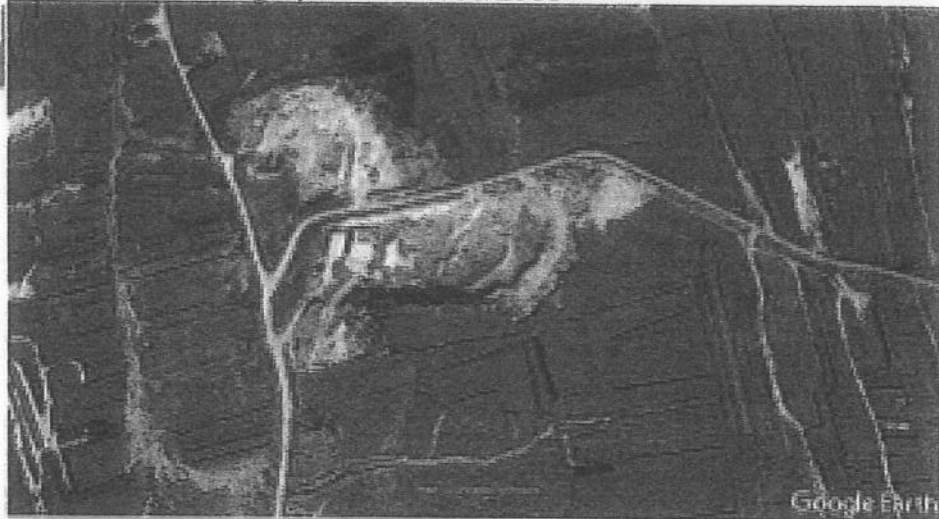
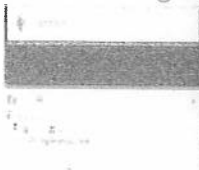


Section 5 Referral regarding pre-64 authorisation to quarry lands at Arduns, Gweedore, Co. Donegal.

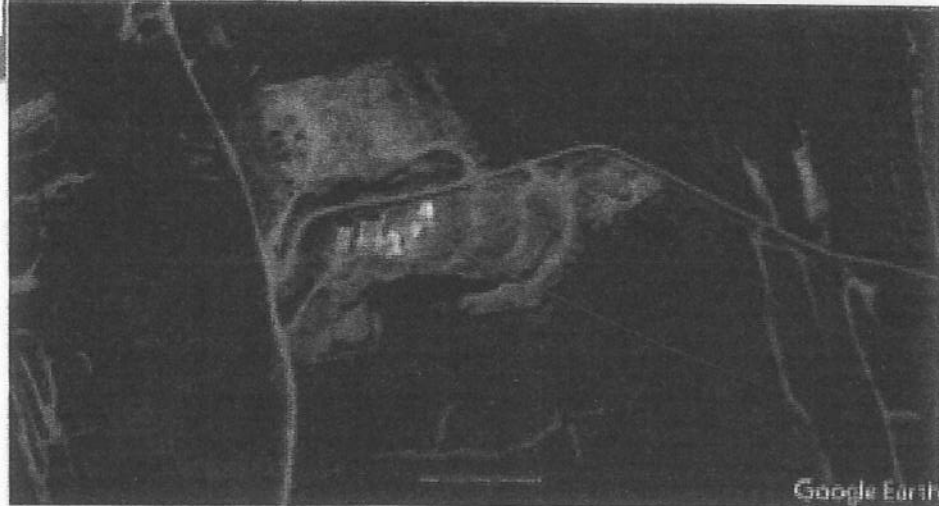
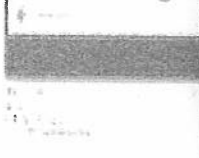




Above: Google Earth Aerial Photograph from 21/03/2009



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



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

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







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

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



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



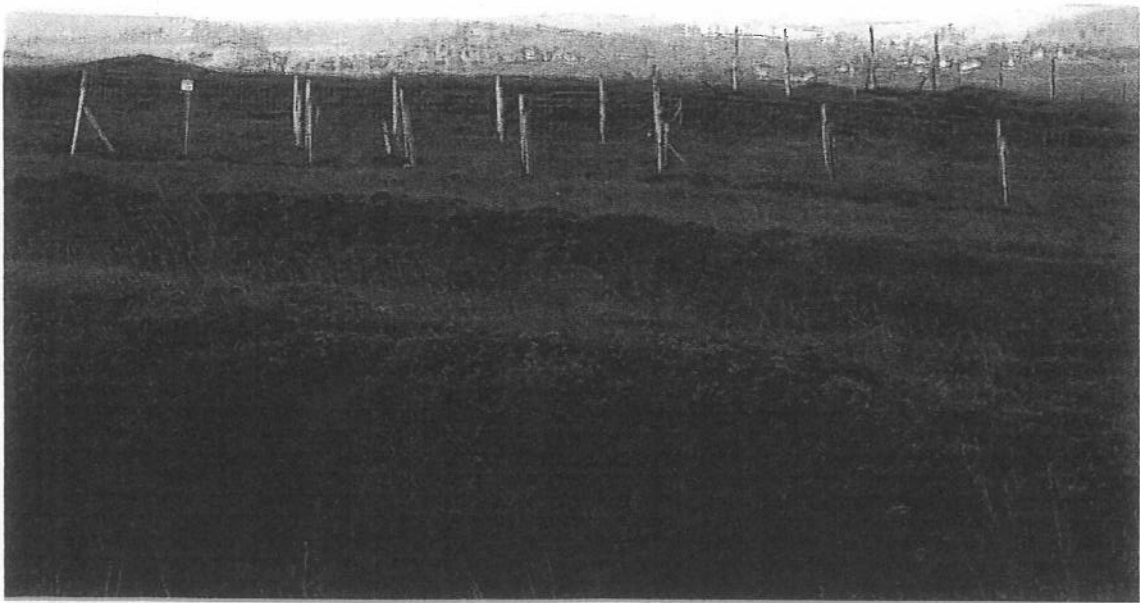
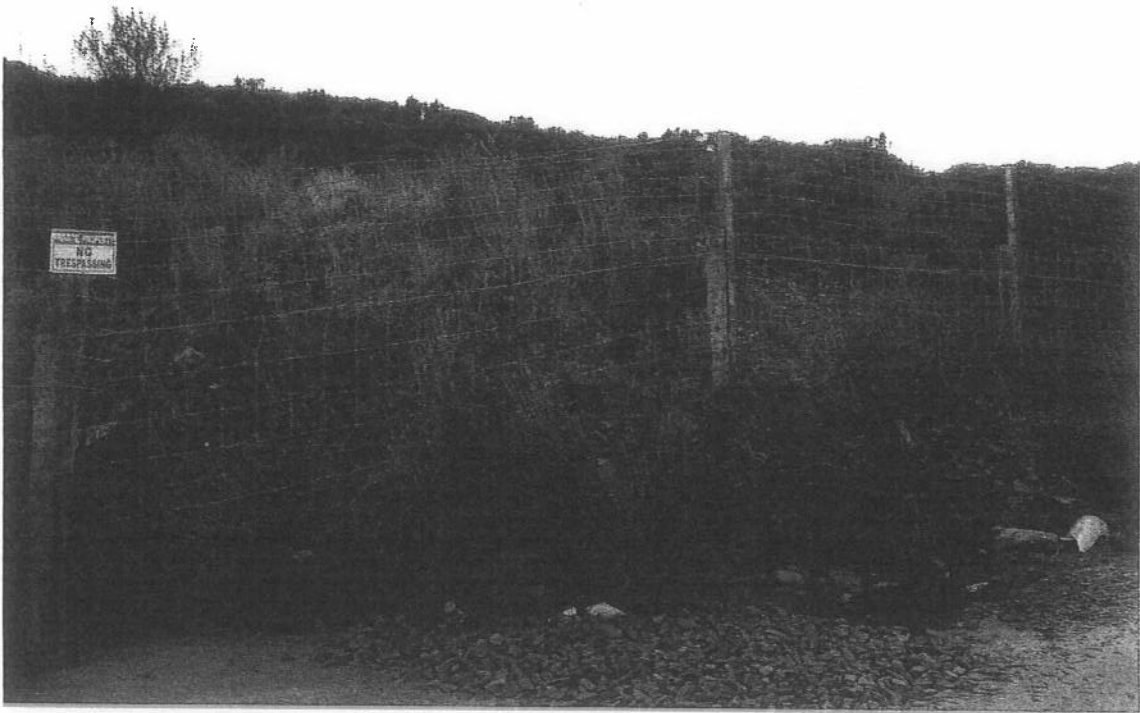
Section 5 Referral regarding pre-64 authorisation to quarry lands at Arduns, Gweedore, Co. Donegal.





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





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







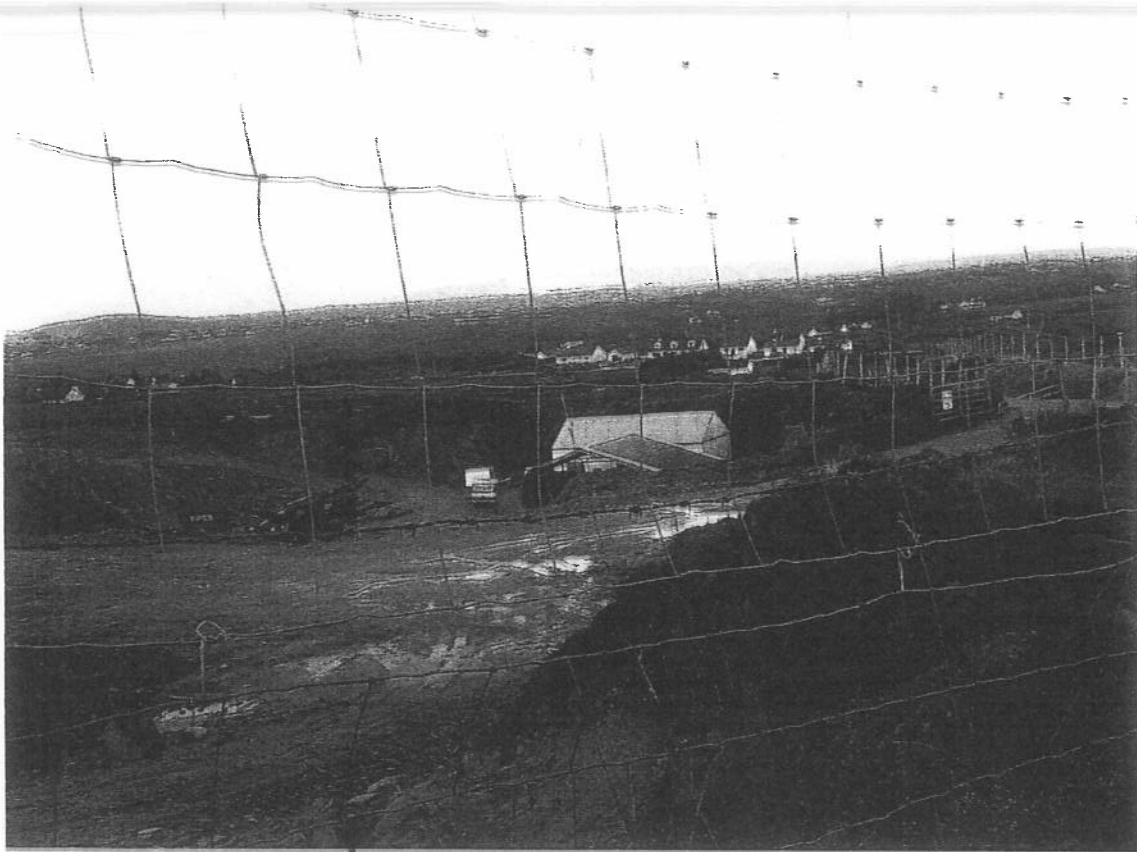
Section 5 Referral regarding pre-64 authorisation to quarry lands at Arduns, Gweedore, Co. Donegal.





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





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







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







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 1<sup>st</sup> Feb 1990 and Habitats Directive 26<sup>th</sup> Feb 1997.

The Planning Authority issued a 4(a) Notice of determination dated 22<sup>nd</sup> 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 Pleanála that this quarry was a pre-1964 quarry development.

**Other matters:**

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



amended) 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 1<sup>st</sup> 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 7<sup>th</sup> 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 26<sup>th</sup> 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.

*LOTT 29/10/21*  
*Ex. Pl.*









# Planning and Development Act, 2000

Warning **152.**—(1) Where—  
letter,

(a) a representation in writing is made to a planning authority by any person that unauthorised development may have been, is being or may be carried out, and it appears to the planning authority that the representation is not vexatious, frivolous or without substance or foundation, or

(b) it otherwise appears to the authority that unauthorised development may have been, is being or may be carried out,

the authority shall issue a warning letter to the owner, the occupier or any other person carrying out the development and may give a copy, at that time or thereafter, to any other person who in its opinion may be concerned with the matters to which the letter relates.

(2) Notwithstanding *subsection (1)*, where the development in question is of a trivial or minor nature the planning authority may decide not to issue a warning letter.

(3) A planning authority shall issue the warning letter under *subsection (1)* as soon as may be but not later than 6 weeks after receipt of the representation under *subsection (1)*.

(4) A warning letter shall refer to the land concerned and shall—

(a) state that it has come to the attention of the authority that unauthorised development may have been, is being or may be carried out,

(b) state that any person served with the letter may make submissions or observations in writing to the planning authority regarding the purported offence not later than four weeks from the date of the service of the warning letter,

(c) state that when a planning authority considers that unauthorised development has been, is being or may be carried out, an enforcement notice may be issued,

(d) state that officials of the planning authority may at all reasonable times enter on the land for the purposes of inspection,

(e) explain the possible penalties involved where there is an offence, and

(f) explain that any costs reasonably incurred by the planning authority in relation to enforcement proceedings may be recovered from a person on whom an enforcement notice is served or where court action is taken.







## Planning and Development Act, 2000

Enforcement notice. **154.**—(1) (a) Where a decision to enforce is made under [section 153](#) or where urgent action is required under [section 155](#), the planning authority shall, as soon as may be, serve an enforcement notice under this section.

(b) Where an enforcement notice is served under this section, the planning authority shall notify any person who made representations under [section 152 \(1\)\(a\)](#) and any other person, who in the opinion of the planning authority may be concerned with the matter to which the notice concerned relates, not being a person on whom the enforcement notice was served, of the service of the enforcement notice.

(2) Where the planning authority decides not to issue an enforcement notice, it shall notify any person to whom the warning letter was copied under [section 152](#) and any other person who made a representation under that section of the decision in writing within 2 weeks of the making of that decision.

(3) (a) An enforcement notice under [subsection \(1\)](#) shall be served on the person carrying out the development and, where the planning authority considers it necessary, the owner or the occupier of the land or any other person who, in the opinion of the planning authority, may be concerned with the matters to which the notice relates.

(b) If, subsequent to the service of the enforcement notice, the planning authority becomes aware that any other person may be carrying out development or is an owner or occupier of the land or may be affected by the notice, the notice may be served on that person and the period specified for compliance with the notice shall be extended as necessary to a maximum of 6 months, and the other person or persons on whom the notice had previously been served under [paragraph \(a\)](#) shall be informed in writing.

(4) An enforcement notice shall take effect on the date of the service thereof.

(5) An enforcement notice shall refer to the land concerned and shall—

- (a) (i) in respect of a development where no permission has been granted, require that development to cease or not to commence, as appropriate, or
- (ii) in respect of a development for which permission has been granted under [Part III](#), require that the development will proceed in conformity with the permission, or with any condition to which the permission is subject,



- (b) require such steps as may be specified in the notice to be taken within a specified period, including, where appropriate, the removal, demolition or alteration of any structure and the discontinuance of any use and, in so far as is practicable, the restoration of the land to its condition prior to the commencement of the development,
- (c) warn the person or persons served with the enforcement notice that, if within the period specified under *paragraph (b)* or within such extended period (not being more than 6 months) as the planning authority may allow, the steps specified in the notice to be taken are not taken, the planning authority may enter on the land and take such steps, including the removal, demolition or alteration of any structure, and may recover any expenses reasonably incurred by them in that behalf,
- (d) require the person or persons served with the notice to refund to the planning authority the costs and expenses reasonably incurred by the authority in relation to the investigation, detection and issue of the enforcement notice concerned and any warning letter under *section 152*, including costs incurred in respect of the remuneration and other expenses of employees, consultants and advisers, and the planning authority may recover these costs and expenses incurred by it in that behalf, and
- (e) warn the person or persons served with the enforcement notice that if within the period specified by the notice or such extended period, not being more than 6 months, as the planning authority may allow, the steps specified in the notice to be taken are not taken, the person or persons may be guilty of an offence.
- (6) If, within the period specified under *subsection (5)(b)* or within such extended period, not being more than 6 months, as the planning authority may allow, the steps specified in the notice to be taken are not taken, the planning authority may enter on the land and take such steps, including the demolition of any structure and the restoration of land, and may recover any expenses reasonably incurred by it in that behalf.
- (7) Any expenses reasonably incurred by a planning authority under *paragraphs (c) and (d)* of *subsection (5)* and *subsection (6)* may be recovered—
- (a) as a simple contract debt in any court of competent jurisdiction from the person or persons on whom the notice was served, or
- (b) secured by—
- (i) charging the land under the Registration of Title Act, 1964, or
- (ii) where the person on whom the enforcement notice was served is the owner of the land, an instrument vesting the ownership of the land in the authority subject to a right of redemption by the owner within five years.





(8) Any person on whom an enforcement notice is served under *subsection (1)* who fails to comply with the requirements of the notice (other than a notice which has been withdrawn under *subsection (11)(a)* or which has ceased to have effect) within the specified period or within such extended period as the planning authority may allow, not exceeding 6 months, shall be guilty of an offence.

(9) Any person who knowingly assists or permits the failure by another to comply with an enforcement notice shall be guilty of an offence.

(10) Particulars of an enforcement notice shall be entered in the register.

(11) (a) A planning authority may for stated reasons by notice in writing to any person served with the notice, and, where appropriate, any person who made a representation under *section 152 (1)(a)*, withdraw an enforcement notice served under this section.

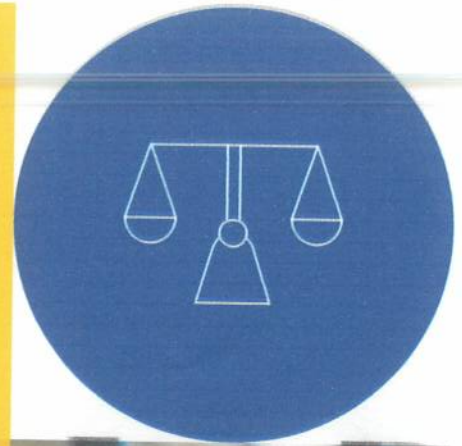
(b) Where an enforcement notice is withdrawn pursuant to this subsection by a planning authority or where a planning authority finds that an enforcement notice has been complied with, the fact that the enforcement notice was withdrawn and the reason for the withdrawal or that it was complied with, as appropriate, shall be recorded by the authority in the register.

(12) An enforcement notice shall cease to have effect 10 years from the date of service of the notice under *subsection (1)* or, if a notice is served under *subsection (3)(b)*, 10 years from the date of service of the notice under that subsection.

(13) A person shall not question the validity of an enforcement notice by reason only that the person or any other person, not being the person on whom the enforcement notice was served, was not notified of the service of the enforcement notice.

(14) A report of a local authority under *section 50* of the *Local Government Act, 1991*, shall contain details of the number of enforcement notices issued under this section, warning notices issued under *section 153*, prosecutions brought under *section 157* and injunctions sought under *section 160* by that authority.





# A Guide to Planning Enforcement in Ireland



Planning  
Leaflet **6**









# A Guide to Planning Enforcement in Ireland

This leaflet is a practical guide to understanding how planning law is enforced. It provides information and guidance for those undertaking development, or those who may be concerned that breaches of planning requirements have occurred. This leaflet is not intended as an interpretation of planning law, for further advice you are advised to contact your local planning authority (city or county council).



## 1. What is planning?

Planning plays an important role in society. It enables us to make the best use of our resources and allows necessary and worthwhile development to go ahead. It also ensures that the environment and heritage of our towns, cities and countryside is protected. Planning authorities control the location, amount and type of development through their decisions on planning applications. Everyone has a right to comment on planning matters, shaping the planning and development of their area.

## 2. What is planning enforcement?

Good planning decisions are key to our quality of life. Planning enforcement ensures that good decisions, taken at the planning application stage, are carried out in the finished building or development. It deals with those who flout the law by ignoring, or not complying with, the planning process.

## 3. Who is responsible for planning and planning enforcement?

Local authorities (city or county councils) are responsible for the planning system. Their role includes enforcement relating to breaches of planning legislation and taking action on unauthorised development. Local authorities may apply to the courts to obtain legal orders to stop unauthorised development.

## 4. What is unauthorised development?

Any development that requires planning permission or a development which is in breach of the conditions of its planning permission is classed as 'unauthorised development'.

The term 'development' covers a wide range of activities including carrying out any works (i.e. building, demolition, alteration) on, in, over or under any land or buildings and making a material (i.e. significant) change of use of structures or land.

Carrying out unauthorised development is an offence and anyone who has undertaken unauthorised development may be subject to enforcement proceedings. Enforcement is the means by which the planning authority ensures that unauthorised development becomes compliant with planning law.

Enforcement action can only be taken when development has been undertaken without the appropriate planning permission. It is important to note that planning enforcement action cannot be taken if the work carried out does not require planning permission such as:

- a change of use of a structure which is not material; *or*







- development of a minor nature, such as a small extension to a house or installing solar panels on the roof. There are certain thresholds for minor works set out in planning law. Where these thresholds are exceeded, the exemptions no longer apply.

### **5. I believe unauthorised development has taken place, so how do I make a complaint?**

If you think someone is developing or using land without, or contrary to planning permission, the first step is to contact the planning authority. When doing this you need to set out in writing why you believe this is the case. When reporting a suspected breach of planning control, it is helpful if you provide as much information as possible including:

- the exact address,
- dates and/or times when activities started,
- the nature of the building works or use, *and*

- the names, addresses and contact details of the known owners or other persons responsible.

It is recommended that when you write to the planning authority, you state that you are making a written representation under Section 152 of the Planning and Development Act 2000, as amended. Members of the public and organisations such as residents' groups may have helpful information and knowledge. Any information you provide will be added to the planning authority's existing records. Such representations are generally treated by local authorities as confidential.

### **6. What will the planning authority do when it receives my complaint?**

When a planning authority receives a complaint, it will generally investigate the



matter. This investigation may include site inspection/s and follow-up enquiries. Where a complaint is found to be valid, the planning authority may issue a warning letter. The planning authority may also decide that the complaint is frivolous or without substance. The planning authority alone has the discretion to decide this.

A warning letter informs the person concerned that the planning authority is aware that they may be carrying out unauthorised development. The person concerned is given a four-week period to reply to the warning letter.

Where a warning letter has been issued, the planning authority must carry out an investigation into the alleged unauthorised development. If the planning authority determines that unauthorised development has taken place, it must also determine whether the requirements of the warning letter have been met before taking further action.

Where the planning authority establishes, following an investigation, that unauthorised development which is not trivial or minor is being carried out, and that the person carrying out the development has not remedied the situation (e.g. by removing the offending development or by securing planning permission) the planning authority must take further action. According to planning law, the planning authority needs a compelling reason for taking no further action in such a case.

Further action will normally take the form of an enforcement notice requiring the person concerned to rectify the situation. The planning authority should, where possible, make its decision on further action within 12 weeks of sending the warning letter. The planning authority should also inform the person who made the complaint of the action being taken. A summary of the process is set out in the table below:

### Timescale for Warning Letter Process

Action	Timescale
Written complaint received by planning authority	Start
Warning letter issues	Within six weeks
Response from alleged unauthorised developer	Within a further four weeks
Reply issued to complainant by planning authority	Within a further two weeks
Planning authority decides whether further action is required	Within 12 weeks if possible

In circumstances where the planning authority believes urgent action is required, it may issue an enforcement notice without issuing a warning letter. In these circumstances, the person who made the complaint will be informed within two weeks of the issue of the notice.





## 7. What is contained in an enforcement notice?

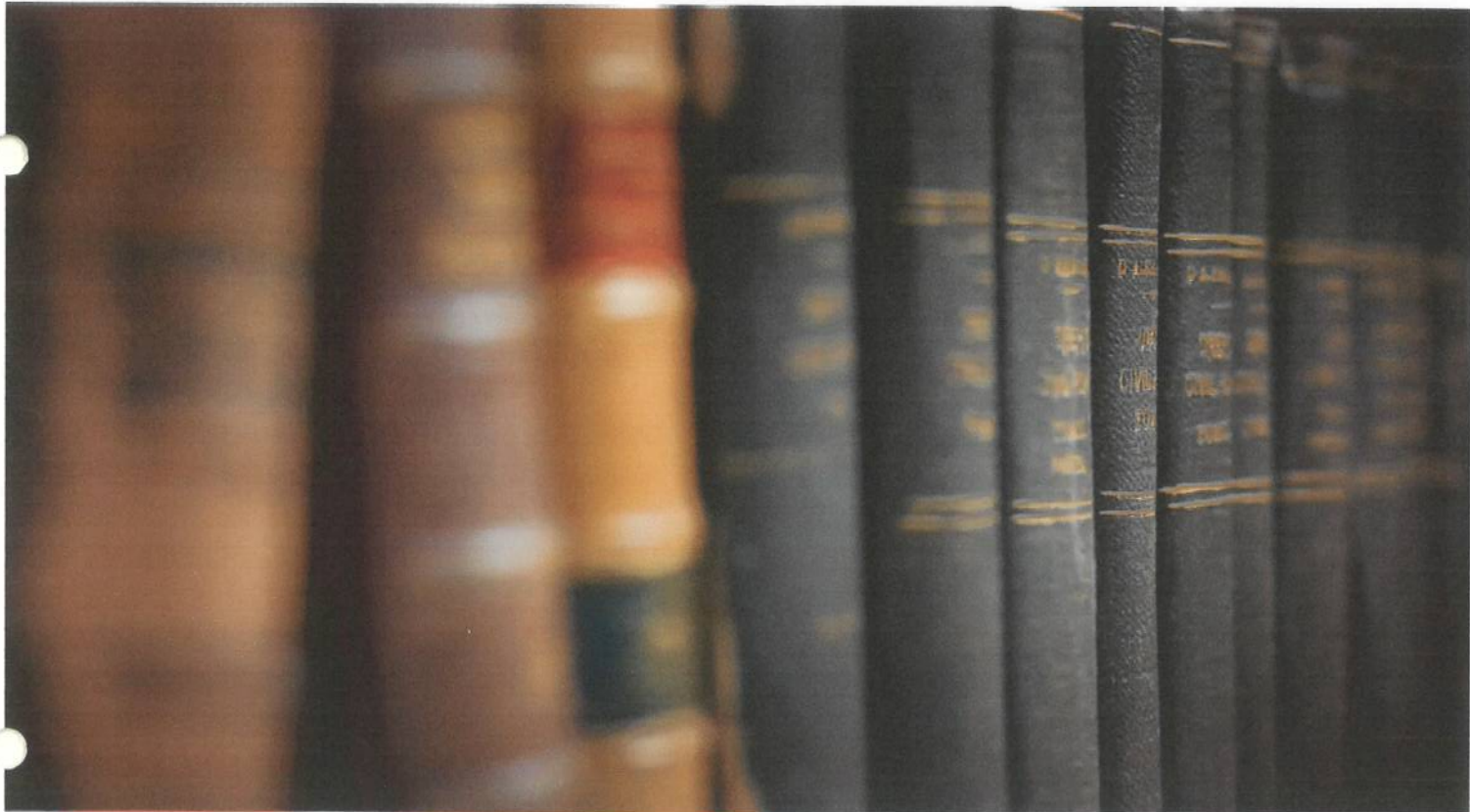
An enforcement notice will normally:

- instruct that any development being carried out without planning permission must stop;
- instruct that if the development has planning permission but work is not being carried out in accordance with the conditions of the permission, that steps have to be taken to ensure the development is in line with the planning permission;
- inform what steps are required to be taken within a specified period. These could include removing, or altering a structure, stopping the use of land, or returning land to its previous condition before the unauthorised development began; *and*

- outline that if these steps are not taken within the period stated, that the person may be guilty of an offence and that the planning authority may enter the land and do the work itself. The owner or developer will have to pay the cost of this work. The owner or developer may also have to pay other related expenses such as legal costs.

## 8. What penalties apply if you do not comply with the enforcement notice?

Where you do not comply with an enforcement notice, the planning authority can take the matter to court. Penalties for breaching planning law are set out in the Planning and Development Act 2000, as amended. These penalties depend on the nature of the offence but, if found guilty, you may face a criminal conviction and a fine and/or a prison sentence.





### 9. Are there any other ways to stop unauthorised development?

In more serious cases, or in an escalation of existing enforcement cases, a planning authority may apply to the Circuit Court or the High Court for an 'injunction' to prevent an unauthorised development from commencing or continuing. Individuals or groups can also apply for an injunction, even if the planning authority has not taken this step.

### 10. I am unsure whether my development requires planning permission, how can I avoid becoming subject to enforcement measures?

Certain types of development are exempted from planning control, so do not require planning permission. Planning regulations contain lists of developments that do not require planning permission.

However, if you are still uncertain about whether a particular development requires planning permission, you can ask the planning authority for a written answer under the 'Section 5 Declaration' process (see Planning Leaflet 1 – "Introducing the Planning System" for further advice on this process). You have to supply all necessary information and pay a nominal fee for this service. Unless the planning authority requires additional information, it must respond to you within four weeks giving reasons for its decision.

There is a right of appeal of the decision to An Bord Pleanála.

### 11. I have made a genuine mistake, can unauthorised development be regularised and how?

Genuine mistakes can be made regarding the need for planning permission. If you discover that you have undertaken unauthorised development, you may apply for permission to retain it. This approach should not be relied on in order to avoid seeking planning permission before starting work as you may not be granted planning permission for retention, or you may be required to carry out costly modifications. To disincentivise unauthorised development, planning application fees for retention are much higher than for an application made before development starts.

In addition, making an application for permission to retain an unauthorised development does not mean that you cannot still be prosecuted if enforcement action has already been initiated. An application for retention will be considered 'de novo'. This means that it will be considered as a new application and normal standards and policies will be adhered to. A planning authority is not obliged to grant permission for a retention application.





It is also important to note that it is not always possible to seek planning permission to retain unauthorised development in circumstances where impacts on the environment have occurred. For example, in most circumstances, a planning authority cannot accept an application for permission to retain development which would have required:

- environmental impact assessment (EIA),
- a determination as to whether EIA was required (i.e. screening for EIA), or
- an appropriate assessment (AA) under the Habitats Directive.

The provisions of the planning acts regarding the above are extensive and complex. Therefore, if you believe that your development is in any of these categories, you are strongly advised to consult with your local planning authority. Otherwise, you face the risk of enforcement action requiring the land to be restored.

### **12. Are there any cases where enforcement action cannot be taken against an unauthorised development?**

Any legal action taken by the planning authority against unauthorised development, with the exception of quarrying operations and peat extraction, must start within seven years of the breach of planning law taking place. Irrespective of the time that has elapsed, an enforcement notice can be served, or an injunction can be

sought where a person has failed to satisfy a planning condition concerning the use of land. Finally, in cases where the seven year rule applies and the planning authority has not taken enforcement action within that timeframe; this does not alter the planning status of the development i.e. it does not become authorised. The development will continue to be unauthorised, albeit immune from action. This may have implications for the future sale of the property or compliance with other codes of legislation e.g. environmental licencing, building control.

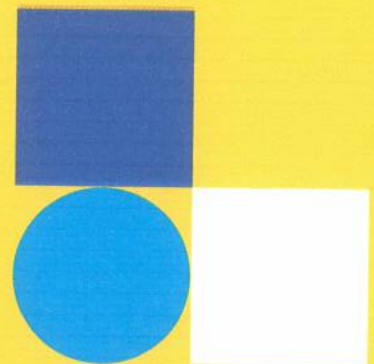
### **13. Where can I find out more about planning enforcement?**

A more detailed user's guide to planning enforcement (**A Guide to Planning Enforcement in Ireland, November 2012**) is available on the Department of Housing, Local Government and Heritage website, [www.gov.ie/housing](http://www.gov.ie/housing). The law governing the planning system is set out in the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001, as amended. You can purchase these from the Government Publications Sales Office, telephone (01) 6476834 or at [publications@opw.ie](mailto:publications@opw.ie) or download them for free from the Department of Housing, Local Government and Heritage's website [www.gov.ie/housing](http://www.gov.ie/housing). Legislation is also available to view and download from: [www.irishstatutebook.ie](http://www.irishstatutebook.ie).



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**The Property Registration Authority**  
**An tÚdarás Clárúcháin Maoine**

**Land Registry Sealed and Certified Copy Folio (& Filed Plan)**

eugene  
 oneill  
 4 riverside mews  
 meenaleck  
 crolly  
 donegal, f92e2n4

**This page forms part of the official document. Do not detach.**

**Folio Number:** DL83951F  
**Application Number:** P2021LR121872Y  
**Your Reference:** quarry

This document comprises an office copy of the Land Registry record for the above mentioned folio/filed plan as of the date appearing.

Details of **dealings pending** (if any) on the enclosed folio/filed plan are listed in the **Schedule** below.

~~An officer duly authorised by the Property Registration Authority.~~

**Schedule**



**Notes:**

1. Filed plans should be read in conjunction with the Register. The description of the land in the Register or on the filed plan is not conclusive as to the boundaries or extent of the land (see Section 85 of the Registration of Title Act 1964, as substituted by Section 62 of the Registration of Deeds and Title Act, 2006).
2. Filed plans greater than A3 in size may be provided as separate A3 tiles with an overlap and print gutter. When aligning the tiled sheets, customers are advised to use the underlying topographical detail.
3. On receipt of this record, please check to verify that all the details contained therein are correct. If this is not the case, please return the document to the Property Registration Authority immediately.

Folio Number: DL83951F  
 Date Printed: 16/11/2021

Application Number: P2021LR121872Y  
 Page 1 of 6





**Land Registry**

**County Donegal**

**Folio 83951F**

**Register of Ownership of Freehold Land**

**Part 1(A) - The Property**

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

No.	For parts transferred see Part 1(B) Description	Official Notes
1	<p>The property shown coloured Red as plan(s) 20C on the Registry Map, situate in the Townland of ARDUNS, in the Barony of KILMACRENAN, in the Electoral Division of MAGHERACLOGHER.</p> <p>The Registration does not extend to the mines and minerals</p>	<p>From Folio DL365F</p>



**Land Registry****County Donegal****Folio 83951F****Part 2 - Ownership**Title **ABSOLUTE**

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965
1	08-MAY-2015      BERNADETTE O'NEILL of MEENALECK, ANNAGRY, COUNTY DONEGAL is D2015LR057650N full owner.









## Glásaigh Enviro

Environmental Research and Consulting

Ecological Reports and survey, REPS, EMS, CZM, Environmental Impact assessment, SAC Appeals  
Environmental Interpretation, monitoring and Wildlife Photography

Connors, Glenfin Street, Ballybofey, Co. Donegal

Phone 074 9190260, Fax 074 91 90261, mobile 086 8357844 email [catrionastorey@eircom.net](mailto:catrionastorey@eircom.net)

Date 8<sup>th</sup> December 2005

**To whom this concerns**

**Mr O'Neill's Registration of Quarries Section 261 of the Planning and Development Act 2000**

During the site survey of Mr O Neills land during April 2005, his lands were found to be adjacent to cSAC Boundary of c Sac IE002047 Cloghernagore bog and Glenveagh National Park.

The land area of Mr O'Neill's quarry to the best of my knowledge does not extend into the SAC.

The quarry land area was mapped and quarry location is shown on the SAC map.

Yours truly

Catherine Storey B.Sc. (Hons) CEnv, MIEEnvSc, MIEEM







Comhairle Contae Dhun na nGall  
 Donegal County Council, County House, Lifford  
 Tel no. 074 9172222 Fax no. 074 9141205

APPLICATION TO DONEGAL COUNTY COUNCIL FOR REGISTRATION OF A QUARRY UNDER  
 SECTION 261 OF THE PLANNING AND DEVELOPMENT ACT, 2000

1(a) Name of Owner/operator of quarry(s)

Sinead O Neill

In the event of the operator not being the owner please also give details of owner

Address Meenaleck, Crolly, co. Donegal

Telephone No. .... Email address .....

1(b) If the Applicant is a Company registered under the Companies Act 1963 to 1994, state :

(i) the name of the Directors of the Company (if this space is insufficient, please use a separate sheet)

(ii) Registered Address of Company .....

(iii) Company Registration No. ....

2. Name & Address to which any correspondence is to be sent ... Sinead O Neill, Meenaleck

Crolly, co. Donegal

Tel No. ....

Fax No. ....

3. (a) Location, townland or postal address of quarry concerned: .....

Arduns, Gweedore, co. Donegal

(b) Identify the relevant Ordnance Survey Map Ref. No. and the Grid Reference

OS Map 42 Northing 421640.04 Easting 184306.20

(c) A site location map to a scale of not less than 1:2500 is to be attached. The map is to define:

- (i) the entire landholding in the locality (in blue)
- (ii) the quarry site (outlined in red)
- (iii) the current working quarry area (hatched in colour)



(d) Clarify whether parts of the total land holding were acquired at different periods; if so, then

- (i) identify the relevant portion of land,
- (ii) usage of said lands at time of acquisition,
- (iii) date of acquisition
- (iv) from whom was the land obtained
- (v) evidence as appropriate to substantiate the foregoing

---

4. Was planning permission under Part IV of the Local Government (Planning and Development) Act, 1963 granted?

YES      Reference No.: .....      NO

If YES, please quote the reference number of the permission and include a copy of said permission(s) and conditions.

---

5. Did the quarry commence operation before 1<sup>st</sup> October, 1964?

YES       NO

If YES, please supply any available documentary evidence.

---

6. Total site area of quarry (hectares):

---

7. Extraction area of quarry (hectares):

---

8. Types of material being extracted:

---

9. Details of processes, if any, within the site:

---

10. Is pumping carried out at the development? YES      NO

If YES, give details of (a) rate of pumping and (b) identify point of discharge.

Licence Reference under which discharge is being carried out: .....

---

11. (a) Date which quarrying commenced on the land? .....

(b) Date which current operator commenced quarrying? .....

(c) If operation of the quarry was only periodic, please give details of dates of operation, if known):

02/09/2004



(d) Any other details on the history of the working quarry and quarry operator:

.....  
.....

12. Quarry operating hours:

(i) Plant operating hours:

(a) Weekdays ..... 8.00am to 17.00pm

(b) Saturdays .....

(ii) Loading/Off-site Haulage Hours (if different from above):

(a) Weekdays .....

(b) Saturdays .....

(iii) Hours (outside normal opening hours)

required to service exceptional customer requirements:

.....

..... n/a .....

(iv) No of employees on site: ..... 2 .....

(v) Sanitary and canteen facilities: ..... none .....

.....

13. Traffic generated by the operation of the quarry? (Type and frequency of vehicle entering and leaving the quarry and identify traffic routes – To be accompanied by maps as appropriate):

2 HGV lorries per hour from 8.00 to 17.00pm not on Sat or Sun

14. Please give details of emissions (noise, dust, water, etc.) from the quarry where measurements are available:

Noise: nearest residence: N56/ 50dBA to 60dBA, within quarry rock breaker 70dBA, mean noise in quarry 60dBA

Dust: n/a

Water: n/a

Waste Water: n/a

Other: .....

15. Give details of current depth of excavation relative to the Ordnance Datum:

85m at quarry floor

16. Give details of the level relative to Ordnance Datum of the winter water table:

59m taken from Nacung

17. Is the existing activity subject to IPC licence: ..... n/a .....

If yes, give details of licence no.: .....



18. Is the quarry **\*situated on** a European site or any other area prescribed for the purpose of section 10(2)(c), or land to which an order under section 15, 16 or 17 of the Wildlife Act, 1976, applies:                      YES    NO

If YES, give details: .....

.....

.....

**\*Is the quarry adjacent to a European site or any other etc as per 18.** SAC IE 0002047

19. Give details of any material changes in the particulars referred to above during the period 28<sup>th</sup> April, 2004 and the date on which the information is provided:

.....

.....

.....

Name (BLOCK CAPITALS):
Signature:
Position with firm/company : <sup>2</sup>
Date:

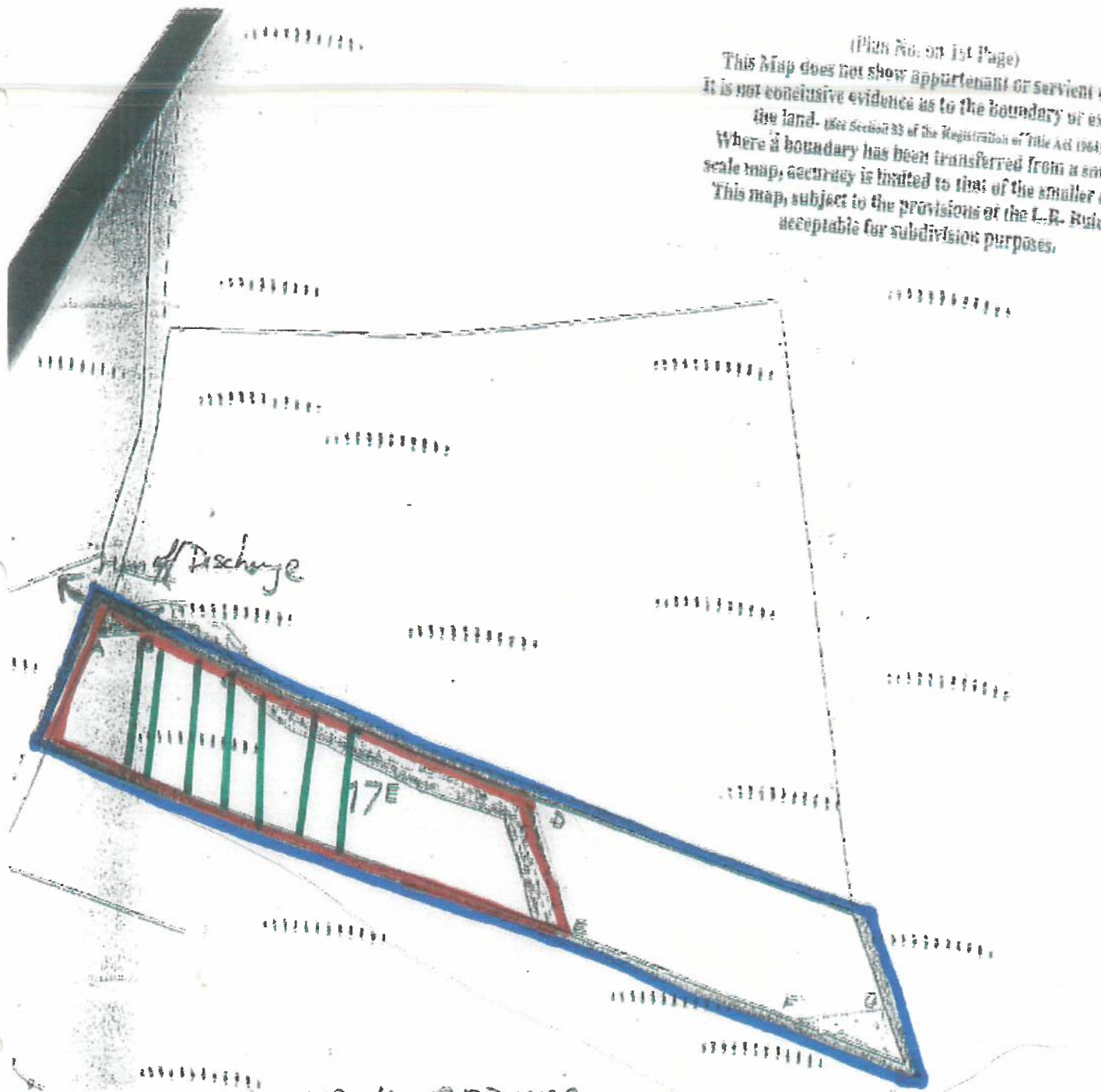
<sup>2</sup> Where registration is on behalf of a company, the form must be signed by a company director/secretary








(Plan No. on 1st Page)

This Map does not show appurtenant or servient right  
It is not conclusive evidence as to the boundary or extent  
of the land. Use Section 33 of the Registration of Title Act 1964  
Where a boundary has been transferred from a small  
scale map, accuracy is limited to that of the smaller scale  
This map, subject to the provisions of the L.R. Rules, is  
acceptable for subdivision purposes.

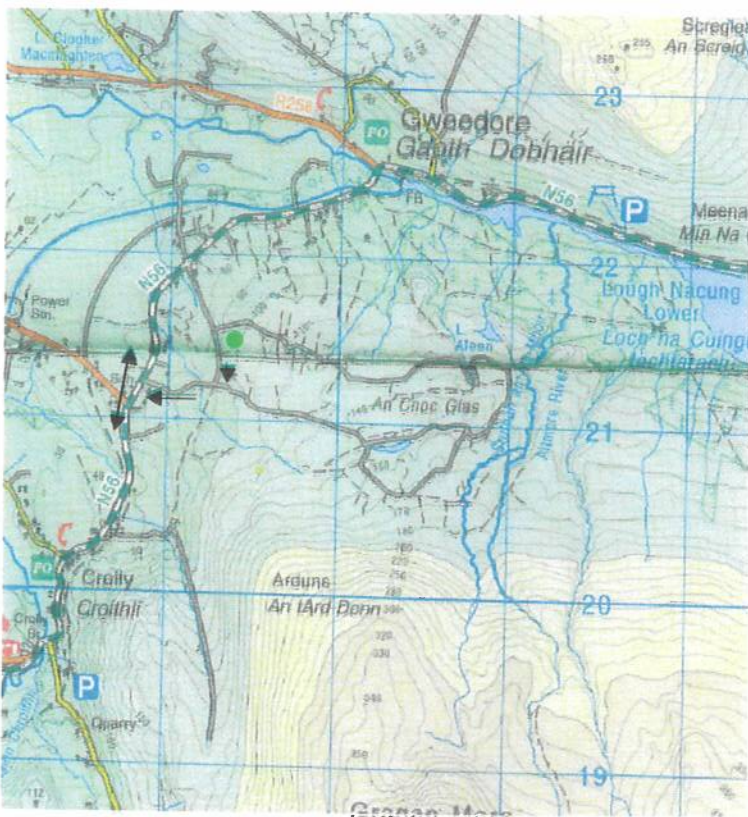


Legend. Sinead O'Neill ARDUNS  
Gweedore.

-  Entire Land holding
  -  Quarry Site
  -  Current Working Quarry  
Discharge of Surface Waters
- Scale 1:2500  
Map ref OS 42



Application to Donegal county council for Registration of a Quarry at Arduns, Gweedore, Co. Donegal



**Legend**

- Quarry Location
- ↔ Transport direction
- to N56, white arrows

Map compiled by C.Storey  
Ordnance Survey Ireland  
Licence No. EN 0031005  
© Ordnance Survey Ireland  
Government of Ireland



Noise Monitoring analysis

Siobhan O'Neill Arduns Quarry

3rd March 2005

Weather dry and sunny but cold with NW winds

Time 10.00 AM to 12.00 PM

Souns levels recorded

High

Low

Grid ref N

Grid ref W

Elevation

location

mean noise level for 15 minutes period

1. Outside quarry

56dBA

60dBA

55 02' 38"

008. 14"54.2"

7m

normal

at the two houses off N56

61

68

008. 14"54.2"

7m

digger operating to the SW of the site near the road

61

61

Hooded crow calling

1. Quarry centre

no machinery operating

54

70 055.02' 27.4"

008. 14'44.4"

11m

lowest quite highest conversation

digger startup

73

81

operating quiet

70

78

loading of lorry

77.6

64

mean 77.9

WATER Table

measured at

55.02'27.6"

008. 14'44.0"

3.5.m



## SITE SYNOPSIS

**SITE NAME : CLOGHERNAGORE BOG AND GLENVEAGH NATIONAL PARK**

**SITE CODE : 002047**

This is an exceptionally large inland site located in the centre of north-west Donegal. It includes a rich diversity of habitats and landscape features, including mountains, exposed rock and scree, blanket bogs, dry, wet and alpine heath, upland grassland, wet grassland, rivers, lakes, scrub and woodland. The Gweebarra fault bisects the area forming a long valley, orientated north-east/ south-west, in which Lough Barra and Lough Veagh (Beagh) are situated. The area is generally mountainous, taking in most of the Derryveagh and Glendowan ranges and including the two highest mountains in Donegal, Errigal (751 m) and Slieve Snaght (678 m). Towards the centre-west of the site are the fine ice-carved cliffs of the Poisoned Glen and Bingorms, which contrast dramatically with the gently undulating expanses of blanket bog in the south-west and north-east corners of the site.

The underlying rock is predominantly granite, with a few intrusive dykes. However, around Errigal the geology is more complex with bands of schists, quartzite, granodiorite and limestone occurring.

Atlantic blanket bog is the dominant habitat of interest, with much of it being relatively unspoilt. Indeed, the area around Cloghernagore constitutes the most extensive blanket bog system remaining in the north-west of Ireland. Overall, there are excellent examples of several types of blanket bog including, Highland Bog (Cashelnagor and Dunlewy Far), Lowland Bog (Cloghernagore and Glenveagh Bridge), Domed Valley Bog (Derrybeg and Calabber Valley), Headwater Bog (Crockastoller and Carrickatimpan Mountain) and blanket bog apparently in the early stages of formation (Attinadague).

The blanket bog vegetation is relatively uniform and typically dominated by Purple Moor-Grass (*Molinia caerulea*), Heather (*Calluna vulgaris*), Black Bog-Rush (*Schoenus nigricans*), Deergrass (*Scirpus cespitosus*) and Common Cottongrass (*Eriophorum angustifolium*), with areas of Bog Myrtle (*Myrica gale*) occurring.

Some well-developed blanket bog features are found: pool systems are typically colonised by Bog Moss (*Sphagnum*) species (*S. auriculatum* and *S. cuspidatum*), Lesser Bladderwort (*Utricularia minor*), Bogbean (*Menyanthes trifoliata*) and sedges (*Carex panicea*, *C. limosa*), with Great Sundew (*Drosera anglica*) occurring around the margins; hummocks of *Sphagnum* species (*S. capillifolium*, *S. imbricatum* and *S. papillosum*) and other mosses (*Leucobryum glaucum*, *Racomitrium lanuginosum*); flushed areas with *Sphagnum* species (*S. auriculatum* var. *inundatum* and *S. magellanicum*), Common Reed (*Phragmites australis*), rushes (*Juncus acutiflorus* and *J. effusus*) or sedges (*Carex echinata*, *C. rostrata* and *C. demissa*); quaking flats of mosses (*Campylopus atrovirens*, *C. brevipilus*, *Pleurozia purpurea* and *Sphagnum*





spp.) with sedges (e.g. *Carex lasiocarpa*); shallow, infilling lakes with associated Sphagnum scrubs and sedge swards.

A number of scarce or only locally-occurring vascular plant species have been recorded from bogs on the site. These include a hybrid Sundew, *Drosera anglica* x *D. rotundifolia* (*Drosera* x *obovata*), Whorled Caraway (*Carum verticillatum*), Bearberry (*Arctostaphylos uva-ursi*), Cranberry (*Vaccinium oxycoccos*) and, in a gorge, Cowberry (*Vaccinium vitis-idaea*). Lower plants of note include several mosses (*Sphagnum fuscum*, *S. contortum*, *S. recurvum* var. *tenuis*, *S. molle*, *Calliergon stramineum* and *Polytrichum longisetum*) and lichens (*Cladonia parasitica*, *C. gracilis*, *C. bellidiflora*, *C. cervicornis* subsp. *verticillata*, *C. digitata*, *Peltigera hymenea*, *Sphaerophorus fragilis*, *Usnea fragilesceus* and *Umbilicaria polyrrhiza*).

The site includes many rivers and streams, containing, or fringed by plants such as Water Horsetail (*Equisetum fluviatile*), Lesser Spearwort (*Ranunculus flammula*), Pondweeds (*Potamogeton natans*, *P. polygonifolius*), sedges (*Carex* spp.) and rushes (*Juncus* spp.). By one river the locally-occurring, Lemon-scented Fern (*Oreopteris limbosperma*), is found. Sometimes the streams cut gorges, where fragments of deciduous woodland remain. These are characterised by Aspen (*Populus tremula*), Rowan (*Sorbus aucuparia*), Oak (*Quercus petraea* and *Q. robur*) and Willow (*Salix* spp.).

An area of semi-natural deciduous woodland occurs on the steeply sloping eastern side of Glenveagh. The dominant trees are Sessile Oak (*Quercus petraea*), Birch (*Betula pubescens*) and Rowan, with Hazel (*Corylus avellana*) occurring frequently. Holly (*Ilex aquifolium*) occurs in the understorey. Rhododendron (*Rhododendron ponticum*) has invaded much of the woodland and adjacent hillsides. Other species present include Yew (*Taxus baccata*), Juniper (*Juniperus communis*) and, near Lough Veagh, the scarce, Rock Whitebeam (*Sorbus rupicola*). Within the woodland the lower plant community is well-developed with liverworts, including *Frullania tamarisci*, growing on the tree trunks. This is replaced as an epiphyte in damper areas by Wilson's Filmy-fern (*Hymenophyllum wilsonii*). Of particular note, is the presence of the scarcer, Tonbridge Filmy-fern (*H. tunbrigense*). The woodlands are also notable for the presence of two rare species of Myxomycete fungus, namely *Licea gloeoderma* and *Physarum vernum*, the former in its only known Irish site.

There are several large lakes on the site, including Lough Barra, Lough Veagh and Lough Altan. Aquatic plant species found include Water Lobelia (*Lobelia dortmanna*), Shoreweed (*Littorella uniflora*) and Bulbous Rush (*Juncus bulbosus*). Lough Veagh also contains two Quillworts (*Isoetes lacustris* and *I. echinospora*), the latter of which is a locally-occurring species. Some of the smaller lakes also contain the scarce, Pipewort (*Eriocaulon aquaticum*).

Many scarce plants have been recorded from cliffs and gullies, mainly around Slieve Snaght and the Poisoned Glen. These include Brittle Bladder-fern (*Cystopteris fragilis*), Alpine Clubmoss (*Diphasiastrum alpinum*), Stiff Sedge (*Carex bigelowii*), Mountain Sorrel (*Oxyria digyna*) and Irish Spurge (*Euphorbia hyberna*).



Purple Saxifrage (*Saxifraga oppositifolia*) and Alpine Saw-wort (*Saussurea alpina*) have also been recorded from this area, along with a more recent sighting of Killarney Fern (*Trichomanes speciosum*). Both of these are rare species which are listed in the Irish Red Data Book, the latter also being legally protected (Flora Protection Order, 1987) and listed on Annex II of the EU Habitats Directive.

Within the whole site, three other rare Red Data Book plants have been recorded, namely: Bird Cherry (*Prunus padus*), Small-White Orchid (*Pseudorchis albida*) and Heath Cudweed (*Omalotheca sylvatica*). The two last-named are legally protected (Flora Protection Order, 1987).

The area is of considerable zoological value. Mammal interest includes the largest herd of Red Deer in Ireland, along with numerous Foxes, Badgers, Otters, Irish Hares and Stoats.

Lough Veagh contains Arctic Charr, an indigenous fish that was once widespread but is now rare in most places. It is listed as vulnerable in the Irish Red Data Book. Other fish present include Brown Trout and Salmon. Common Lizard has been recorded from the site. The site supports populations of Freshwater Pearl-mussel (*Margaritifera margaritifera*), a rare species that is both legally protected in Ireland and listed on Annex II of the EU Habitats Directive.

Bird Life is well represented with several Red Data Book species, listed on Annex I of the EU Birds Directive, breeding within the area, namely: Red-throated Diver, Golden Plover, Merlin and Peregrine. A small flock of Greenland White-fronted Geese, also listed on Annex I of the EU Birds Directive, feed on some of the bogs in winter. The Red Data Book species, Goosander and Wood Warbler, both breed on the site.

Generally, the woodlands are favoured by Siskin, Tree Creepers and Redstarts, while Meadow Pipits, Red Grouse, Ravens, Snipe and Dunlin are among the birds found on the moorland. Red-throated Divers use some of the lakes and Osprey have been recorded in the past.

One of the major land uses is conservation management. The site contains the whole of the Glenveagh National Park along with two Statutory Nature Reserves, Lough Barra Bog and Meenachullion Bog.

Grazing by sheep and deer is common and in a few places the bogs have suffered from overgrazing and poaching. Grazing has also prevented woodland regeneration. Annual deer culls take place to control numbers and the main herd is kept within the confines of the National Park by a 45 km deer fence.

Invasion by Rhododendron has been a particular problem within the Park, where it has choked areas of woodland and covered adjacent hillsides. A removal programme is currently in progress and the threat from this species has been considerably reduced.



Peat-cutting, both by hand and machine, has caused damage to some bogs in the site. Turbary and afforestation are the main threats to this habitat, with erosion and burning also having an impact.

The site is of great scientific and conservation value, particularly for the large areas of excellent, little-damaged blanket bog it contains, including the largest intact area of blanket bog in north-west Ireland. It also includes good quality examples of semi-natural deciduous woodland, heath, oligotrophic lakes and inland cliffs. The importance of the site is increased by the presence of a wide range of plant and animal species, including many rare or threatened Red Data Book species, and several that are listed on Annex II of the EU Habitats Directive or Annex I of the EU Birds Directive.

18.3.1998



EXH 13 a

EU QY78 Request for a review under SECTION 261A (4) (a) Local Government( Planning and Development ) Act 2000

---

To Brid Tiernan

Executive Officer, An Bord Pleanala

Request to An Bord Pleanala for a review of Notice under Section 261 A(4)(a)

For Existing pre 1<sup>st</sup> of October 1964 Quarry at Arduns, Gweedore, Co. Donegal

Your ref: QV05EQV0189

P.A. Reg. Ref: EUQY78

Our ref: Mr Eugene O Neill on behalf of Ms Sinead O Neill

**Quarry Registration number EU QY78**

**Local Authority Area Co. Donegal.**

Quarry Owner Ms Sinead O Neill,

Meenaleck

Crolly

Co.Donegal

(Quarry Operator Ms Sinead O Neill who has authorised Mr. Eugene O Neill, her father to appeal on her behalf ( 7<sup>th</sup> September 2012)

Review application compiled by

Catherine Storey CEnv MIEEnvSc, MCIEEM

Upper Kilraine

Glenties

Co, Donegal

T.

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om





**Maps**

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3. Information Review.....	3
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5. Summary of accepted application for EU QY 78.....	4
5. Donegal County council under the Planning and Development Acts 2000 to 2011, Section 261A(4) 9a) Notice was sent to the land owner of EUQY78.....	5

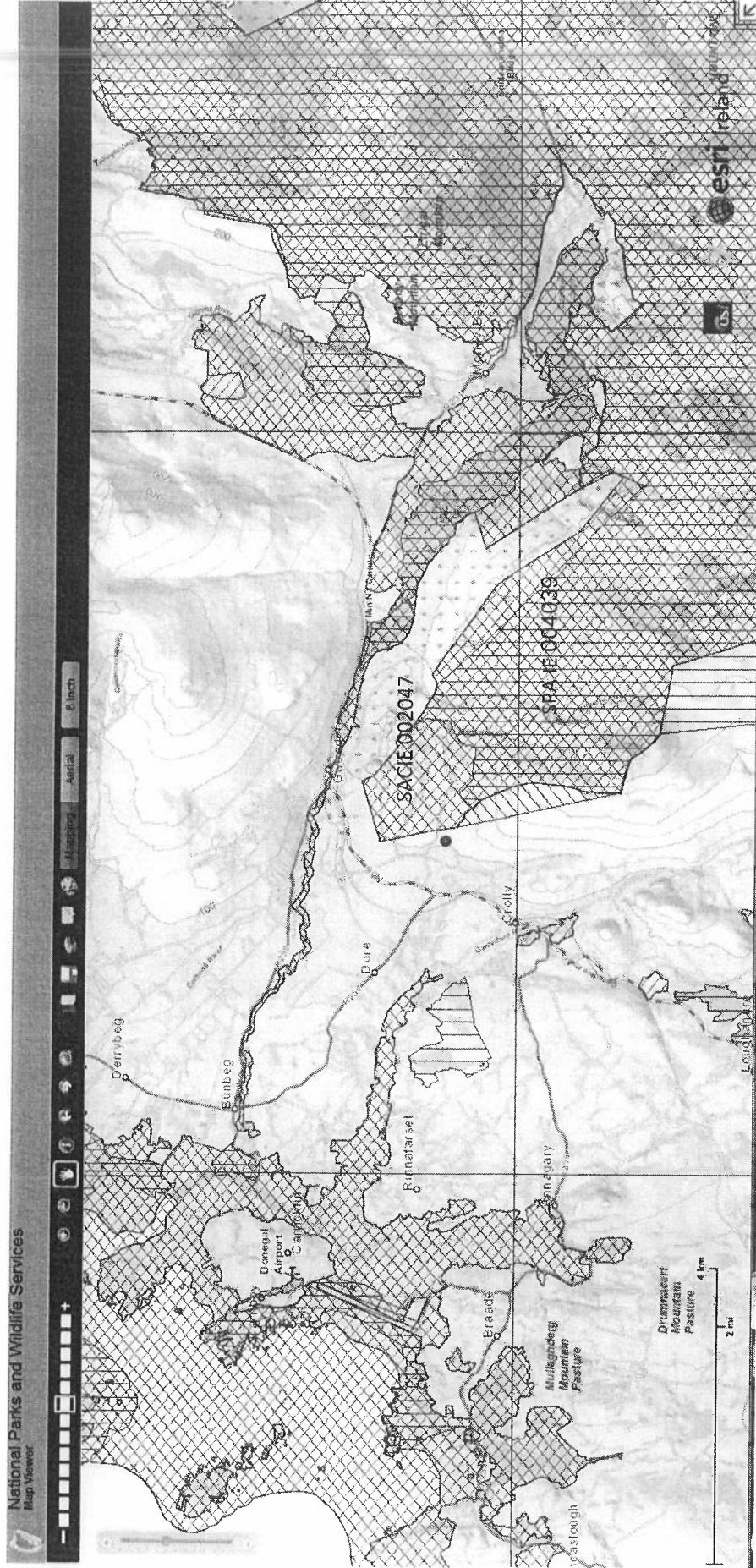
**Appendices**

**1.Site synopsis**

**2. copies of affidavits**



Maps for EUQY78



Legend

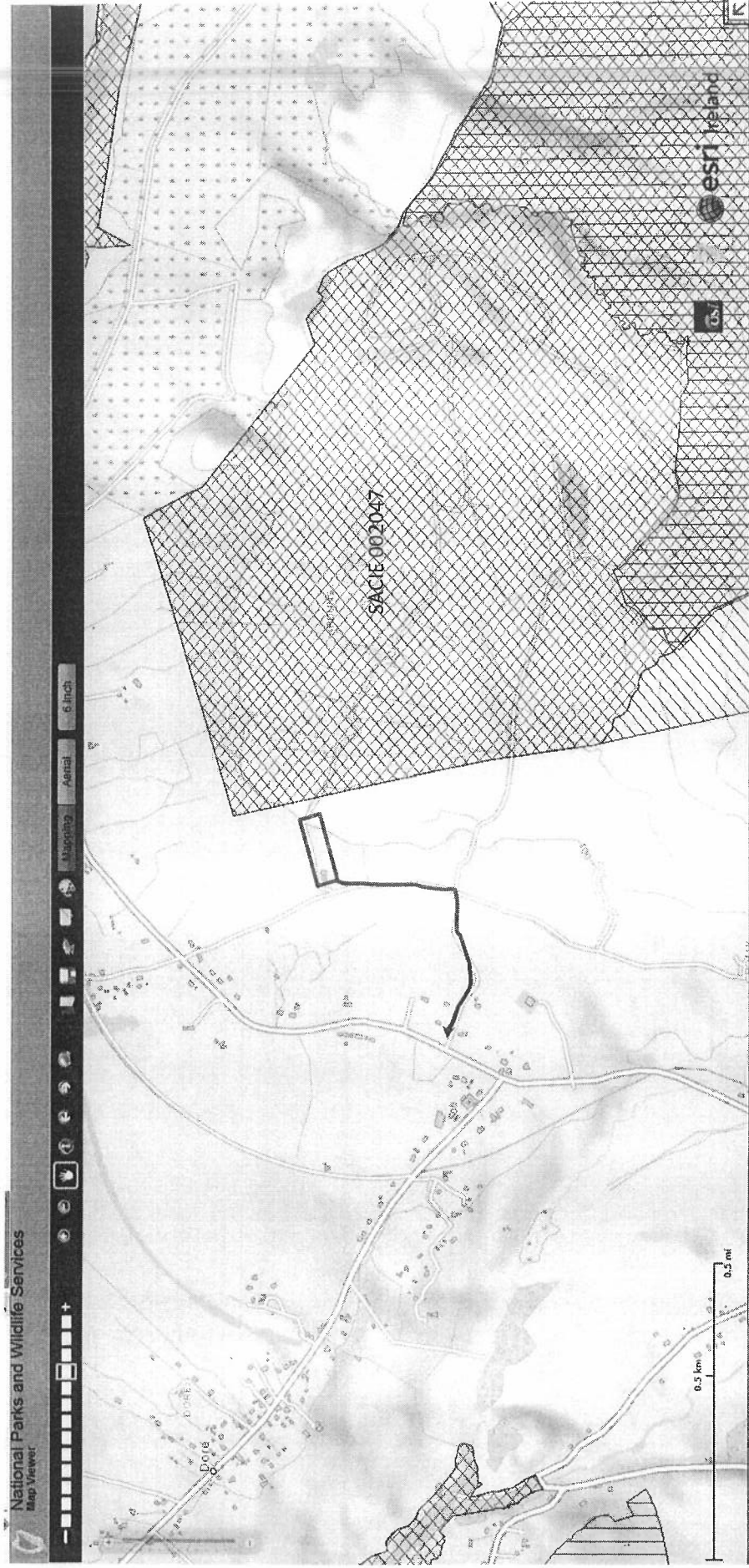
- Site location

Compiled from [www.npws.ie](http://www.npws.ie) map

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Maps for EUQY78



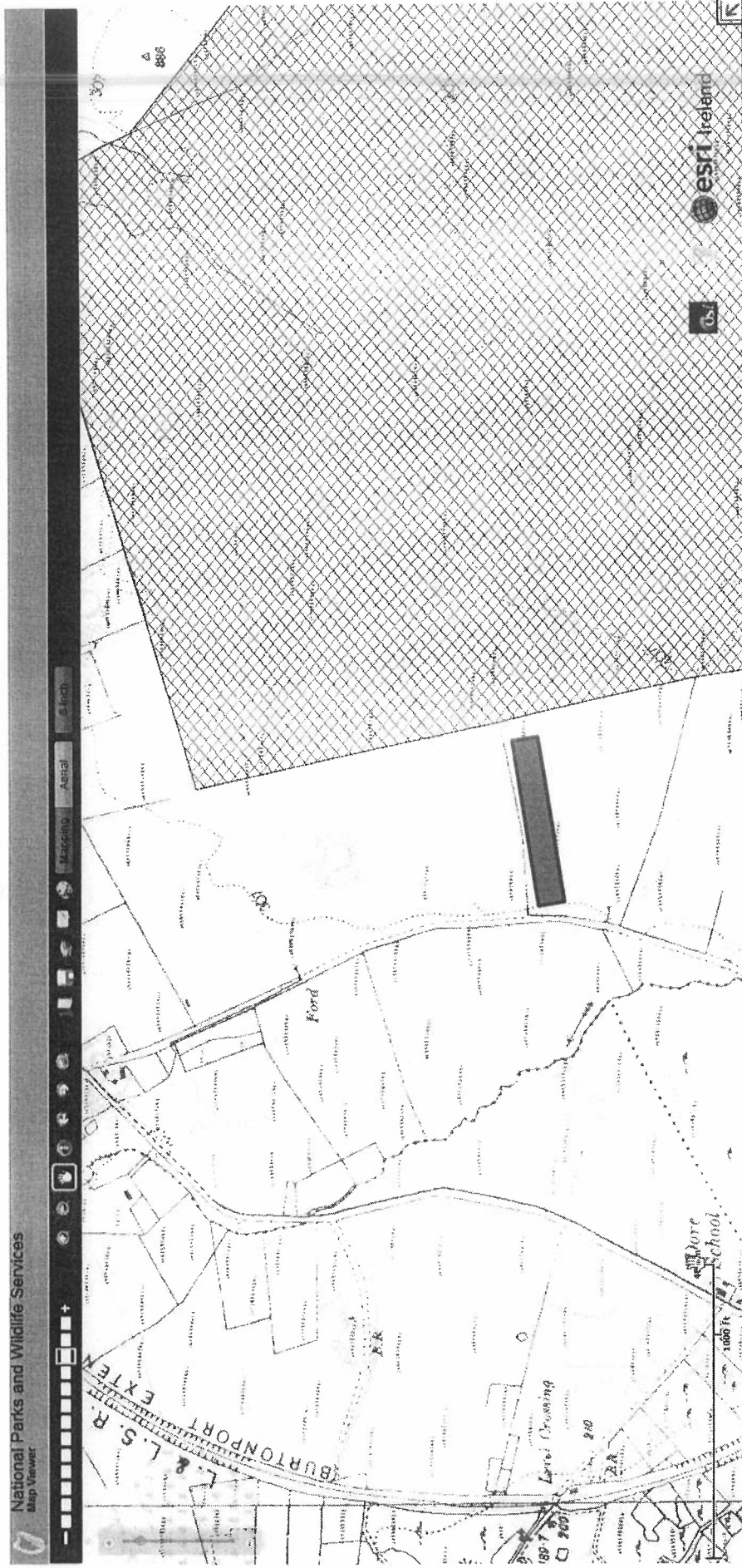
Legend



site of quarry EUQY78, located on cutover bog land adjacent to SACIE 002047 Cloghernagore and Glenveagh National park. Red line shows transport route from the site.

Ordnance Survey of Ireland License no. EN 0031014©Ordnance Survey Ireland and Government of Ireland. This map has been extracted and compiled by Catherine Storey CEnv MIEEnvSc MCIEEM





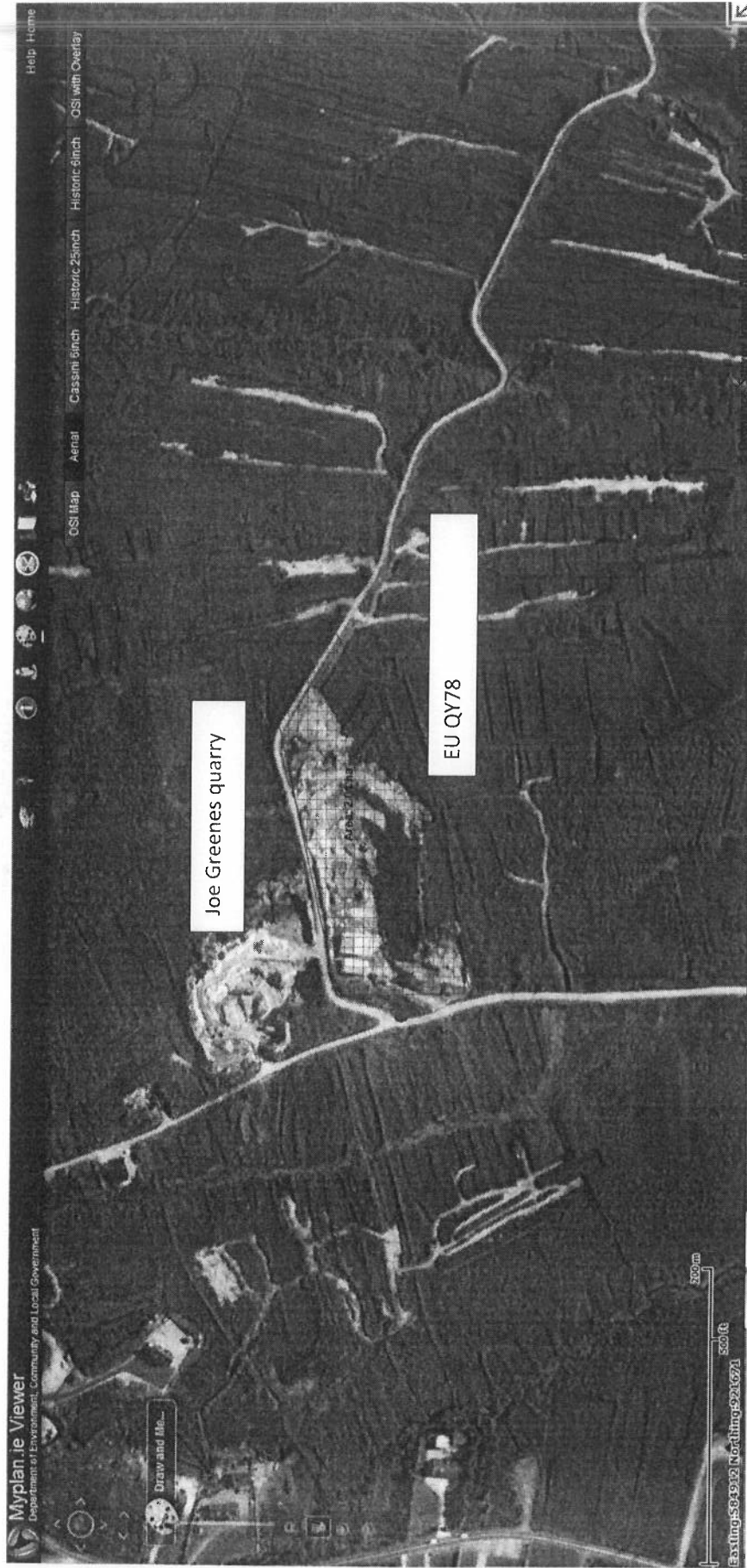
Scale 6inch map

Legend





Maps for EUQY78



Scale 1:2500 Area in circa of 2.068 Ha. Site has two sheds and 2 x settlement ponds. Discharge of water via roadside drain after treatment in settlement pond, Discharge point shown as red dot. Map compiled from [www.myplan.ie](http://www.myplan.ie) by Catherine Storey CEnv,

Legend



EUQY 78 Arduns Quarry owned and operated by Eugene O Neill on behalf of his daughter Ms Sinead O Neill.

Ordnance Survey of Ireland License no. EN 0031014©Ordnance Survey Ireland and Government of Ireland. This map has been extracted and compiled by Catherine Storey CEnv MIEEnvSc MCIEEM



Your Ref: QV 05EQV0189

QV132

P.A. Reg Ref: EUQY78

Our Ref: Sinead O Neill,

(Enclosed letter authorising Her father Mr Eugene O Neill to act on her behalf in respect of the quarry at Arduns

**Appeal Re: Quarry 4(a). Arduns, Gweedore, co. Donegal**

1. The following report is in conjunction with request by Mr.Eugene O Neill for a Review of the Quarry at Arduns, Gweedore. Co. Donegal.

The review request is to provide information as requested by An Bord Pleanala:

The original documentation for review was submitted by Mr Eamon McBride , Solicitor who was acting on behalf of Mr Eugene O Neill, the quarry operator

**2. The following response was sent from An Bord Pleanala**

**“The Board seeks to clarify whether in addition to seeking a review of the planning authority decision under Section 261A (4) (a) of the Local Government (Planning and Development) Act 2000 (as amended) it is your intention also to seek a review of the determination under section 261 A(2) (a)(i) and under section 261 A(2)(a) (ii) of the Act and if so to submit your reasons for seeking such reviews to the Board for consideration. (letter received 9<sup>th</sup> jan 2014)**

**3. Information Review**

I, Catherine Storey CEnv MIEnvSc. Have been requested, by mr Eugene O Neill the quarry operator, to provide an Bord Pleanala with the necessary information to clarify the status of the quarry under Section 261A (a) of the Local Government (Planning and Development) Act 2000 (as amended) it is your intention also to seek a review of the determination under section 261 A(2) (a)(i) and under section 261 A(2)(a) (ii) of the Act and if so to submit your reasons for seeking such reviews to the Board for consideration.

**4. Application history**

I submitted on behalf of Ms Sinead O Neill, the original application to Donegal County Council, for the Registration of the Arduns Quarry under Section 261 of the Planning and Development Act 2000.



The Section 261 application was accepted and the quarry acquired the registration identity of EUQY78. The application was submitted previously by Mr. Eamon McBride, Solicitors office, Main Street Dungloe, Co. Donegal. I, Catherine Storey CEnv carried out SECTION 261 assessment of the quarry, Assessment dated 13<sup>th</sup> April 2005.

I submitted a letter to Donegal County Council, on 8<sup>th</sup> December during the quarry registration process under Section 261 of the Planning and Development Act 2000, that the land area of the quarry at that time did not extend into SAC IE 2047 Special Area of Conservation "Cloghernagore and Glenveagh National Park" part of designated area under EU Natura Habitats Directive.

I, have read through all the available documentation relating to the Arduns Quarry.

### **5. Summary of accepted application for EU QY 78.**

Planning authority Register Ref. number	EU QY 78
Quarry Location	Arduns, Gweedore, Co. Donegal
Grid reference OS map 42; Northing 421640.04	Easting 184306.20
Registered land owner	Ms Sinead O Neill
Owners address	Meenaleck, Crolly, Co. Donegal
Registered Quarry operator	Sinead O Neill and Mr Eugene O Neill
Operators address	Meenaleck, Crolly, Letterkenny, Co. Donegal.
Total site Area	2.068 Hectares
Extraction area of the quarry	2 Hectares
Extraction process	Rock breaker, no blasting to win the rock.
Material being extracted	Building Stone and aggregates
When did the quarry begin operation:	circa of 1957 (history of quarry in appendices)
Date current operator commenced quarrying:	20 <sup>th</sup> February 2004

Ms. O'Neill has leased the quarry since February 2004, with stone extraction as required for building and local requirements; the quarry has been operated to the present day from the Commencement date.

