



Our Ref: S 5 22/07

11th March, 2022

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

AN BORD PLEANÁLA	
LDG-	<u>050352-22</u>
ABP-	
14 MAR 2022	
Fee: €	<u>110</u> Type: <u></u>
Time: <u></u>	By: <u>Post</u>

Re: Section 5 Declaration sought by Pearse O’Gorman in relation to quarrying activity by P. McCaffrey & Sons Ltd at Ballymagroarty, Ballintra, Co. Donegal under Ref. No. S5 22/07

Dear Sir,

The Planning Authority received a Section 5 referral in relation to the above-stated development on 15th February, 2022. The Planning Authority has made two previous declarations in the relation to the quarrying activity and on both occasions the decision has been the subject of a judicial review.

As background to the matter the quarry operator has consistently relied on Pre-1963 consent for the quarrying activity. A previous planning application for the retention and completion and extension to the existing quarry operation lodged under Plan. Ref. No.: 01/106 was approved by the Planning Authority and subsequently refused on appeal by the Board (ABP Ref No. PL 05.131103).


In 2012, pursuant to Section 261A the Planning Authority issued an enforcement notice requiring cessation of the operation of the quarry and the operator sought a review of this determination by the Board. The Board considered that the quarry had commenced prior to 1st October, 1964 and that the enforcement notice should not have been issued – thus allowing the operator to apply for substitute consent.

A substitute consent application for the quarry was submitted to the Board in December, 2014. By correspondence dated 9th January, 2015 the Board sought a rationale for why the substitute consent application was only made for 4.4Ha and excluded the remaining 10.35Ha of the quarry. On 23rd May, 2017 the Board issued it's decision on the matter dismissing the application on the grounds that the substitute consent application did not relate to the entire quarry area. A Section 37L application for the continuation and extension of the quarrying activity was also refused by ABP on 23rd May 2017.

Both the decisions to dismiss the substitute consent application and refuse the Section 37L application by the Board are the subject of judicial review proceedings.

As the quarrying activity which forms the basis of this Section 5 referral is the subject of on-going judicial review proceedings and given the legal complexities associated with the matter the Planning Authority is referring the question to An Bord Pleanála in accordance with Section 5(4) of the Planning & Development Act 2000 (as amended) to be decided by the Board. See attached a copy of the Section 5 referral for your consideration and the prescribed fee of €110.00 for this referral.

Yours sincerely,



For Frank Sweeney
A/Senior Executive Planner
Planning Services

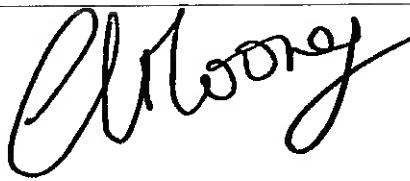
/mp



SECTION 5 APPLICATION

DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

1.	Applicant's Name	Pearse O Gorman	
	<i>Contact details must be supplied at the end of this form</i>		
2.	Name of Agent	MKO, Tuam Road, Galway	
	<i>Contact details must be supplied at the end of this form</i>		
3.	Location of Proposed Development:	Ballymagroarty, Ballintra, Co Donegal	
4.	Description of Proposed Development:	Quarry Activity	
5.	Is development a Protected Structure or within the curtilage of a Protected Structure?	Yes	
	(Indicate as appropriate)	No	X
6.	If the answer to question no 5 is yes has a declaration under Section 57 of the Planning and Development Act 2000(as amended) been requested or issued in respect of the property by the Planning Authority	N/A	
7.	Applicants Interest in site:	None – applicant resides in the vicinity	
	If applicant is not the owner of the site please provide the Name and Address of the owner	P McCaffrey & Sons Ltd Quarry	
8.	List of plans, drawings etc. submitted with this application:	Cover letter and & Site Layout & Site Location maps	
9.	Are you aware of any enforcement proceedings connected to the site? If so please supply details	No	

10.	Please provide details of works (where applicable) or proposed development (Only works listed and described under this section will be assessed under this section 5 application)	
	<p style="text-align: center;">Ongoing quarry at the site (see cover letter)</p>	
11.	Signature of Applicant (or Agent):	
12.	Dated:	14/02/2022

- NOTES:
- (a) Application must be accompanied by fee of €80.00
 - (b) Application must be accompanied by:
 - (i) site location map,
 - (ii) site layout plan,
 - (iii) elevations (if applicable).

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OFFICE USE ONLY	
Ref. No.	
Date Received	
Fee Paid	
Receipt Number	

ADDITIONAL CONTACT INFORMATION (Section 5 Application)

NOT TO BE MADE AVAILABLE WITH APPLICATION

Please note:

- 1) The applicant's address must be submitted on this page.
- 2) It would be beneficial if telephone numbers were provided here as there are times when the applicant/agent needs to be contacted urgently
- 3) This page will not be published as part of the planning file and the public will not have access to same.

Applicant:

Address (Required)	Pearse O Gorman
	Ballymagroarty, Ballintra, Co Donegal
Eircode	-
Telephone No. (See note 2 above)	-
Email Address	pearse.grm@gmail.com
Fax No.	-

Person/Agent acting on behalf of the Applicant (if any):

Address	MKO
	Tuam Road, Galway
Eircode	H91 VW84
Telephone No. (See note 2 above)	091 735611
Email Address	amooney@mkoireland.ie
Fax No.	-

Should all correspondence be sent to the agent's address? (Where an agent has been listed on page 1)

please tick appropriate box

Yes

☒

No

☐

(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)



Attn: Planning Dept.
Donegal County Council,
County House,
Lifford,
Co Donegal
F93 Y622

Our Ref: 210201

14th February 2022

Re: Section 5 Declaration in respect of quarrying activity at P McCaffrey & Sons Ltd Quarry at Ballymagroarty, Ballintra, Co Donegal

Dear Sir/Madam,

On behalf of our client, Pearse O'Gorman, we are making an application to seek a Declaration of Development under the terms of Section 5 of the Planning and Development Act 2000, as amended, in relation to the ongoing quarrying activity and ancillary works taking place at P McCaffrey & Sons Ltd Quarry, Ballymagroarty, Ballintra, Co. Donegal.

This Section 5 application seeks a declaration from Donegal County Council on the following:

'Whether the ongoing quarrying and ancillary activities at P McCaffrey & Sons Ltd Quarry, Ballymagroarty, Ballintra, Co. Donegal is or is not development requiring planning permission from Donegal County Council and is or is not exempted development'

For context the following is a planning history of the site beginning in 2001.

2001 Planning Application

In 2001 the applicant applied for planning permission for an extension to, retention and completion of an existing quarry operation and associated buildings [offices, laboratory, garage, store and gravelstore] and the extinguishment of a public right-of-way adjacent to the quarry [PI Ref: 01/106]. This grant of permission was appealed to An Bord Pleanála who subsequently refused planning permission [Ref: 05.131103] and the primary reason given was that-

'It is considered that that the proposed development, if permitted, would seriously injure the amenities and depreciate the value of properties in the vicinity of the site and would be unacceptable in terms of risk to environmental pollution and traffic safety'

While there is some considerable confusion and contradictory information in this planning application with respect to the overall site area, and this is referred to in the Inspectors Report, this application encompassed both the north and south quarry areas. The application refers to a site area of 19.8HA and an excavation area of 10HA.



MKO, Tuam Road, Galway, Ireland. H91 VW84

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McCarthy Keville O'Sullivan Ltd. t/a MKO. Registered in Ireland No. 462657. VAT No. IE9693052R.

For the purposes of this Section 5 application, it is important to note that this planning application was made in respect of the entire quarry and the Inspectors report readily identifies this. For ease of reference, the extent of the quarry area is identified below.



Figure 1: Quarry Extent

Application for Registration under Section 261

Section 261 of the Planning and Development Act 2000, which deals with the Control of Quarries, came into effect on the 28th April 2004. Section 261 introduced a once off system of registration for all quarries, except those for which planning permission was granted in the previous 5 years. In 2006 the subject quarry was registered under Section 261 of the Planning and Development Act as set out above. The total site area at that time was stated to be 33.9ha with an extraction area of 10.6ha. This registration related to the entire quarry.

Section 261A

The Planning & Development [Amendment] Act 2010 contained significant changes relating to quarry developments, particularly in relation to applications for retention permission and to planning enforcement. Under section 75 of the new Act (which inserts a new section 261A into the 2000 Act) each planning authority must determine which quarries in its administrative area, would, having regard to the dates of implementation of the EIA Directive and the Habitats Directive, respectively, have required an environmental impact assessment, a determination in relation to environmental impact assessment, or an appropriate assessment in relation to possible effects on the integrity of a European site, and which have not had such assessment/determination carried out.

In 2012, pursuant to section 261a as set out above, Donegal County Council notified the operator of the McCaffrey Quarry of their intention to issue an Enforcement Notice requiring the cessation of the operation of the quarry. This determination was undertaken on the basis that the quarry had



commenced operation on or after 1st October 1964 and no planning permission had been granted in respect of the quarry.

The applicants made an application for review under section 261A to An Bord Pleanála (ABP) following the Planning Authority's determination. This review and its assessment by ABP relates to the entire quarry operation including both the north and southern quarry areas. Section 2 of the Inspectors report includes a description of the quarry subject to the review. This clearly relates to the entire quarry area.

Section 12 of the Inspectors Report is also relevant and the following is an extract from this section:

"it is the submission of the quarry owner that notwithstanding that the entire area was registered under S261, the northern quarry (quarry B) is a separate development unit and should not be associated with the main quarry (quarry A).

I do not accept this argument. It is a statement of fact that the entire area - Quarry A, Band C - were registered as a single quarry under section 261. In addition, the planning application for development at the quarry (PL05. 1311 03) included the northern quarry within the development boundary, as have several other submissions from the quarry owner during the lengthy planning history. On the date of my site inspections, material was being excavated in the northern quarry and brought to the main quarry for processing.

It is my reasoned opinion that each of the three quarry areas are intrinsically linked, by ownership, by operation (with the exception of area C which has not been developed) and by custom. I am satisfied that the quarry is a single operation and should be assessed as one."

The Board's direction on this review application includes a note as follows:

"Having regard to the nature and extent of operations, landownership, and the extent of lands indicated during the S261 registration process, the board considered that it would be appropriate to consider the entirety of the site as a single entity."

On 5th June 2013 the Board's Inspector found that the quarry had commenced operation before 1st October 1964 and therefore Donegal County Council's decision to issue an enforcement notice was incorrect and should be set aside. This opened the way for the quarry operator to apply to An Bord Pleanála for Substitute Consent.

Substitute Consent Application

In December 2014 the quarry operator applied to An Bord Pleanála for substitute consent under Section 261A of the Planning & Development Act 2000. This substitute consent application related to the northern quarry area only (Area B).

On 9th January 2015 An Bord Pleanála wrote to the quarry operator stating:

'Having regard to the report by Donegal County Council on the 261A process and the Inspector's Report, Board Direction and Order in relation to QT/0128, you are requested to submit the rationale behind your submission of an area of 4.4 hectares for substitute consent and the exclusion of the remainder of the estimated 10.35 hectares [2010 aerial photograph] extracted/working area.'



The applicant's agent responded by way of a letter on 19th January 2015. This response, in our view, relies entirely on an informal communication between Donegal County Council and An Bord Pleanála which was interpreted such that the southern quarry area was deemed to not require substitute consent.

On 29th June 2015 An Bord Pleanála wrote to the quarry operator requesting the following be submitted:

'A revised application including a revised remedial Environmental Impact Statement and revised remedial Natura Impact Statement to incorporate sufficient information to enable the Board to complete an environmental impact assessment and appropriate assessment in relation to the overall quarry development (i.e. North Quarry, South Quarry and quarried lands to the east of the public road and west of the N15'.

On the 15th December 2015 the quarry operator submitted, to An Bord Pleanála, a revised remedial Environmental Impact Statement (rEIS) and a revised remedial Natura Impact Statement (rNIS). The red line boundary of the substitute consent application site remained unchanged still only encompassing the northern quarry area (Area B) however the revised remedial Natura Impact Statement and revised remedial Environmental Impact Statement which formed the 'revised application' had an extended 'study area' which included the southern quarry area (Area A).

By the applicant's own admission in Section 1.3 of the Revised Remedial EIS, the northern quarry area has supplied stone which is processed in the southern quarry area. While the northern quarry area is not being operated at present, with the exception of disposal of waste material from the southern quarry area, the overall operation involves processing a stockpile of stone extracted from the northern quarry area during a period of intense activity from approx. 2012 when, we understand, an estimated 250,000 tonnes of stone was extracted and stockpiled in the southern quarry area. Both the northern and southern quarry areas therefore form the overall quarry development and operation.

On 23rd May 2018 An Bord Pleanála issued their decision on this case dismissing the application for the following reason:

'The Board noted that the application for substitute consent is required to be made in relation to the development in respect of which the planning authority has made a determination under Section 261A(2)(a) of the Planning and Development Act, 2000, as amended. The determination affecting the subject quarry related to the entirety of the quarry (planning authority reference number EUQY01).

A review undertaken by An Bord Pleanála of the planning authority's order (An Bord Pleanála reference number 05E.QV.0128) also referred to the entirety of the quarry.

The application for substitute consent initially received by An Bord Pleanála did not relate to the entire quarry and the Board, by means of a notice under Section 132 of the Planning and Development Act, 2000 sought on two occasions to give the applicant an opportunity to address the deficiencies in the application, specifically to ensure the application and the supporting documentation extended to the entire site (as per the planning authority's order) and not one element only.

Notwithstanding these communications and the responses received, the Board considered that the identified deficiencies have not been resolved and that consequently the application in respect of the



quarry does not comply with the requirements of Section 261A(14) of the Planning and Development Act, 2000, as amended. The Board is precluded under sections 177K(1) and 261a(14) of the Planning and Development Act, 2000, as amended, from making a decision in these circumstances to grant or refuse substitute consent and, accordingly the Board decided to dismiss the application pursuant to Section 133 of the Planning and Development Act, 2000.'



Figure 2: Quarry Areas

Section 37L Application

Section 37L of the Planning and Development Act 2000 (as amended) allows for applications to further develop existing quarries, which are currently the subject of a substitute consent application under Section 261A of the Act. The legislation states-

'Where an application for substitute consent is or was required to be made by the owner or operator of a quarry pursuant to subsection {7}, {10} or {12} of section

261A. the owner or operator may apply for permission to further develop that quarry in accordance with this section.'

The quarry operator made a planning application to An Bord Pleanála under Section 37L of the Planning & Development Act, consisting of-

'Quarrying of 6.2 hectares down to a level of 85m00 and will be subject to extraction primarily by drilling and blasting means and all associated ancillary facilities/works, screening berms and landscaping over a 35 year period.'

An extract from the Environmental Impact Assessment [Non-Technical Summary], which accompanies the planning application, explains the nature of the development in further detail-



'It is proposed to extend the quarry void of the existing main quarry into the application area where suitable reserves have been proven to exist. In order for extraction to take place, overburden will be removed from the surface of the rock and used to construct berms around the boundary of the quarry. These will be shaped and planted with native trees and shrubs to provide screening. Rock will be extracted from the application site using conventional blasting methods which will fragment the rock into a manageable size. This will be undertaken on an as required basis by competent contractors. The blasted material will be stockpiled on the quarry floor and transported to the manufacturing area of the main quarry for processing at the fixed crushing and screening plant.'

The 'existing main quarry' referred to in the excerpt above is the Southern Quarry Area referred to throughout this submission i.e. (Area A - the area which has no planning permission and was omitted from the red line boundary of the substitute consent application. On 23rd May 2017 An Bord Pleanála decided to refuse planning permission for the extension of the quarry for the following reason:

'The Board considered that the Environmental Impact Statement submitted with the application is deficient on the grounds that the document failed to adequately quantify the volume of material to be extracted on site and the consequential impact that this would have on the processing and manufacturing of materials within the main quarry area. As a result the Board is unable to adequately identify and assess the impacts of the proposed extension in terms of traffic, noise and dust generation arising from the proposed extension in isolation and in combination with existing processing and manufacturing activities on site. The Board is, therefore, not satisfied the proposed development, as a consequence of such impacts, would not seriously injure the residential amenities of neighbouring and nearby properties and depreciate the value of such property. It is therefore considered that the proposed development would be contrary to the proper planning and sustainable development of the area.'

Current Situation & Section 5 Declaration

The Planning and Development Act 2000 (as amended) defines a quarry and quarrying as follows:

"quarry" means an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or bore-hole or a well and bore-hole combined, and shall be deemed to include—

(i) any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on;

(ii) any place occupied by the owner of a quarry and used for depositing refuse from it but any place so used in connection with two or more quarries, and occupied by the owner of one of them, or by the owners of any two or more in common, shall be deemed to form part of such one of those quarries as the Minister may direct;

(iii) any line or siding (not being part of a railway) serving a quarry but, if serving two or more quarries shall be deemed to form part of such one of them as the Minister may direct;



(iv) a conveyor or aerial ropeway provided for the removal from a quarry of minerals or refuse.

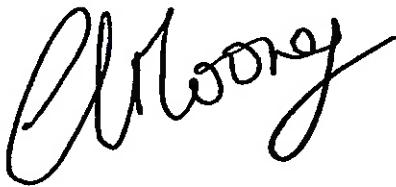
It should be noted that quarrying activities as specified above are ongoing at the P McCaffrey & Sons Ltd Quarry, Ballymagroarty, Ballintra, Co. Donegal in the absence of any planning permission. Therefore it is our contention that the entire quarry operation on this property is unauthorised.

The purpose of this Section 5 Declaration Application is to establish Donegal County Council's position on the following:

'Whether the ongoing quarrying and ancillary activities at P McCaffrey & Sons Ltd Quarry, Ballymagroarty, Ballintra, Co. Donegal is or is not development requiring planning permission from Donegal County Council and is or is not exempted development'.

Enclosed with this Section 5 Declaration Application are the appropriate application form and the statutory fee.

I trust that the above and enclosed is in order. Should you require any further information in respect of this matter please do not hesitate to contact this office.



Anne Mooney

Planner

McCarthy Keville O'Sullivan Ltd.





Comhairle Chontae Dhún na nGall
Donegal County Council

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

REMITTANCE ADVICE / FAISNÉIS ÍOCAÍOCHTA

AN BORD PLEANALA
64 MALBOROUGH STREET
DUBLIN 1
Ireland

Cheque No. 214062
Supp ID / Uimh. Aitheantais 393548
Date / Dáta 11/03/2022
Page / Leathanach 1/1

Your Ref/ Bhur dTagairt	Inv Date/ Dáta Sonraisc	Our Ref/ Ár dTagairt	AMOUNT/ SUIM EUR	Payable Iníoctha EUR
Section 5 Referral	11/03/2022	30944212	110.00	110.00
PAGE TOTAL / IOMLÁN AN LEATHANAIGH			EUR 110.00	110.00
GRAND TOTAL / MÓRIOMLÁN			EUR 110.00	110.00

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