

FB. →
28/04

S. 37

File With B'onnell

SECTION 131 FORM

Appeal NO: AB1-313030-22

Defer Re O/H ☐

TO: SEO

Having considered the contents of the submission received 14/04/2022 from

Rearse O'Gorman I recommend that section 131 of the Planning and Development Act, 2000

~~be~~ not be invoked at this stage for the following reason(s): no new material
issues raised

E.O.: Aisling Kelly

Date: 24/04/2022

To EO: _____

Section 131 not to be invoked at this stage. ☐

Section 131 to be invoked – allow 2/4 weeks for reply. ☐

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached submission

to: _____ Task No: _____

Allow 2/3/4weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File With _____

CORRESPONDENCE FORMAppeal No: ABP-313030-22M c LawlorPlease treat correspondence received on 14/04/2022 as follows:

1. Update database with new agent for Applicant/Appellant _____

2. Acknowledge with BP 21203. Keep copy of Board's Letter ☐

1. RETURN TO SENDER with BP _____

2. Keep Envelope: ☐3. Keep Copy of Board's letter ☐**Amendments/Comments**

Rearse o' Gorman response to Section
131 notice
(326817 Task) / JMS

4. Attach to file(a) R/S ☐ (d) Screening ☐(b) GIS Processing ☐ (e) Inspectorate ☐(c) Processing ☐**RETURN TO EO** ☐Plans Date Stamped ☐Date Stamped Filled in ☐EO: Aisling KellyAA: Maolán O'SullivanDate: 24/04/2023Date: 27/04/2023

Aisling Reilly

From: Appeals2
Sent: Monday 17 April 2023 14:19
To: Aisling Reilly
Subject: FW: ABP Ref: 313030-22 - Section 5 Referral
Attachments: ABP Ref Response - 210201 - 2023.04.14 - F-compressed.pdf

From: Bord <bord@pleanala.ie>
Sent: Monday, April 17, 2023 9:53 AM
To: Appeals2 <appeals@pleanala.ie>
Subject: FW: ABP Ref: 313030-22 - Section 5 Referral

From: Sean McCarthy <smccarthy@mkoireland.ie>
Sent: Friday, April 14, 2023 4:16 PM
To: Bord <bord@pleanala.ie>
Subject: ABP Ref: 313030-22 - Section 5 Referral

Dear Sir/Madam,

I refer to your letter dated 29/03/23 in relation to Case Ref: 313030-22 inviting our client Pearse O'Gorman to make a submission in respect of a Section 5 Referral relating to McCaffrey & Sons Limited Quarry, Ballintra, Co. Donegal.

Please see attached response. If you require any further information, please do not hesitate to get in touch.

Kind regards,
Sean

Sean McCarthy
Project Director

MKO

Tuam Road, Galway, H91 VW84

Offices in Galway and Dublin
mkoireland.ie | +353 (0)91 735 611



McCarthy Keville O'Sullivan Ltd. T/A MKO Registered in Ireland No. 482657 VAT No. IE9893052R

This email and any attached files or emails transmitted with it are confidential and intended solely for the use of the individual(s) or entity to whom it is addressed. If the reader is not a representative of the intended recipient(s), any review, dissemination or copying of this message or the information it contains is prohibited. If you have received this email in error please notify the sender of the email and delete the email. MKO does not represent or warrant that any attachment hereto is free from computer viruses or other defects. The opinions expressed in this e-mail and any attachments may be those of the author and are not necessarily those of MKO.

21



An Bord Pleanála
64 Marlborough Street
Dublin 1
D01V902

Our ref: 210201
Your ref: ABP313030-
22

14th April 2023

Re: Section 5 Referral – P.McCaffrey & Sons Limited Quarry, Ballymagroarty, Ballintra, Co. Donegal

Dear Sir/Madam,

We refer to the Board's correspondence dated 29th March 2023 inviting our client, Pearse O'Gorman, Ballymagroarty, Ballintra, Co. Donegal, to respond to a submission received by the Board prepared by Earth Science Partnership Ltd on behalf of P.McCaffrey & Sons Limited Quarry. Our client welcomes the opportunity to provide a response and requests that the Board note the matters set out below.

In the first instance, we would refer the Board to the extensive quarrying activity that has occurred on the northern portion of the site beginning c.2012 (approx. 250,000 tonnes of stone extracted and stockpiled on the southern quarry area) as well as the extensive quarrying activity that took place on the southern quarry in the period 2013-2022 and which is documented in the photographic record that is appended to this submission. It is considered that the Board should be clear, when considering the matters set out in the Section 5 application, that the quarry operators have been involved in large scale and intensive quarry activities on the site almost continuously for the past 25 years+. It should also be noted by the Board that the processing of material at the quarry is ongoing as of the present day. MKO understand that raw material is being sourced locally and transported to the quarry where it is processed. It is against this backdrop that the pertinent matters associated with the Section 5 referral should be considered.

A key point raised in the Earth Science Ltd submission is the suggestion, based on our interpretation, that the quarry areas were developed prior to 1990 and 1997 i.e., prior to the dates by which EIA and AA may have been required¹ and that substitute consent was only required in respect of areas that were subsequently '*disturbed*'. The Earth Science Ltd submission notes the following (Page 4):

¹ Section 261(2)(a) Planning & Development Act 2000 (as amended)

'It is abundantly clear from OSI aerial photographs attached to the Inspectors' Report that the quarry areas were developed prior to designated dates and on the face of this evidence and in accordance with Section 261a Guidelines, should not have been required to apply for substitute consent'.

The summary above and associated extract appear to be the basis on which the quarry operator concluded what part of the quarry required substitute consent and what part did not. The quarry operator appears to concede that Area B was 'disturbed' after February 1990 and therefore this area requires substitute consent. Conversely, we understand that the quarry operator is contending that Area A was not 'disturbed' hence it's omission from the substitute consent planning application.

The question here, would appear to be, whether the Southern Quarry Area was the subject of quarrying activity post February 1990 and therefore whether Remedial Environmental Impact Assessment and/or Remedial Appropriate Assessment was required. We would respectfully suggest that the interpretation set out by the quarry operator's agent is flawed. Area A was/is an integral part of the overall quarry where all material was/is processed. The definition of quarry as set out in the Planning and Development Act 2000 (as amended) includes not just the extraction areas but also:

'any place on the surface or surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of minerals, including the breaking, crushing, grinding, screening washing or dressing of such minerals'

Based on our interpretation of the definition set out in the Act, quarrying activity has been occurring on Area A continuously and is still occurring as of the present day. There is no reasonable basis to conclude that Area A should have been omitted from the extent of the substitute consent application.

This artificial distinction drawn by the quarry operators, and as summarised above, has already been dealt with by An Bord Pleanála in correspondence with the quarry operator as part of the Substitute Consent Planning application. The Board noted the following in correspondence to the quarry operator post receipt of the Substitute Planning Application –

'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 Act, 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.'

It is noted that Earth Science Ltd. make reference to the EIS undertaken as part of the 2001 planning application as well as a suite of environmental management systems that are allegedly in place at the quarry as well as the securing of a water discharge license. The quarry operator's agent goes onto conclude that, based on the submission of an Annual Environmental Report to DCC annually since 2011, this is 'proof that the Environmental Legislation was considered and complied with'. MKO would take the view that the implementation of environmental management systems and monitoring etc. has absolutely no bearing on the central point that we are making on behalf of our client and that is pertinent in respect of the Section 5 referral before the Board:

- The entirety of the quarry constitutes unauthorised development and the ongoing processing of raw material at the quarry is also unauthorised development.

The entirety of the quarry required retrospective planning permission in the form of substitute consent as a result of the commencement of Section 261a of the Planning and Development Act 2000 (as amended) and associated timelines/procedures. No substitute consent permission was ever secured in

respect of the quarry, and it has constituted unauthorised development since the adoption of Section 261a. Notwithstanding the unauthorised development status of the quarry and the dismissal of the substitute consent planning application by the Board in May 2017, the quarry operator has engaged in an ongoing and extensive program of extraction and processing of material in the intervening years (i.e. see photographic record of Area A extraction 2013-2019) and continues to process material as of the present day. These activities do not have the benefit of planning permission and constitute unauthorised development.

We would respectfully request that the Board confirm Donegal County Council's previous Section 5 declarations in respect of this matter which stated that the ongoing quarrying activity at P.McCaffrey & Sons Limited Quarry, Ballymagroarty, Ballintra, Co. Donegal is development and is not exempted development.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'SM', is written above a horizontal line.

Sean McCarthy BSc. (Hons) MURP MRTPI
Project Director (Planning)
McCarthy Keville O'Sullivan Ltd.

Encl.



October 2013 – materials excavated in the north quarry stockpiled in the south quarry



October 2013 - materials excavated in the north quarry stockpiled in the south quarry



October 2015 – stockpiled materials exhausted and quarry operator commences quarrying on floor of south quarry



October 2015 – quarry operator commences quarrying in the floor of the south quarry



November 2015 – quarrying in south quarry



November 2015 – quarrying in south quarry



November 2015



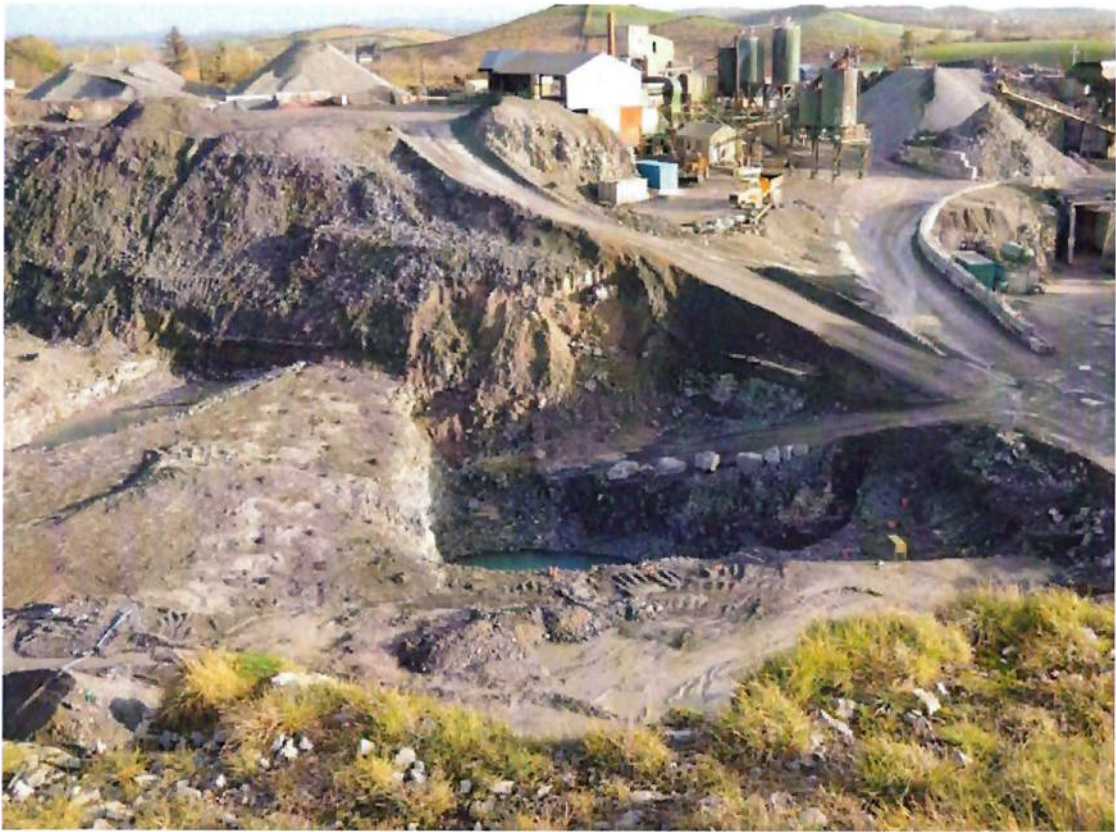
December 2015



December 2015



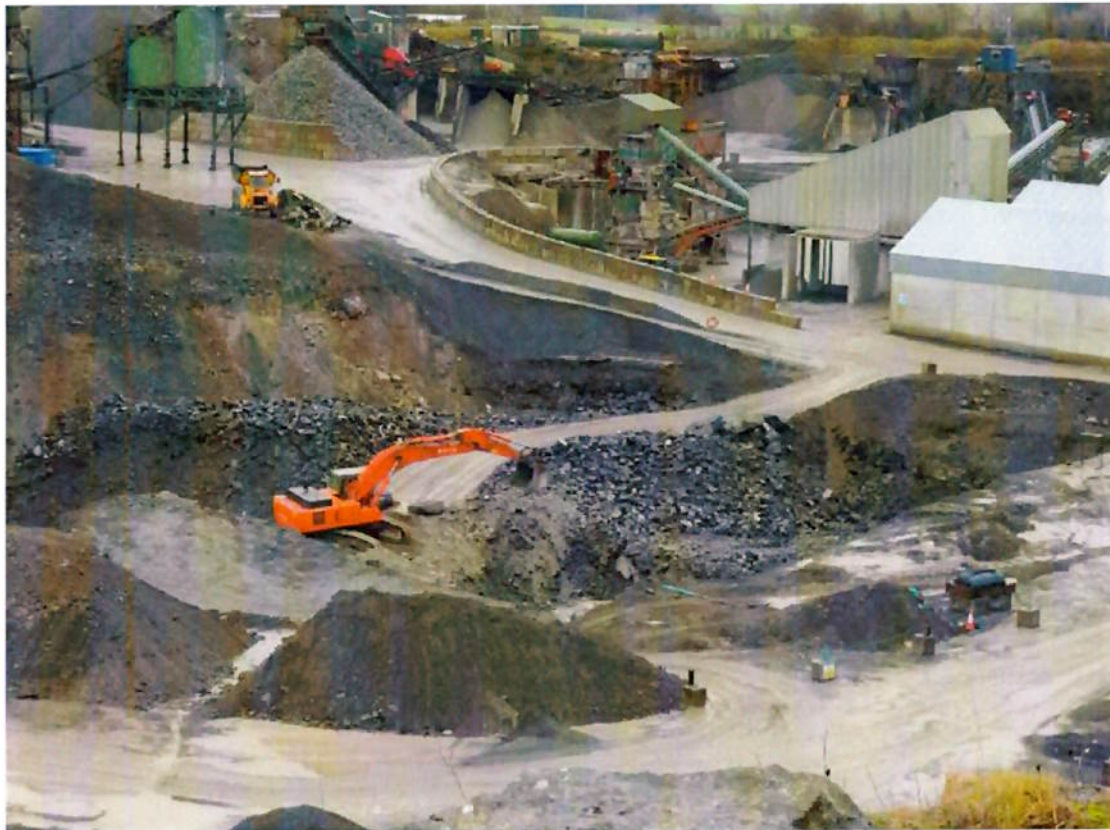
December 2015



December 2015



December 2015



January 2016



January 2016



March 2016



April 2016



April 2016



May 2016



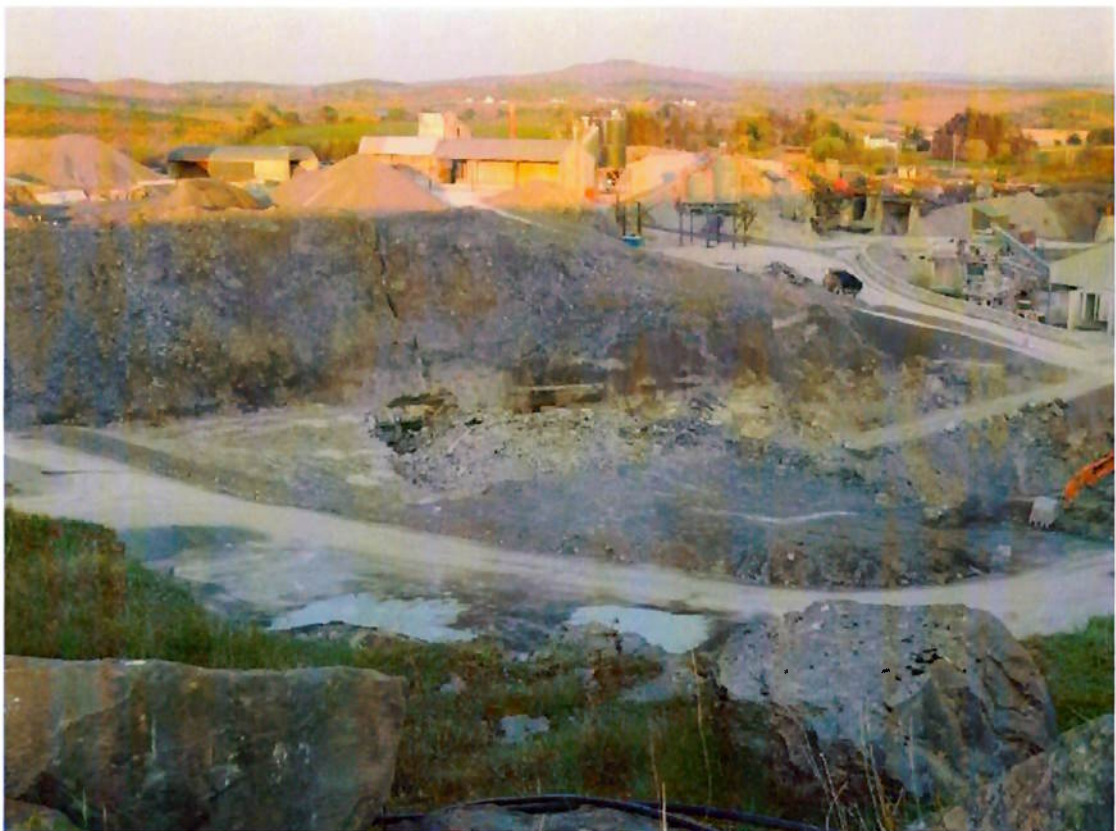
8 May 2016



8 May 2016



11 May 2016



11 May 2016



5 June 2016



19 June 2016



12 July 2016



1 August 2016



7 August 2016



7 August 2016



7 August 2016



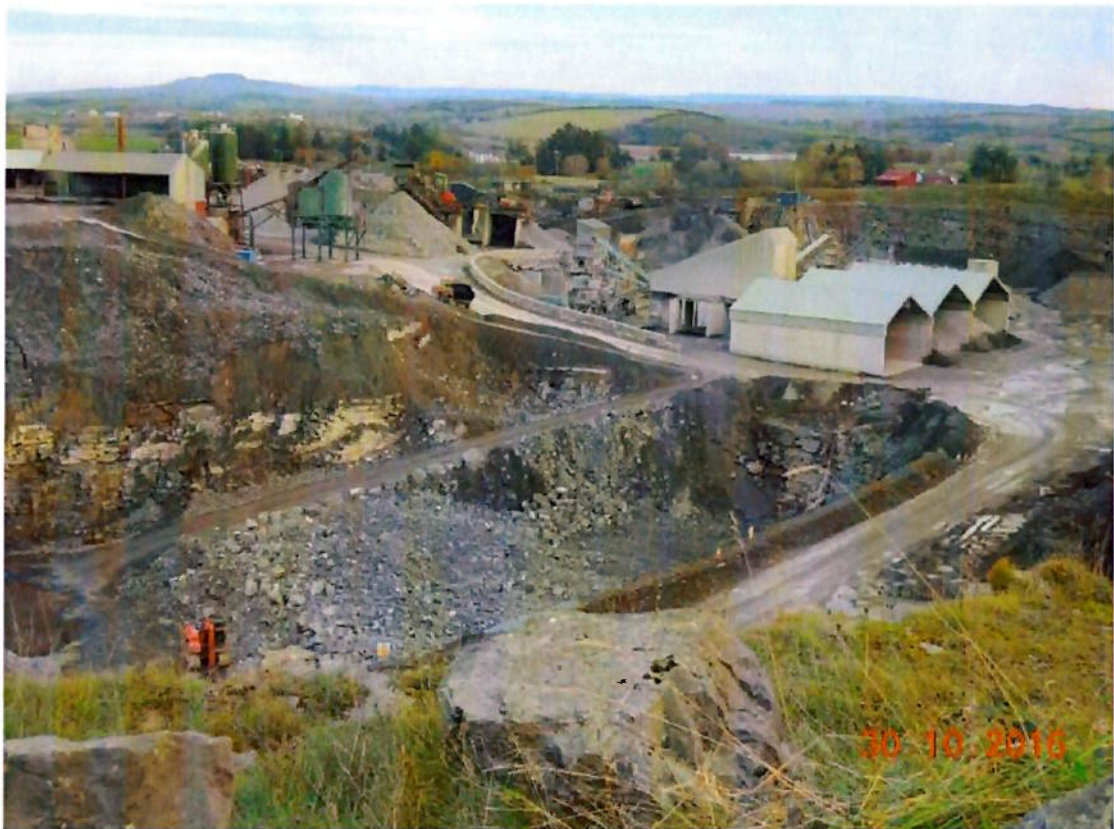
4 September 2016



18 September 2016



25 September 2016



30 October 2016



2 January 2017



2 January 2017



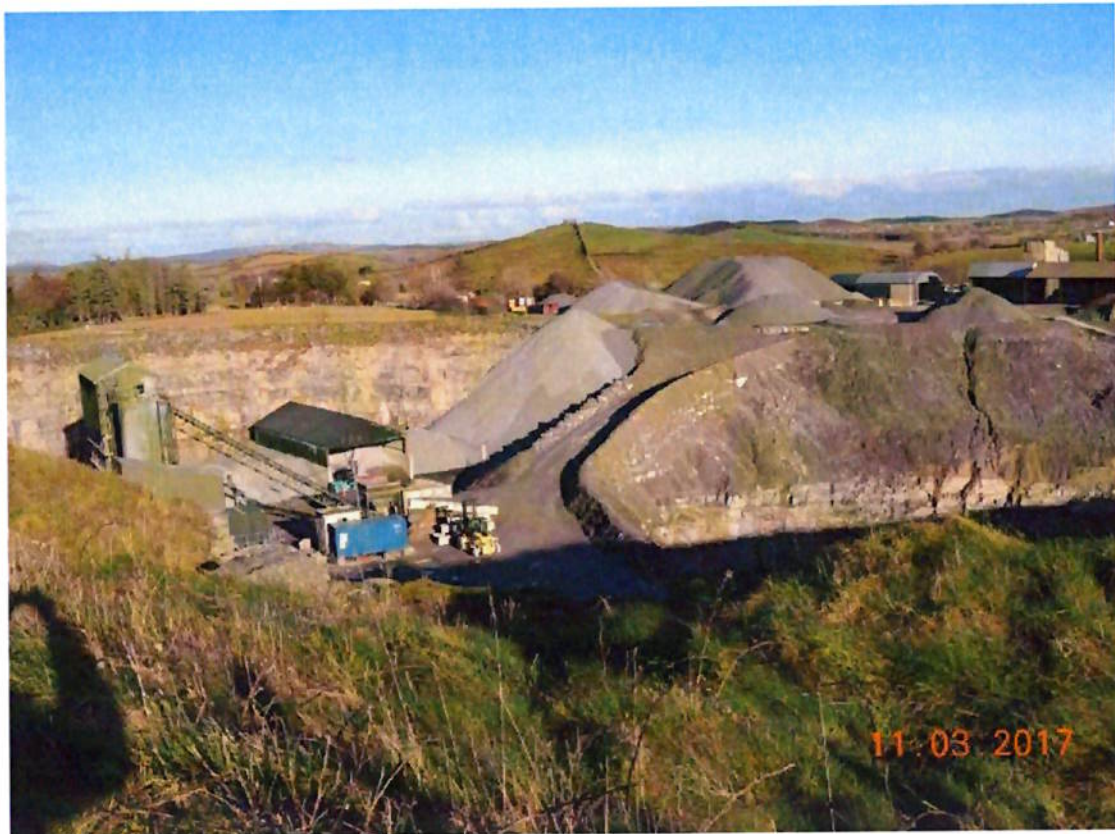
22 January 2017



11 March 2017



11 March 2017



11 March 2017



10 June 2017



10 June 2017



10 June 2017



10 June 2017



9 July 2017



9 July 2017



19 November 2017



19 November 2017



19 November 2017



19 November 2017



29 December 2017



29 December 2017



29 December 2017



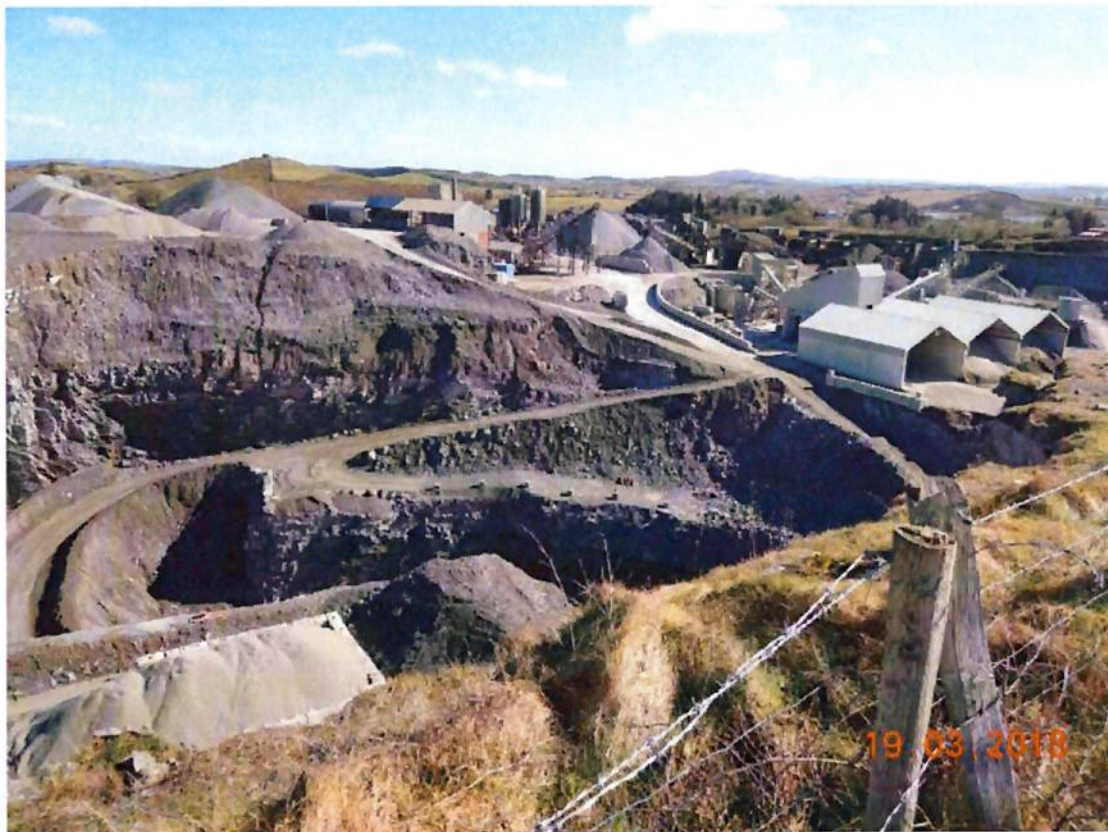
11 March 2018



19 March 2018



19 March 2018



19 March 2018



13 May 2018



13 May 2018



10 June 2018



10 June 2018



February 2019



February 2019