

An
Bord
Pleanála

Inspector's Report ABP-313189-22

Question	Whether the continuation of quarrying is or is not development or is or is not exempted development.
Location	Meenderrygamph, Gweedore, Co. Donegal.
Referral	
Referred by	Donegal County Council.
Owner/ Occupier	Eugene Ferry and Eamon Sweeney.
Observer(s)	None.
Date of Site Inspection	15 th September 2022
Inspector	Deirdre MacGabhann

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1.0 Site Location and Description

- 1.1. The c.5ha appeal site lies to the west of Gweedore, in the townland of Meenderrygamph, County Donegal. It lies immediately north of the R258 the regional road between Bunbeg and Gweedore. Access to the site is direct from the regional road via an unpaved internal access road.
- 1.2. The site is broadly rectangular in shape, with a dwelling to the south west of the site alongside the public road (outside the site). Approximately two thirds of the site (c.3.5ha), extending from the public road has been worked with sand and stone removed from areas of the site. An electricity line crosses through the site in an east west direction approximately 90m north of the public road. At the time of site inspection there was a digger on site, but no working of the site. Surface water arising on the site, and to the north of the site, is managed by constructed drainage channels within the site.
- 1.3. Immediately south of the public road the Clady river, c.150m from the quarry, is designated as Fawnboy Bog/Lough Nacung pNHA and SAC (shared site code 000140 – attachment 1). Clady River discharges, downstream of the site, into Gweedore River a designated SAC, Gweedore Bay and Islands SAC (site code 001141).

2.0 The Question

- 2.1. The question before the Board, referred to the Board by Donegal County Council, is whether:
 - i. The continuation of existing quarry operation including extraction, processing and sale of quarried material, is operating in accordance with its pre-63 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 (c.5h) is in accordance with its pre-63 authorisation and is or is not development and is or is not exempted development.

3.0 Planning History

3.1. The following history is relevant to the subject site:

- PA ref. 0830106 – Application in respect of subject site by Eugene Ferry for retention permission for (a) entrance and access road to existing quarry and (b) excavation works. Withdrawn 19th March 2008.
- PA ref. 0830501 – Application in respect of subject site by Eugene Ferry for retention permission for (a) entrance and access road to existing quarry and (b) extension area of existing registered quarry. Refused September 2008 on grounds including level of unauthorised works on site, impact on residential amenities, health hazard and impact on landscape character.

4.0 The Referral

4.1. Referrer's Case

4.1.1. The referral is made by Donegal County Council. Grounds of referral are:

- The development is being investigated as an unauthorised development under PA ref. UD20248.
- The quarry has no extant planning history but was registered in 2006 under Section 261 of the Planning and Development Act 2000 (as amended) (the Act), ref. Euqy 85.
- The submitted application did not identify a registered quarry area or extraction area. Extracted material was identified as stone and gravel, with no processing carried out on site.
- It is accepted by all parties that quarrying commenced before the appointed day, 1st October 1964, and therefore prior to the introduction of the EIA Directive (1st February 1990) and Habitats Directive (26th February 1997).
- The PA issued a section 261(4)(a) Notice of Determination under the Act on the 22nd August 2012 (Appendix A). The Board confirmed that no review of the Notice had been sought (5th October 2012). [The notice states that development, intensification of quarry operations, was carried out after 1st

February 1990 which would have required an EIA or determination in respect of EIA which was not carried out, and that enforcement action would be taken to require cessation of operations].

- The northern part of the subject site, north of the overhead power lines, was pre-63 authorised (currently abandoned and partially regenerated). Quarrying which has subsequently been carried out in a southeast/eastern direction between 2004 and 2010, was not pre-63 authorised.
- Under UD 14108, an Enforcement Notice was served on the owners (18th June 2014) requiring that all unauthorised quarrying and ancillary activities cease and plant and equipment be removed (Appendix C). No further action was taken and the Enforcement Notice was withdrawn in 2020 and the case subsequently closed (as part of current enforcement investigation).
- Under UD20248, an Enforcement Notice was served on the owners (8th March 2021), under section 154 of the Act, requiring the cessation of the use of the lands for quarrying. No action taken to comply with Notice and case currently before the courts.
- PA acknowledge case law that pre-63 authorisation of quarries is based on extent of core body or landholding under the control of the landowner before the appointed day. However, if intensification/expansion occurred post 1st February 1990 that would have required EIA or determination in respect of EIA, then a quarry cannot rely solely on pre-63 authorisation.
- PA have a no. of section 5 cases with the Board including APB-309662-21, where board concluded that the continuation of quarrying including extraction processing and sale of material of a pre-63 existing quarry is development and is exempted development.
- PA acknowledge this outcome but consider the current case is materially different:
 - Current area of active extraction is c.3.5ha, while the entire landholding is c.5ha resulting in a material difference in the morphology of the quarrying boundaries, its overall scale and footprint, therefore requiring EIA or determination in respect of EIA,

- The quarry is located 0.15km north of the closest Natura 2000 site, Fawnboy Bog/Lough Nacung SAC, which flows into Gweedore Bay and Islands SAC, therefore requiring consideration of AA or screening for AA.
- There are no other applicable exemptions and the continuation of quarrying without the benefit of planning permission comprises development and is not exempted development.

5.0 Responses

5.1. The owner of the quarry makes the following response to the referral:

- Referral history. Owner made a Referral to the board under ABP-312686-22 to provide clarity for operator to continue to operate in the area specifically covered by the pre-63 operation(s). Referral was deemed invalid as no decision made by the PA.
- Exempted development. Quarry was registered under section 261 and is accepted to be pre-63. Evidence submitted to support this. [Owner's submission refers to a series of aerial images attached to submission. These are not on file]. The work that is taking place within the confines of the appended map (Site Location Map) could have been envisaged at the time (1963) and is exempted development. Extraction area has not increased or intensified.
- Quarry operation. Main products from the quarry are sand, stone and gravel. Little to no processing carried out (extraction, crushing of larger rocks, grading). No more than 4 persons working on site at one time. Materials used for concrete, mortar, for plastering or road making. Facility is small scale and has not intensified since 1963 and operator intends to keep the operation small scale into the future.
- Quarry/extraction area. Actual landholding is 4.93ha. Area of existing gravel pit is 2.88ha (Site Location Map appended). This is the pre-63 area and is the area referred to by the PA to the north of the overhead power lines.

- Footprint. The area which is currently being developed through extraction of rock is the same area as was in existence prior to 1963 (aerial images again referred to but not on file).
- Material change of use. The development and means of extraction (described above) are the same as the pre-63 operation with the addition of modern machines.
- Abandonment. The quarry has been in place and operational since the early 1940s.
- EIA. The site is 2.88ha and below the threshold for EIA. If the owner wishes to increase the extraction area or alter the operation in any way he is aware he must apply for permission.

6.0 Statutory Provisions

6.1. Planning and Development Act, 2000

6.1.1. In Section 2 of the Act, as amended, the following definitions apply:

- “quarry” means *‘an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals ... or products of minerals and shall be deemed to include*
 - 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;*
 - any place occupied by the owner of a quarry and used for depositing refuse from it ..’*
- Works - *‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.’*

6.2. Section 3 of the Act defines development as '*except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land*'.

6.3. **Planning and Development Regulations, 2001**

6.3.1. Exempted development provisions are set out in the Planning and Development Regulations, 2001 (as amended). No exemptions are provided in respect of quarrying operations.

7.0 **Assessment**

7.1. **Is or is not development**

7.2. As stated above, development is defined to include any works on, in, over or under land and the making of a material change in use of land. Works specifically include the acts of excavation and quarrying is defined as excavations for the purpose of getting minerals and use of surrounding or adjacent land for ancillary purposes.

7.3. Early OSi maps indicate agricultural use of the subject site. Inspection of the site, and material on file, indicates that c.2/3 of the c.5ha site (see attachment no. 8) has been subject to quarrying, with the excavation of lands and use of adjoining lands for ancillary purposes (e.g. storage, creation of drainage channels, internal access roads).

7.4. Having regard to the foregoing, extraction of sand and gravel from the subject site comprises development.

7.5. **Is or is not exempted development**

7.6. The subject quarry has been registered under the Planning Act and has been accepted by the PA as a quarry which has pre-63 status. There is no map or plan on file, submitted by either the PA or owner, indicating the quarry lands that were registered under section 261A or the lands from which extraction was taking place.

7.7. Notwithstanding this, OSI historic mapping and aerial photography of the site indicate the following operational history:

- 1829-41 – Possible evidence of quarrying to the south west of the site (in location of adjacent dwelling). Subject site in agricultural use (attachment no. 10).
- 1995 – Working potentially taking place on the northern side of the site (attachment no. 3).
- 1999 - 2003 – Worked area on northern side of site recolonised (attachment no. 4).
- 2004 - 2006 – As above (attachment no. 5).
- 2005 - 2012 – Working has extended south and an access road from the regional road has been introduced (attachment no. 6).
- 2011 - 2013 – Working continues to the south of the subject site (attachment no. 7).
- 2013 – 2018 – Working continues on the northern side and southern side of the site (attachment no. 8).

7.8. It is evident from the foregoing that prior to c.2005 the extraction area associated with quarry was confined to the northern area of the site i.e. to an area of c.1.5ha (see attachment no. 9). This area appears to be the 'core body' of the site with the extraction area and working area remaining largely unchanged over at least the period 1995-c.2005. In coming to this conclusion, it is evident from aerial photography that lands outside of the c.1.5ha have not been subject to extraction up to c.2005.

7.9. Further, I would infer that this area (c.1.5ha) represents the pre-63 extraction area and I do not consider that the 'step change' in scale of operations, increase in extraction area, rate of extraction and access from the regional road could have been reasonably envisaged in 1963. This point is accepted by the owner, who in his submission states that the northern part of the site is the pre-63 area i.e. the area north of the overhead power lines (see Site Location Map, April 2022). However, I note that the 2.88ha referred to by the owner in the Site Location Map includes an access road from the regional road, and land to the north of the extraction area which, from the evidence available, has never been worked. I do not except that this larger area comprises the pre-63 quarried lands, but that instead a smaller area

comprising approximately the middle third of the site, north of the electricity line, with an area of c.1.5ha represents the pre-63 lands (attachment no. 9 also shown as the boundary of the extraction area in the owner's Site Location Map, April 2022). Extraction and sale of quarried material from these lands would be exempted development by virtue of its pre-63 status.

- 7.10. Consistent with the PAs determination under section 261A(4)(a), from c.2005 on, it would appear that extraction has progressed substantially to the south of the pre-63 extraction area and a new access to the site has been constructed from the public road. These works, comprising development, clearly fall outside of the established extraction area and access to it that was associated with the quarry up to c.2005, and do not benefit from the pre-63 status of the quarry and are not exempted development.
- 7.11. In addition to the foregoing, the extension and intensification of quarrying since c.2005 has been carried out subsequent to the EIA Directive (1990) and Habitats Directive (1997). The PA determined in 2012 that intensification of quarrying at the site since 1990 would have required EIA or a determination in respect of EIA.
- 7.12. Given the size of the quarry post c.2005, potential for effects on the environment (e.g. by way of noise, dust, water pollution and landscape effects), its location adjoining other working quarries, proximity to nearby residential development and a European site (Fawnboy Bog/Lough Nacung SAC), this conclusion in respect of EIA is not unreasonable and would of itself preclude reliance on pre-63 status of the quarry for works outside of the core area. Further, given the proximity of the site to a European site and likely drainage from the site towards the River Clady, AA or screening for AA is also likely to be required for any works outside of the pre-63.

8.0 Recommendation

- 8.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether:

- i. The continuation of existing quarry operation including extraction and sale of quarried material, is operating in accordance with its pre-

63 authorisation and is or is not development and is or is not exempted development, and

- ii. The continuation of quarrying at the extremity of the landholding (c.5ha) is in accordance with its pre-63 authorisation and is or is not development and is or is not exempted development.

AND WHEREAS Donegal County Council requested a declaration on this question under the provisions of section 5(4) of the Planning and Development Act 2000 (as amended) on the 1st day of April 2022.

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2 and 3 of the Planning and Development Act, 2000, as amended,
- (b) The planning authority's determination under section 261A(4)(a),
- (c) The nature and extent of the original extraction area and the scale of the activities undertaken at the quarry site post c.2005, including extraction to the south of the original extraction area and construction of direct access to the regional road, and
- (d) The pattern of development in the area which includes an active quarries adjacent to the site and Fawnboy Bog/Lough Nacung SAC to the south of the site.


AND WHEREAS An Bord Pleanála has concluded that:

- (i) The continuation of existing quarry operation including extraction and sale of quarried material from the c.1.5ha extraction area on the northern part of the site as depicted in the Site Location Map (April 2022), is in accordance with its pre-63 authorisation, and
- (ii) The continuation of quarrying at the extremity of the landholding, outside the boundary of the c.1.5ha extraction area and

construction of access road from the regional road, is not in accordance with its pre-63 authorisation.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that:

- (i) The continuation of existing quarry operation (c.1.5ha) including extraction and sale of quarried material, is operating in accordance with its pre-63 authorisation and is development and is not exempted development, and
- (ii) The continuation of quarrying at the extremity of the landholding (c.5ha) is not in accordance with its pre-63 authorisation, is development and is not exempted development.



Deirdre MacGabhann

Planning Inspector

22nd September 2022