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An Coimisiún Pleanála
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16 February 2026

Re: Laois County Council Appeal to An Coimisiún Pleanála Ref: 324050-26

Introduction

This referral requires the determination of whether works undertaken at Ballymullen following the expiry of PL95/300 in 2001 may lawfully be treated as exempted development under section 4 of the Planning and Development Act 2000, or whether they constitute development requiring planning permission and prior compliance with Environmental Impact Assessment and Appropriate Assessment obligations.

The development comprises a continuous, integrated quarrying, processing, and waste-related operation, including multiple excavation areas, extraction below groundwater level, permanent pumping and settlement infrastructure, dual batching capacity, and on-site deposition of industrial residues. The physical configuration and scale of these works are illustrated in Appendix 1 (Photographs 1–6 and 14–18)

The central issue, therefore, is whether the integrated project triggers screening obligations. If so, section 4(4) operates as a statutory bar to exemption, and a Section 5 determination cannot disapply that consequence.

Appendix 1 contains a Booklet of Photographs and Quarry Map documenting the post-expiry development relied upon.

Legal Framework

The EIA Directive 2011/92/EU, as amended by Directive 2014/52/EU, requires that projects likely to have significant effects on the environment undergo an Environmental Impact Assessment before development consent is granted. The Habitats Directive 92/43/EEC requires screening for Appropriate Assessment where a project is likely to have a significant effect on a European site. These obligations are preventive in nature and must be complied with before authorisation is granted.

Section 4(4) of the Planning and Development Act 2000 gives domestic effect to those requirements by providing that development is not exempted development where Environmental Impact Assessment or Appropriate Assessment is required.

Article 9 of the Planning and Development Regulations further disapples the exemption where development contravenes a condition of permission or comprises the extension or continuation of unauthorised structures or uses.

The post-CJEU amendments to the Planning and Development Act 2000, including the substitute consent and extension provisions introduced following Case C-50/09 and Case C-215/06, reinforce that development requiring Environmental Impact Assessment must be assessed before authorisation and cannot be regularised through reliance on expired or incomplete permissions.

Section 5 is declaratory only. It determines whether development is exempted development; it does not confer permission and cannot disapply section 4(4). Accordingly, where screening is required under EU law, exempted development cannot lawfully apply.

Integrated Project and Screening

The Ballymullen operation must be assessed as a single, integrated project. Quarrying supplies processing; processing generates residues; pumping and settlement lagoons manage hydrological consequences; waste materials are deposited within the same excavation footprint. These elements are physically and functionally interdependent and form one coordinated industrial operation. The operation of two batching plants and associated residue lagoons is illustrated in Photographs 6 and 39

Under Annex II of Directive 2011/92/EU, extractive industry development and installations for the disposal of waste are capable of requiring Environmental Impact Assessment where significant environmental effects cannot be excluded. Article 6(3) of Directive 92/43/EEC requires screening where a project is likely to have a significant effect on a European site, alone or in combination with other projects. The deposition of cementitious slurry and concrete material within the quarry void is illustrated in Photographs 12, 13, 16 and 17.

Extraction below groundwater level, engineered settlement infrastructure, industrial-scale processing, and on-site waste deposition are each capable of significant environmental effects. Extraction extending below the groundwater level is illustrated in Photograph 14. Viewed cumulatively, the integrated project triggers screening obligations under EU law.

Statutory Consequence

Where Environmental Impact Assessment or Appropriate Assessment screening is required, section 4(4) of the Planning and Development Act 2000 operates as a statutory bar to exempted development.

The integrated Ballymullen project, viewed cumulatively, triggers screening obligations under Directive 2011/92/EU and Directive 92/43/EEC. In those circumstances, an exemption under section 4 cannot lawfully apply.

Section 5 is declaratory only. It cannot be classified as exempt development works that are subject to mandatory screening requirements.

For the purposes of section 5, the sole legal question is whether, viewed cumulatively, the integrated development is capable of requiring Environmental Impact Assessment or Appropriate Assessment. If screening is required, section 4(4) of the Planning and Development Act 2000 operates as a statutory bar to exempted development. In those circumstances, the Commission is not required to determine the ultimate environmental effects, but only to determine whether the development falls within the screening threshold.

Conclusion

The Ballymullen activities constitute a continuing, integrated extractive and industrial project undertaken following the expiry of planning permission PL95/300. The project includes quarrying below groundwater level, permanent hydrological infrastructure, industrial-scale processing, and on-site waste deposition.

Under Directive 2011/92/EU and Directive 92/43/EEC, environmental assessment must precede the grant of development consent. Section 4(4) of the Planning and Development Act 2000 gives effect to that obligation by deeming exempt development to be non-exempt where screening is required.

The integrated project has significant environmental effects and therefore triggers screening obligations. In those circumstances, exempt development cannot lawfully be applied.

Section 5 cannot operate to displace the statutory consequence of section 4(4). The only legally sustainable determination is that the development requires planning permission supported by prior EU-compliant environmental assessment.

Yours sincerely,

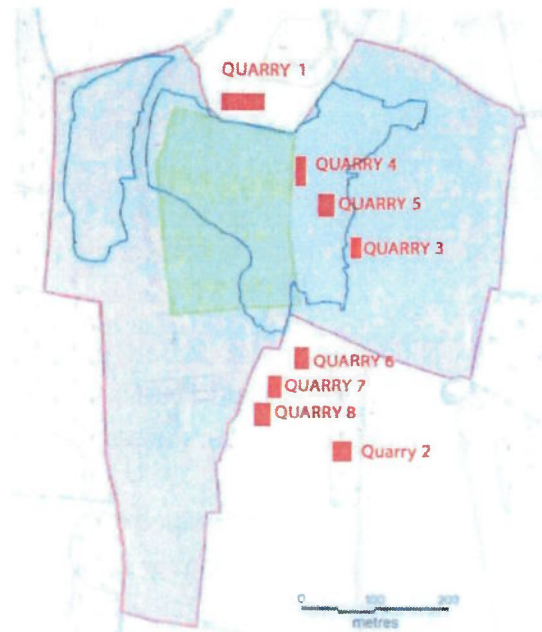
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Appendix 1

Booklet of Photographs and Quarry Map



Quarry Q15/76/1 Registration Area

The accompanying Quarry Map shows that Quarries 3, 4 and 5 fall within the lands registered under section 261 of the Planning and Development Act 2000, whereas Quarries 1, 2, 6, 7 and 8 lie outside that registered extraction area. Material extracted from all eight locations is transported to the former PL95/300 lands for processing, forming a single integrated quarrying and industrial operation.

Condition 2 of PL95/300 strictly confined excavation to the red-hatched area and prohibited works outside it. Excavation beyond that boundary falls outside the permission and constitutes unauthorised development. Article 9(1)(a)(i) disapplies exempted development where a condition of permission is breached. Accordingly, once Condition 2 was contravened, reliance on exempted development is precluded.

The post-expiry extraction across eight quarry locations represents a material expansion in both spatial extent and operational scope beyond what was authorised. In the absence of any extant permission or substitute consent, continued extraction and related processing require fresh planning consent as a matter of law.

No Environmental Impact Assessment or Appropriate Assessment screening has been undertaken for these integrated quarry developments, despite their scale and cumulative effects. Where screening is required, section 4(4) disapplies exempted development.



Photograph 1

Photograph 1 shows one of the silt/settling ponds at Ballymullen. On 16 December 2020, Booth Concrete Ltd sought a section 5 Declaration (Ref. 20-056-01) in respect of on-site surface water management, acknowledging that multiple permissions operated together as a single industrial facility.

On 1 February 2021, Laois County Council determined that the development was not exempted under Class 21 or section 4(1)(h), and on 7 December 2021, An Bord Pleanála confirmed that the silt/settling ponds constitute development and are not exempted development. Those determinations establish that the excavation and use of additional settlement ponds fall outside the scope of PL95/300.

No application for permission under section 34 of the Planning and Development Act 2000, nor any application for substitute consent under Part XA, has been made in respect of those works.



Photograph 2

Photograph 2 shows waste material generated from one of the concrete batching plants being deposited within the silt/settling ponds at Ballymullen. Such residues include cementitious washout and slurry, which fall within waste categories under the European Waste Catalogue, including EWC 10 13 14 (waste concrete and concrete sludge) and, where relevant, EWC 10

13 09 (flue-gas dust (fly ash)). The use of the ponds for the storage and containment of these materials reinforces that they form part of an integrated extractive and industrial operation and constitute development that does not qualify for exempt status.



Photograph 3

Photograph 3 shows a fixed, electrically powered water-pumping installation mounted on a permanent steel framework within an excavated water body, together with large-diameter pipework and control equipment.

On 16 December 2020, Booth Concrete Ltd sought a section 5 declaration (Ref. 20-056-01), stating that multiple permissions operated together as a single industrial aggregate and concrete facility, confirming functional integration. In ABP-309575-21 (7 December 2021), the Board held that the new pump houses, pipework and pumping equipment constitute development under section 3 of the Planning and Development Act 2000, though exempt under Class 21(a)(ii) and (iii).

The referral relied on the existence of an “*existing concrete manufacturing facility*” under PL95/300. That permission expired on 2 September 2001. The installation of new pumping infrastructure and reconfigured drainage arrangements demonstrates the continuation and material intensification of operations formerly authorised under PL95/300, notwithstanding its expiry. There is no subsisting planning permission to underpin those works.



Photograph 4

Photograph 4 shows extensive stockpiling of manufactured concrete blocks across the site. The scale of on-site manufacturing, storage and handling is materially greater than that authorised under PL95/300 and is consistent with the description advanced in the Section 5 request that multiple permissions operated together as a single industrial facility for aggregate processing and concrete manufacture.

Taken together, Photographs 3 and 4 demonstrate a material intensification and expansion of use beyond that authorised by PL95/300, which expired on 2 September 2001. Continued operation at that scale, in the absence of any subsisting planning permission or substitute consent, constitutes development requiring fresh planning consent and prior compliance with Environmental Impact Assessment screening obligations.



Photograph 5

Photograph 5 (2024) shows substantial stockpiles of sand and gravel, active conveyor systems, screening and crushing plant, a pump house and associated fixed infrastructure. The materials processed include aggregates extracted from eight unauthorised quarry locations and imported from other quarry sites, including those identified in enforcement records (UD 16/19; UD 20/12; UD 22/44; UD 24/102; Ref. ENF23020).

Condition 2 of PL95/300 confined the authorised development strictly to that described in the application and within the red-hatched area. The 2024 image demonstrates a materially expanded aggregate processing complex, extensive external stockpiling, and the importation and treatment of material from multiple unauthorised quarries. That activity represents a material intensification and expansion beyond the development permitted under PL95/300, which expired on 2 September 2001.



Photograph 6

Photograph 6 shows two concrete batching plants and two fly ash lagoons. PL95/300 authorised a single batching plant. The operation of a second batching plant represents a material intensification beyond the scope of the permission and, in the absence of any subsisting planning consent following the expiry of PL95/300 on 2 September 2001, constitutes development requiring fresh authorisation.



Photograph 7



Photograph 8



Photograph 9



Photograph 10

Photographs 7 to 10 show a substantial accumulation of concrete blocks deposited within the Ballymullen site. The material is consistent with construction and demolition waste classified under EWC 17 01 01 (concrete). The scale of deposition and the absence of evident containment or authorised recovery infrastructure indicate waste storage or disposal activity forming part of the wider industrial operation of the “*existing concrete manufacturing facility*”



Photographs 11

Photograph 11 shows a substantial accumulation of discarded precast concrete chimney sections stored irregularly on open, unsealed ground, together with broken timber pallets and concrete debris. Several units appear damaged or misaligned, indicating rejected or surplus manufactured products rather than installed structures. Where such materials are no longer intended for lawful reuse, they constitute construction and demolition waste within EWC 17 01 01 (concrete) and potentially EWC 17 09 04 (mixed construction and demolition waste). The scale and manner of storage demonstrate industrial-level stockpiling forming part of the integrated concrete manufacturing operation.



Photograph 12



Photograph 13

Photographs 12 and 13 show the discharge and deposition of concrete washout slurry across open ground within the quarry void. The material consists of cementitious fines, alkaline process water and suspended solids generated from batching operations. Where such material is discarded or deposited without controlled reuse, it constitutes waste within the meaning of Directive 2008/98/EC and the Waste Management Act 1996.

The material falls within EWC 17 01 01 (concrete) and, where slurry residues are present, EWC 10 13 14 (waste concrete and concrete sludge). As part of the integrated extractive and processing operation, this activity may give rise to environmental effects and therefore reinforces the requirement for screening under section 4(4) of the Planning and Development Act 2000.



Photograph 14

Photograph 14 shows excavation at Quarry 1 extending below the natural groundwater table, resulting in standing water within the quarry void. Extraction below the groundwater level constitutes a significant alteration of natural hydrological conditions and forms part of the integrated extractive operation. Such activity represents a material intensification beyond the scope of PL95/300. In those circumstances, screening is required, and section 4(4) of the Planning and Development Act 2000 operates to disapply exempted development.



Photograph 15

Photograph 15 shows a Moxy articulated dump truck discharging wet, slurry-like material directly into Quarry 1. The material is consistent in appearance with concrete washout residues from batching plant operations, a fine, cementitious sludge typically containing lime and other high-pH constituents.



Photograph 16



Photograph 17

Photographs 16 and 17 show material deposited within Quarry 1, consisting of light-yellow, fine-textured sediment forming cracked and hardened surfaces across the quarry floor. The material appears consistent with cementitious slurry or washout residues associated with concrete production. The deposits are located within the excavation area and are in direct contact with the quarry substrate, with standing water visible in adjacent areas.

These photographs depict the presence and storage of such material within the quarry void under open and uncontained conditions.

Conclusion

The accompanying Quarry Map and Photographs depict multiple excavation areas, fixed industrial processing infrastructure, batching facilities, settlement ponds, pumping installations, stockpiled materials and deposited residues located within the Ballymullen site. The images demonstrate that extraction, processing, material storage and residue deposition occur across interconnected areas forming a continuous operational footprint.

The photographs show that material extracted from several quarry locations is transported to and processed within the former PL95/300 lands, and that additional infrastructural works, containment structures and material deposits are present within the quarry voids. The scale, configuration and spatial relationship of the works illustrate a physically and functionally integrated quarrying and concrete manufacturing operation.

The matters shown are not isolated works but form part of the same operational area and industrial activity occurring at the site.

David Malone

Dated 16 February 2026

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