

Dallagh

From: Slattery, Brendan <Brendan.Slattery@mccannfitzgerald.com>
Sent: Thursday 2 April 2026 15:37
To: Appeals2
Subject: An Coimisiún Pleanála ref. no.: ACP-324050-26 [MCF-LIVE.FID2766537]
Attachments: 260402 acp - booth concrete re mcevoy section 5 request(81310880.2).pdf

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Our client: Booth Precast Products Limited, a Breedon Group company

Request for declaration under section 5 of the Planning and Development Act 2000 (as amended) (the "2000 Act") made by Mr Tom McEvoy in relation to quarrying activities at Ballymullen, Abbeyleix, County Laois and the referral of that declaration to An Coimisiún Pleanála under section 5(4) of the 2000 Act

An Coimisiún Pleanála ref. no.: ACP-324050-26

Dear colleagues,

Your letter dated 9 March 2026 has been passed to us for response. We attach that response. You might please confirm safe receipt, when convenient.

Thank you,

Brendan Slattery

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OUR REF

BNMS\81310880.2

YOUR REF

ACP-324050-26

DATE

2 April 2026

BY EMAIL – appeals@pleanala.ie

FAO – Mr Faolán Bashford
An Coimisiún Pleanála
64 Marlborough St
Rotunda
Dublin 1
D01 V902

Our client: Booth Precast Products Limited, a Breedon Group company

Request for declaration under section 5 of the Planning and Development Act 2000 (as amended) (the "2000 Act") made by Mr Tom McEvoy in relation to quarrying activities at Ballymullen, Abbeylax, County Laois and the referral of that declaration to An Coimisiún Pleanála under section 5(4) of the 2000 Act

An Coimisiún Pleanála ref. no.: ACP-324050-26

Dear Colleagues,

Our client Booth Precast Products Limited, a Breedon Group company, is the owner and operator of a sand and gravel pit and concrete products manufacturing facility on lands at Ballymullen, Abbeylax, County Laois.

Your letter dated 9 March 2026 has been passed to us for response. The period for response would ordinarily expire on 5 April, but that period is extended to the next date the offices of An Coimisiún Pleanála (the "Commission") is open, namely 7 April. This submission is made by email on or before that date.

Your letter encloses a request for declaration made by Mr Tom McEvoy to the planning authority, Laois County Council (the "Council") on 19 December 2025 under section 5 of the of the 2000 Act in relation to quarrying activities at Ballymullen, Abbeylax, County Laois (Council ref. S5.2025/98). The

S Holst (Managing Partner) • M White (Chair) • K Kelly • H Marren • E O'Hanrahan • H Kilroy • C Fanning • P Lavery • A Fuller • M Doyle • H Beattie
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Company Secretarial and Compliance Services: R Hunt.

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Council referred the request to the Commission under section 5(4) of the 2000 Act on 22 January 2026 (Commission ref. no. ACP-324050-26).

Preliminary Observations

We have three preliminary observations.

First, there is a dispute between Mr McEvoy and our client that is the subject of pending High Court proceedings, the outcome of which will determine four of the questions raised in his request for declaration.

The request made by Mr McEvoy includes 9 no. questions. The principal question, as summarised in the referral by the Council, is whether the ongoing extraction of sand, gravel, shale, or other minerals on the land after the expiry of planning permission PL95/300 constitutes development.

The question is based on a false premise, namely, that planning permission ref. no. PL95/300 has expired. The permission has not in fact expired. Mr McEvoy has conflated the "appropriate period" under section 40 of the 2000 Act and the permitted operational life of the quarry.

You should be aware that a dispute between Mr McEvoy and our client about this very question is the subject of pending High Court proceedings. Specifically, on 14 January 2025, Mr McEvoy and another person commenced proceedings bearing the title and record number *Malone and McEvoy v. Laois County Council, An Bord Pleanála and Booth Precast Products Limited*, High Court 2025 17 MCA. Each of the Council, the Commission and our client made applications to strike out and/or dismiss the proceedings. Those applications were heard on 26 May 2025. The court delivered judgment on 23 June 2025: [2025] IEHC 345.

The proceedings against the Council and the Commission were struck out and/or dismissed in their entirety. Certain of the assertions in the proceedings made against our client were struck out and/or dismissed (see § 189(c)). Specifically, the proceedings against our client are now limited solely to *allegations* made by Mr McEvoy that (see § 189(d)):

"Permission PL95/300, only, has expired such that further quarrying is now unauthorised.

Unauthorised development in the form of waste activities have occurred on Site."

The first issue that remains to be determined in the proceedings overlaps entirely with question no. 1 in the request for declaration. The second issue that remains to be determined in the proceedings overlaps with question nos. 7, 8 and 9 in the request.

Since judgment was delivered, the proceedings have been listed in court for mention on each of 30 June, 14 July, 28 July, 15 September, 1 October, 10 November, 8 December, 16 December 2025 and 12 January, 26 January, 9 March, 23 March 2026. They are next listed for mention on 13 April 2026.

The outcome of the proceedings will determine question nos. 1, 6, 7, 8 and 9.

We must record our surprise that Mr McEvoy did not bring his proceedings to the attention of the Council or the Commission, and has not yet brought this pending request for declaration to the attention of the High Court. Our client will do that at the next available opportunity.

It is a matter for the Commission to consider whether the request should be dismissed on this basis.

Second, Mr McEvoy has failed to provide the Council and/or the Commission with the information necessary to enable it to make a decision on these matters. Under section 5(1) of the 2000 Act, the person requesting a declaration “shall provide ... any information necessary to enable the authority to make its decision on the matter”.

Mr McEvoy has attached to his request an “Annex A – Background Information (Provided for Context Only)”. Mr McEvoy states in express terms that this information is “provided for contextual background only and is *not relied upon* for the determination sought under section 5(1)” (emphasis added). As Mr McEvoy has stated *expressly* that he does not rely on that information, we must conclude that the information is not relevant or necessary, and so this response does not address those matters. Please note that this should not be taken as an acceptance by our client of the content thereof.

It logically follows that, absent any material to support the 9 no. requests, Mr McEvoy has failed to provide any relevant information to enable a decision to be made. It is a matter for the Commission to consider whether the request should be dismissed on this basis.

Third, the jurisdiction under section 5 is limited to “what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act”.

The jurisdiction does not extend to whether activities on land are “authorised”: see *Ógalas (t/a Homestore and More) v. An Bord Pleanála* [2014] IEHC 487 (§ 4). The Supreme Court has confirmed that “the question of whether the development comes within the scope of the planning permission, i.e. whether it was authorised, was not an issue that the planning bodies have jurisdiction to decide”: *Krikke v. Barranafaddock Sustainable Electricity Limited* [2022] IESC 41 (§ 101-117).

The court made clear that the “concepts of “development” and “exempted development” and “unauthorised development” are very distinct and separate concepts under the planning code, and the Oireachtas chose to include the first two concepts within the scope of s. 5, but not the third concept” (*Krikke* § 106). The Commission remains free – under section 5 – to interpret a planning permission is whether a material change of use from permitted development arises: (*Krikke* § 111).

In this context, some of the requests made by Mr McEvoy trespass the limited scope of section 5. It is a matter for the Commission to consider whether those requests should be dismissed on this basis.

Before addressing each of Mr McEvoy’s 9 no. questions in turn, we should record certain features of the 2000 Act.

Section 2 of the 2000 Act includes the following definitions:

- “use”, in relation to land, does not include the use of the land by the carrying out of any works thereon;
- “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1) of the 2000 Act includes the following definition:

“development” means ... 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.”

Section 5(1) of the 2000 Act provides:

"If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter."

Section 5(4) of the 2000 Act provides:

"Notwithstanding subsection (1), a planning authority may, on payment to the [Commission] of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the [Commission]."

Each of the 9 no. questions the subject of the request made by Mr McEvoy are set out below, with our response set out in turn.

Question No. 1

"Whether the ongoing extraction of sand, gravel, shale, or other minerals on the land after the expiry of planning permission PL95/300 in 2001 constitutes development requiring planning permission"

The dispute between Mr McEvoy and our client about this very question is the subject of pending High Court proceedings: *Malone and McEvoy v. Laois County Council, An Bord Pleanála and Booth Precast Products Limited*, High Court 2025 17 MCA. As explained, each of the Council, the Commission and our client made applications to strike out and/or dismiss the proceedings. The court delivered judgment on those applications on 23 June 2025: [2025] IEHC 345.

The proceedings against the Council and the Commission were struck out and/or dismissed in their entirety. Certain of the assertions in the proceedings made against our client were struck out and/or dismissed (see § 189(c)). Specifically, the proceedings against our client are now limited solely to *allegations* made by Mr McEvoy that (see § 189(d)):

"Permission PL95/300, only, has expired such that further quarrying is now unauthorised.

Unauthorised development in the form of waste activities have occurred on Site."

The first issue that remains to be determined in the proceedings overlaps entirely with question no. 1 in the request for declaration.

The question cannot be answered without forming a conclusion about whether planning permission ref. no PL95/300 had "expired ... in 2001". Section 5 does not give to the Commission the jurisdiction to answer that question. The jurisdiction under section 5 does not extend to whether activities on land are "authorised" by a permission (*Ógalas* § 4). The Supreme Court has confirmed that "the question of whether the development comes within the scope of the planning permission, i.e. whether it was authorised, was not an issue that the planning bodies have jurisdiction to decide" (*Krikke* § 101-117). The court made clear that the "concepts of "development" and "exempted development" and "unauthorised development" are very distinct and separate concepts under the planning code, and

the Oireachtas chose to include the first two concepts within the scope of s. 5, but not the third concept" (*Krikke* § 106).

Without prejudice to the foregoing, this question is based on a false premise, namely, that planning permission ref. no. PL95/300 has expired. The permission has not in fact expired. Mr McEvoy has conflated the "appropriate period" under section 40 of the 2000 Act and the permitted operational life of the quarry.

The court, when dismissing other allegations in the pending dispute between Mr McEvoy and our client, made the following relevant observations about this pending issue.

The court observed that the that the environmental impact statement ("EIS") submitted with the relevant planning application described the extraction continuing for 30 years. The court observed also that the EIS referred to the expansion of the extraction area, not merely its retention in its then existing form (§ 17):

"Its Non-Technical Summary describes the planning application as 'for the retention of a 2.0 approx. hectare and the extension of 4.70 approx. hectare gravel pit.' In other words, and despite the terms of the permission, it permitted not merely retention, but substantial extension, of the Quarry more than trebling its potential size."

The court has not yet decided whether permission PL95/300 has expired.

While the Council when granting permission could have limited the operational life of the quarry, none of the conditions imposed under the permission purported to limit the operational life of the quarry to a shorter period than requested in the application.

The permission did include a standard form "note" that described the effect of section 40 of the 2000 Act.

Under section 40, a permission shall on the expiration of the "appropriate period" cease to have effect as regards development not completed within the period. However, that does not apply to permission for the retention on land of any structure, does not affect the continuance of any use under the permission or the obligations under conditions requiring something to be done.

The "note" cannot be read to change the operational life of the quarry. It concerns a different requirement, namely, commencement and construction of development. It does not concern operational life.

The regulatory history of the lands is set out in the recent judgment (§ 13-30). It seems that Mr McEvoy suggests that 8 no. separate applications for structures were granted by the Council and/or the Commission from 2006 to 2020 without any of their experts noticing that the principal permission for the entire facility, i.e., PL95/300, had lapsed. Mr McEvoy made submissions, observations and/or appeals in relation each of those 8 no. planning processes. He had the opportunity to raise this concern had he wished to or to challenge any or all the decisions by making an application for judicial review within the correct period to do so, but did not do so.

In these circumstances, we request the Commission to dismiss this request and/or to determine that permission ref. no. PL95/300 has not expired.

Question No. 2

"Whether the opening and operation of multiple quarry excavations across the lands, including separate quarry areas outside the footprint of the original authorised development, constitute development requiring planning permission"

The opening and operation of a quarry excavation is an act of development that is not exempted development.

To the extent the question invites the Commission to form a view on whether there has been extraction "outside the footprint of the original authorised development", the question cannot be answered without information that Mr McEvoy has not provided, or without exceeding the limits of the jurisdiction under section 5 of the 2000 Act. Without prejudice to the foregoing, our client does not accept that Mr McEvoy has established any unauthorised development.

Question No. 3

"Whether extraction carried out below the natural groundwater table, including the creation of flooded quarry voids and groundwater lagoons, constitutes development requiring planning permission"

Extraction by way of excavation is an act of development.

The inundation of an excavation void with water is not an act of development, it is a natural consequence of excavation only.

To the extent the question invites the Commission to form a view on whether there has been extraction "below the natural groundwater table", the question cannot be answered without information that Mr McEvoy has not provided, or without exceeding the limits of the jurisdiction under section 5 of the 2000 Act. Without prejudice to the foregoing, our client does not accept that Mr McEvoy has established any unauthorised development.

Question No. 4

"Whether the abstraction and use of groundwater from quarry voids or excavated areas for the washing and processing of sand and gravel constitutes development requiring planning permission and/or is exempted development"

The abstraction and use of water is not an act of development.

To the extent the question invites the Commission to form a view on whether there has been material change of use "for the washing and processing of sand and gravel", the question cannot be answered without information that Mr McEvoy has not provided, or without exceeding the limits of the jurisdiction under section 5 of the 2000 Act. Without prejudice to the foregoing, our client does not accept that Mr McEvoy has established any unauthorised development.

Question No. 5

"Whether the importation of sand, gravel, or other quarried materials from multiple quarry sites, including from unauthorised quarry excavations, for processing, washing, batching, or manufacture on the lands constitutes development requiring planning permission and/or a material change of use"

The importation of sand, gravel, or other quarried materials is not an act of development.

The processing, washing, batching of quarried materials, or the manufacture on land of concrete products is development, but is permitted development.

To the extent the question invites the Commission to form a view on whether there has been material change of use by the "importation of sand, gravel, or other quarried materials", or "unauthorised quarry excavations" at other locations, or "processing, washing, batching of quarried materials, or the manufacture on land of concrete product", the question cannot be answered without information that Mr McEvoy has not provided, or without exceeding the limits of the jurisdiction under section 5 of the 2000 Act. Without prejudice to the foregoing, our client does not accept that Mr McEvoy has established any unauthorised development.

Question No. 6

"Whether the erection and operation of a new concrete batching plant, along with the installation and use of two silos for storing and mixing fly ash, as well as the processing or incorporation of fly ash and imported sand and gravel into concrete, blocks, or other manufactured products, constitute development requiring planning permission and/or a material change of use, where such works were not authorised under PL95/300"

The erection and operation of a concrete batching plant, including silos, is development, but is permitted development.

The High Court has dismissed Mr McEvoy's complaint that the permitted concrete works are unauthorised development (§ 161, 162 and 189(c)). The court concluded that "the planning status of the use of the retained concrete plant was inevitably unaffected by any expiry of Permission PL95/300". The court ordered that "continued use of the concrete plant, as permitted by Permission PL95/300, is clearly not unauthorised development and the case cannot proceed on the basis of an allegation that, by expiry of Permission PL95/300, it is unauthorised development". Mr McEvoy should not be entitled to agitate the same complaint before the Commission, where the High Court has dismissed it already.

To the extent the question invites the Commission to form a view on whether there has been erection and operations of "a new concrete batching plant", the question is not understood, cannot be answered without information that Mr McEvoy has not provided, or without exceeding the limits of the jurisdiction under section 5 of the 2000 Act. Without prejudice to the foregoing, our client does not accept that Mr McEvoy has established any unauthorised development.

Question No. 7

“Whether the deposit, storage, recovery, treatment, or disposal of waste materials within quarry voids or excavated areas, including concrete waste, cementitious sludge, concrete wash-out, construction and demolition waste, and other industrial waste, constitutes development requiring planning permission and/or is exempted development, including when such waste involves waste concrete and concrete sludge (EWC Code 10 13 14)”

The dispute between Mr McEvoy and our client about this very question is the subject of pending High Court proceedings: *Malone and McEvoy v. Laois County Council, An Bord Pleanála and Booth Precast Products Limited*, High Court 2025 17 MCA. As explained, each of the Council, the Commission and our client made applications to strike out and/or dismiss the proceedings. The court delivered judgment on those applications on 23 June 2025: [2025] IEHC 345.

The proceedings against the Council and the Commission were struck out and/or dismissed in their entirety. Certain of the assertions in the proceedings made against our client were struck out and/or dismissed (see § 189(c)). Specifically, the proceedings against our client are now limited solely to *allegations* made by Mr McEvoy that (see § 189(d)):

“Permission PL95/300, only, has expired such that further quarrying is now unauthorised.

Unauthorised development in the form of waste activities have occurred on Site.”

The second issue that remains to be determined in the proceedings overlaps with question nos. 7, 8 and 9 in the request.

The deposit, storage, recovery, treatment, or disposal of waste on land is an act of development, but it is not accepted that there has been any such deposit, storage, recovery, treatment, or disposal of waste on our client’s lands.

To the extent the question invites the Commission to form a view on whether there has been any deposit, storage, recovery, treatment, or disposal of waste on our client’s land, the question cannot be answered without information that Mr McEvoy has not provided, or without exceeding the limits of the jurisdiction under section 5 of the 2000 Act. Without prejudice to the foregoing, our client does not accept that Mr McEvoy has established any unauthorised development.

Question No. 8

“Whether the use of quarry excavations or lagoons for the containment, settlement, or discharge of liquid or semi-liquid waste, contaminated run-off, leachate, or waste-derived effluent into ground, surface water, or artificial drainage channels constitutes development that requires planning permission”

The second issue that remains to be determined in the proceedings between Mr McEvoy and our client overlaps with question nos. 7, 8 and 9 in the request.

The diffuse drainage of liquid from any land is not an act of development, but it is not accepted that there has been any containment, settlement, or discharge of liquid or semi-liquid waste, contaminated run-off, leachate, or waste-derived effluent into ground, surface water, or artificial drainage channels, as alleged or at all.

To the extent the question invites the Commission to form a view on whether there has been any diffuse drainage of liquid from our client's land, the question cannot be answered without information that Mr McEvoy has not provided, or without exceeding the limits of the jurisdiction under section 5 of the 2000 Act. Without prejudice to the foregoing, our client does not accept that Mr McEvoy has established any unauthorised development.

Question No. 9

"Whether any of the quarrying, processing, importation, or waste-related activities outlined above may lawfully be carried out without a valid and subsisting planning permission, having regard to the expiry of PL95/300, the absence of any extension or subsequent permission, and the absence of screening for Environmental Impact Assessment or Appropriate Assessment in accordance with relevant legislation"

The alleged expiry of planning permission ref. no. PL95/300 has been addressed above in response to question no. 1.

The alleged waste-related activities have been addressed above in response to question nos. 7 and 8.

The dispute between Mr McEvoy and our client about environmental assessment has already been determined in the pending High Court proceedings: *Malone and McEvoy v. Laois County Council, An Bord Pleanála and Booth Precast Products Limited*, High Court 2025 17 MCA. As explained, each of the Council, the Commission and our client made applications to strike out and/or dismiss the proceedings. The court delivered judgment on those applications on 23 June 2025: [2025] IEHC 345.

The proceedings against the Council and the Commission were struck out and/or dismissed in their entirety.

In the proceedings, Mr McEvoy had argued that the entire planning history for our client's lands should be ignored, alleging that that planning permissions granted without prior environmental impact assessment or appropriate assessment, where such assessment was required, are invalid.

The Council, the Commission and our client were entirely successful in persuading the court to dismiss and/or strike out this allegation.

The court accepted that the relevant permissions remain valid (§ 151, 158-159). Mr McEvoy should not be entitled to agitate the same complaint before the Commission, where the High Court has dismissed it already.

We hope this is helpful.

Yours faithfully

(sent by email, so bears no signature)

McCann FitzGerald LLP

