

# **Comhairle Chontae Atha Cliath Theas**

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## **Record of Executive Business and Manager's Order**

**Determination pursuant to Section 261A of the Planning and Development Act, 2000  
(as amended)**

**Reg. Reference:** SDQU05A/5

**Location:** Ballinascorney Quarry, Townland Of Ballinascorney  
Upper, Co. Dublin.

**IN THE MATTER OF Section 261A of the Planning and Development Act, 2000 as inserted by section 75 of the Planning and Development (Amendment) Act 2010, and amended by Regulation 16 of the European Union (Environmental Impact Assessment and Habitats) Regulations 2011, and by Regulation 3 of the European Union (Environmental Impact Assessment and Habitats) Regulations 2012.**

### **S. 261A Review of Quarries**

#### **Ballinascorney Quarry**

**Quarry Location:** Ballinascorney Upper, Bohernabreena, Co. Dublin.

**Owners** Aidan Bagnell, 34 Maynooth Park, Maynooth, Co Kildare  
Aidan Bagnell, 18 Castlilawn, Athboy, Co. Meath  
Roadstone Wood Limited, Fortunestown, Tallaght,  
Dublin 24 (Leasehold Interest).

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### **INTRODUCTION AND BACKGROUND**

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### Introduction

This determination report arises from a number of special legislative provisions in relation to quarries. These are; Section 261A of the Planning and Development Acts, the Environment (Miscellaneous Provisions) Act 2011, and the EU (EIA & Habitats) Regulations 2012. These provisions were commenced on 15 November 2011, with a maximum 9 months allowed for completion.

Guidelines were issued in January 2012 by the Minister for the Environment, Community and Local Government to planning authorities and An Bord Pleanála (the Board) pursuant to section 28 of the Planning and Development Act 2000 (as amended). Further Supplementary Guidelines were issued in July 2012.

This special provision made for quarries effectively provides that, for a very limited period, certain quarries with retention/EIA/Habitats issues will be permitted (and in fact required) to apply for substitute consent without having to prove exceptional circumstances. This is a last opportunity for certain quarries with legal issues/operating beyond their consent to regularise their status.

Section 261A requires the planning authority to 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 EIA, or an appropriate assessment in relation to possible effects on the integrity of a European site, but which were not subject to such assessment/determination.

The Guidelines require the Planning Authority to compile a complete list of all relevant quarry developments within the area, based on every available source of data, such as:

- The planning register, in relation to permissions granted,
- The section 261 register (showing the position as of 2004/2005),
- Planning enforcement records,
- Information from members of the public, including any submissions received in response to the public notice,
- Rateable valuation records,
- Aerial photos or maps (if available), and
- Local knowledge from planning authority staff, particularly staff dealing with specific areas within a county.

The availability of the above data sources was explored for all quarries. All available data was compiled, examined and evaluated in accordance with the Guidelines issued. A separate report has been prepared for each of the relevant

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quarries in the county. This report relates to the unregistered quarry previously operated by Irish Aggregates Limited on lands at Ballinascorney Upper, Bohernabreena, County Dublin.

### **General Overview** [see Appendices 1-4]

The unregistered quarry at Ballinascorney is located in the townland of Ballinascorney Upper, on the north facing slopes of Sliabh na mBanog (384m) which is one of a number of hills forming the northern edge of the Dublin Mountains. The quarry lands that comprise c. 48 hectares are registered on Folio 134775F to Aidan Bagnall, 34 Maynooth Park, Maynooth, Co Kildare. In addition Roadstone Wood Dublin Limited have a leasehold interest. The southern portion of the lands lies above the 350 metre contour line. Information submitted in relation to the application to register the quarry under S. 261 states that quarry operations were suspended c. 1979.

*[Appendix 1 Site location map; S261 Site layout Plan; and map illustrating 350 m contour line on quarry lands. See also Appendix 9-Evidence of leasehold Interest]*

The existing dolerite and slate quarry excavation located on the north western portion of the quarry lands is enclosed on the East, South and West sides by vertical faces and comprises c. 5.22 hectares. The quarry workings at this location are visible from the adjoining road at the quarry entrance and from the R114 to the west of its junction with the L7462. There are no existing requirements in place under the planning code to ensure the effective reinstatement and landscaping of this quarry site. Lands in the vicinity of the quarry are used for sheep and cattle grazing, and there are a number of farms and single houses in the vicinity of the quarry lands. There is a golf course located to the north east of the quarry lands.

There is a smaller disused quarry located to the west of the subject quarry which is accessed from the L7462, and which has also been out of use for a considerable period of time and is unregistered.

The quarry lands are located within an area zoned 'H' in the County Development Plan 2010-2016 (CDP 2010), in relation to which it is an objective of the Development Plan "to protect and enhance the outstanding natural character of the Dublin Mountain area". Extractive industry is 'open for consideration' in the 'H' zone, but is not permitted above the 350m contour line.

Sliabh na mBanog occupies a prominent position at the northern extremity of the line of hills enclosing Glenasmole valley on its western side. It is identified in the County Development Plan 2010-2016 as one of a number of 'Prospects' i.e. prominent landscapes or areas of special amenity value or interest, which are visible from surrounding areas. Views of Sliabh na mBanog, from a number of specified locations within the urban area and within Glenasmole valley, have been designated for protection (Table 4.3.1 CDP 2010). It is the policy of the Council (Policy LHA2 CDP 2010) to protect views and prospects of special amenity value or special interest. In addition, it is an objective of the Council to

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protect and preserve significant views towards the quarry lands from public roads in the vicinity at Ballinscorney Gap to the north and at Allagour to the east, as indicated on the relevant development plan maps.

There are two recorded monuments located on the quarry lands, a Ring Barrow (ref. DU024-044) and a Tumulus (ref. DU024-067), which are included in the Record of Monuments and Places, as detailed in Schedule 1 to the South Dublin County Development Plan 2010-2016. It is the policy of the Council to secure the preservation (i.e. preservation in-situ or, as a minimum, preservation by record) of all sites and features of historical and archaeological interest (Policy AA 2 CDP 2010).

The quarry lands are accessed directly from the R114 at the top of a steeply inclined section of the road on the southern side of a narrow valley known as Ballinscorney Gap. The quarry entrance is situated close to a sharp bend in the road where visibility is restricted to traffic.

A tributary stream of the Dodder river flows in an easterly direction through the valley. The northern portion of the subject quarry lands lies within the Bohernabreena Reservoir catchment area, as illustrated on the relevant Development Plan map. It is the policy of the Council (Policy WD 9 CDP 2010) to protect the Bohernabreena Reservoirs and catchment area, cSAC and buffer zone, in the interest of public health and to restrict development in the catchment.

*[Appendix 2 Relevant extracts from County Development Plan 2010-2016]*

There are proposed Natural Heritage Areas located within c. 4 kilometres to the west (Slade of Saggart) c. 3 kilometres to the north (Lugmore Glen), and c. 1 kilometre to the northeast (Dodder Valley), of the subject quarry lands. Lands at Mountseskin and Gortlum located c. 3.5 kilometres to the west of the quarry lands are feeding grounds for Greylag geese, which is a protected bird species under the designated Special Protection Area for Birds at Poulaphouca reservoir in County Wicklow. There are two Special Areas of Conservation (Wicklow Mountain SAC and Glenasmole Valley SAC) located within c. 1.5 kilometres to the southeast of the quarry.

*[Appendix 3 Map illustrating sites of nature conservation interest]*

An aerial view of the quarry is provided in the aerial photography flown in August 2005.

*[Appendix 4 Oblique aerial photography 2005]*

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**Relevant Planning History** [see Appendix 5]

### Quarry at Ballinascorney Upper.

The following planning applications relate to the quarry lands at Ballinascorney Upper:

#### Reg. Ref. D. 1082

Planning permission was granted to Irish Aggregates Limited for a proposed quarry and ancillary buildings on a site comprising 24 acres at Ballinascorney Upper under Order No. P/353/74 dated 5<sup>th</sup> February 1974. The permission was subject to the removal of all structures on or before 28 February 1979.

#### Reg. Ref. G. 1292

Planning permission was refused by Dublin County Council for asphalt and readymix concrete plants for Irish Aggregates Limited at the quarry at Ballinascorney Upper on 9 August 1974 for three reasons:

1. *The site is located in an area zoned high amenity open space in the Development Plan. The industrial development now proposed would be in conflict with this objective, and would not be in accordance with the proper planning and development of the area and would seriously injure the amenities of the area.*
2. *The proposed development would be at variance with Condition No. 13 of the decision to grant permission for a temporary period for quarrying purposes by Order No. P/353/74, dated 5<sup>th</sup> February 1974.*
3. *The proposed industrial development would generate additional traffic movements on the adjoining sub-standard road network and would be likely to create serious traffic hazard by reason of the additional vehicle movements to and from the site.*

Planning permission was subsequently granted on appeal by the Minister for Local Government subject to a condition that the asphalt and readymix plants be removed from the site on or before 28 February 1979.

### Adjoining former quarry lands

The following planning applications relate to the former quarry adjoining the subject quarry lands to the west:

#### Reg. Ref. H. 2603

Temporary planning permission granted to J. Fitzpatrick under order No. P/1885/76 dated 18 June 1976 for re-opening and development of a stone quarry at Ballinascorney Upper for a period of five years up to 30 June 1981.

#### Reg. Ref. TA. 766

Planning permission refused on appeal on 6 April 1981 for the installation of a mixing plant for bituminous materials on a quarry site at Ballinascorney Upper, for the reason that a grant of permission for a substantial plant which is expressly stated to be related to the quarrying and ancillary activity on the site would be contrary to proper planning and development, having regard to the fact that the permission for quarrying operations on the site (Reg. Ref. H.2603) is a temporary one which expires on 30 June 1981.

#### Reg. Ref. WA. 897

Planning permission refused on appeal on 11 August 1982 for retention of a quarry at Ballinascorney Upper, on grounds that the proposed development would: (1) conflict with the zoning objective to preserve the area and would be seriously injurious to the amenities of the area; (2) endanger public safety by reason of traffic hazard due to the generation of additional vehicular traffic on the existing inadequate road network in the area; (3) be likely to lead to pollution of waters in the catchment of the river Dodder and would therefore be prejudicial to public health.

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### Reg. Ref. WA. 898

Planning permission refused on 10 July 1981 for the retention of a quarry with mixing plant at Ballinascorney Upper, on grounds that the proposed development would: (1) conflict with the zoning objective to preserve the area and would be seriously injurious to the amenities of the area; (2) contravene materially conditions numbers 1 and 2 of Order No. P/1885/76 dated 18 June 1976 (Reg. Ref. H.2683); (3) endanger public safety by reason of traffic hazard due to the generation of additional heavy vehicular traffic on the existing sub-standard road network. Notification of withdrawal of appeal was received from An Bord Pleanála on 27 November 1981.

*[see Appendix 5 Planning history documents]*

### **Enforcement History:**

There is no relevant enforcement history relating to the subject quarry lands.

### **Environmental Health Officer Report**

There are no EHO comments relating to the subject quarry lands.

### **Section 261 Registration of Quarry**

Information relating to the quarry leased by Roadstone Dublin Limited at Ballinascorney Upper, was received on 27 April 2005 and was entered in the Planning Register under Register Reference SDQU05A/5. On further examination it was decided that the quarry was not eligible to be registered under section 261 as information submitted with the application stated that the quarry was not in operation at the time of registration and had been out of operation since 1979. Accordingly the entry in the planning register in respect of the quarry was cancelled. The lands concerned are currently registered on Folio 134775F to Aidan Bagnall, 34 Maynooth Park, Maynooth, Co Kildare

### **Section 261A Submissions**

No submissions have been received in respect of the subject quarry under section 261A.

### **Section 261A Determinations / Decisions**

In accordance with the requirements set out in Section 261A, the planning authority will, following an examination of each quarry, issue a notice of its determination or decision regarding each of the following, as appropriate:

- I A decision regarding whether the quarry is authorised;
- II A determination as to whether development was carried out after 1 February 1990 which development would have required, having regard to the Environmental Impact Assessment Directive,

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an EIA or a determination as to whether an EIA was required, but that such an assessment or determination was not carried out or made;

III A determination as to whether development was carried out after 26 February 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out;

IV A determination as to whether the development commenced after 3 July 2008;

V A decision regarding whether the registration requirements of section 261 were complied with.

### **Section 261A of the Planning and Development Act, 2000 and related provisions - Guidelines for Planning Authorities**

Guidelines to planning authorities were issued by the Minister for the Environment, Community and Local Government in January 2012, pursuant to section 28 of the Planning and Development Act 2000, as amended. Supplementary Guidelines issued in July 2012 reflect amendments to section 261A as detailed in the European Union (Environmental Impact Assessment and Habitats) Regulations 2012, (S.I. No. 246 of 2012), effective from 9 July 2012. For ease of reference relevant extracts from the guidelines (as amended) are reproduced in related sections of this report.

### **Definition of 'Quarry'**

In accordance with Section 2(1) of the Act of 2000 as amended by Section 16 of the Environment (Miscellaneous Provisions) Act 2011, the term 'quarry' has the meaning assigned to it in section 3(3) of the Mines and Quarries Act 1965. This states that a 'quarry' includes "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 a place at which any manufacturing process is carried on".

### **Information Sources**

This assessment for the purposes of Section 261A of the Planning and Development Acts 2000-2011 is based on information available at the time of writing. The principal sources drawn upon include the available council records, particularly those relating to planning applications, and documents submitted in relation to the Section 261 registration of quarries from 2005 to the present date. Other sources / documents are used as appropriate where they provide

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relevant information. In the absence of suitable historic mapping information in council records, historic aerial photography in the possession of the Council has been used as a basis for assessing the likely extent of development at a particular time.

The best technology available to the council has been used in the examination of aerial photography in order to ensure that the information derived from such sources is reasonably accurate for the purpose of this review. Where a relevant source document is not available this is noted in the report, and the basis of any assumptions or estimations made in the absence of such documents is presented and explained. It should be noted that extensive searches have been carried out for any missing relevant source documents.

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**I**

**DECISION REGARDING WHETHER THE QUARRY IS AUTHORISED:**

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Section 261A(3)(a)(i): A decision regarding whether the quarry commenced operation prior to 1 October 1964, or whether planning permission was granted in respect of the quarry.

The Quarry Guidelines (2012) advise:

3.3 Section 261A(3): Decision of the planning authority under subsection (3) **Where the planning authority has made a determination under subsection (2)(a) in respect of a quarry that EIA, a determination in relation to EIA, or an appropriate assessment was required but not carried out/made, it must also decide the following in respect of the quarry:**

- (a) whether the quarry at some stage obtained planning permission or whether it commenced operation prior to 1 October 1964 and**
- (b) whether the quarry fulfilled the requirements in relation to registration under section 261 (if required to do so).**

**In relation to (a), the planning authority will already have examined whether the quarry obtained a permission, or commenced prior to 1 October 1964, in making the determination under subsection (2)(a).**

**It is important to note at this point that in order to fulfil the requirement at (a), the quarry just has to have commenced prior to 1964 – it does not have to be operating under a “pre-1964 authorisation” as outlined above: if the quarry was deemed, in respect of post-1990/post-1997 development as appropriate, to be operating under a “pre-1964 authorisation” it would not have been found to have required environmental impact assessment/screening/appropriate assessment in the first place and it would not therefore have been subject to a determination under subsection 2(a).**

**Similarly in relation to the permission question, the requirement is just that a planning permission was granted at some stage, the requirement is not for the permission to be current, or for the development to be in accordance with the permission.**

**(Section 261A of the Planning and Development Act, 2010 and related provisions - Guidelines for Planning Authorities Jan. 2012 - page 11)**

Information submitted in relation to the registration of the subject quarry at Ballinascorney Upper under Section 261 indicates that quarrying was carried out on the subject lands prior to 1<sup>st</sup> October 1964 (exact date of commencement unknown), and that no planning permission has been granted for the operation of a quarry at this location. Information submitted with the application states that quarry operations have been temporarily suspended since circa 1979, that Roadstone Dublin Limited have a leasehold interest in the quarry lands, and that the lands are owned by Aidan Bagnell, 18 Castlilawn, Athboy, Co. Meath.

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Information retrieved from the Council's planning records relating to the planning history of the subject quarry at Ballinascorney Upper indicates that a temporary planning permission was granted to Irish Aggregates Limited in 1974 for quarrying operations on the subject lands, subject to the removal of all structures and plant by 28 February 1979. Correspondence relating to the planning applications indicates that Irish Aggregates Limited acquired the quarry in 1971.

On the basis of the available information, it is considered that quarry development carried out on the subject lands in the period from 1974 to 1979 was authorised on the basis of the planning permission granted by Order No. P/353/74, dated 5<sup>th</sup> February 1974 under register reference D. 1082.

It is noted that decision order P/022/07 dated 17 April 2007 made under section 261 deemed that the quarry at Ballinascorney Upper The lands concerned which are registered on Folio 134775F to Aidan Bagnall, 34 Maynooth Park, Maynooth, Co Kildare, and in which Roadstone Wood Limited have a leasehold interest is not a registered quarry.

### Conclusion

**Following an examination of the available information it is considered reasonable to conclude that quarry development at the unregistered quarry at Ballinascorney Upper Registered to Aidan Bagnall, 34 Maynooth Park, Maynooth, Co Kildare, and in which Roadstone Wood Limited have a leasehold interest was authorised on the basis of a temporary planning permission granted under Reg. Ref. D. 1082, which expired on 28 February 1979.**

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**DETERMINATION IN RELATION TO ENVIRONMENTAL IMPACT ASSESSMENT**

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Section 261A(2)(a)(i): Determination in relation to Environmental Impact Assessment

Whether development was carried out after 1 February 1990 which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment or a determination as to whether an environmental impact assessment was required, but that such an assessment or determination was not carried out or made.

The Quarry Guidelines (2012) advise:

### 3.2.1 General

**Under subsection (2)(a), as amended by Regulation 16 of the European Union (Environmental Impact Assessment and Habitats) Regulations 2011 (SI 473 of 2011), a planning authority is required to examine each quarry in its administrative area to determine whether development was carried out after 1 February 1990 which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment or a determination as to whether an environmental impact assessment was required, but that such an assessment or determination was not carried out or made**

### 3.2.2 Development after 1 February 1990/26 February 1997

**Making the determinations referred to above will require a planning authority to firstly make the best assessment it can of the scale of the development that has taken place after 1/2/1990 in relation to the EIA Directive and after 26/2/1997 in relation to the Habitats Directive.**

**(Section 261A of the Planning and Development Act, 2010 and related provisions - Guidelines for Planning Authorities Jan. 2012 page 6)**

An examination of the seven series of aerial photography flown at intervals during the period from 1971 to 2009 indicates changes in the extent of the quarry workings in that period as detailed in Table 3.

[Appendix 6 *Aerial photography 1971-2009*]

Table 3 Estimated increase in quarry area 1971-2009

Year of photography	Estimated quarry area (hectares)	Increase in quarry area (hectares)
1971	5.06	nil

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1978	5.06	nil
1986	5.22	0.16
1995	5.22	nil
2000	5.22	nil
2005	5.22	nil
2009	5.22	nil

It is noted that ordnance survey Dublin Sheet 24-8 surveyed in 1837 and revised in 1969, used as the base map for the planning register, illustrates a quarry comprising c. 0.77 hectares at this location. The first edition ordnance survey sheet illustrates a quarry at this location of insignificant size, and it can reasonably be inferred that the quarry at this location illustrated on the 1969 revised sheet is an accurate representation of the quarry excavation existing in 1969. Aerial photography flown in 1978 and 1986 illustrates a quarry at this location comprising of c. 5.06 hectares in 1978, and c. 5.22 hectares in 1986 when quarrying had ceased. It is noted that drawings relating to the application under Reg. Ref. G. 1292 appear to confirm the pattern of development at the quarry as outlined above. It appears therefore that the existing quarry excavation was largely developed in the period between 1969 and 1979 when active quarrying ceased. It is considered therefore that, as no development was carried out after 1 February 1990, no requirement arises for an examination of the quarry under subsection 261A(2)(a)(i)

*[Appendix 7 OS Dublin Sheet 24-8 surveyed 1837 revised 1969, and extract from Site layout drawing Reg. Ref. G.1292]*

### Conclusion

**Following an examination of the available information it is considered reasonable to conclude, having regard to the EIA Directives, that no quarry development has been carried out after 1 February 1990 at the unregistered quarry at Ballinascorney Upper registered to Aidan Bagnall, 34 Maynooth Park, Maynooth, Co Kildare, and in which Roadstone Wood Limited have a leasehold interest, and the quarry site is therefore not subject to the requirements under subsection 261A(2)(a)(i) in respect of a determination in relation to Environmental Impact Assessment.**

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**III**

**DETERMINATION IN RELATION TO HABITATS ASSESSMENT**

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### Section 261A(2)(a)(ii) Determination in relation to Appropriate Assessment

Whether development was carried out after 26 February 1997 which development would have required an appropriate assessment, having regard to the Habitats Directive, but that such an assessment was not carried out.

The Quarry Guidelines (2012) advise:

Section 261A(2): Determination in relation to appropriate assessment

**Under subsection (2)(a), as amended by Regulation 16 of the European Union (Environmental Impact Assessment and Habitats) Regulations 2011 (SI 473 of 2011), a planning authority is required to examine each quarry in its administrative area to determine**

**Whether development was carried out after 26 February 1997 which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out**

**(Section 261A of the Planning and Development Act, 2010 and related provisions - Guidelines for Planning Authorities Jan. 2012 page 6)**

The Quarry Guidelines (2012) advise:

***.....appropriate assessment is not required in respect of development authorised by a planning permission granted prior to 26 February 1997. Obviously therefore the planning register should be checked to find out whether any planning permission or permissions were granted in respect of the quarry, and what is the extent of the development authorised by the permission(s). Where it is established that any post-February 1997 development is authorised by a pre-February 1997 planning permission no further action is required in respect of that quarry under section 261A.***

***Where the quarry has not got a planning permission it will necessary to decide..... whether the post-1997 development was authorised by a bona fide pre-1964 use and so might be said to have a "pre-1964 authorisation".***

**(Section 261A of the Planning and Development Act, 2010 and related provisions - Guidelines for Planning Authorities Jan. 2012 page 7)**

As concluded previously in relation to the examination under section 261A(2)(a)(i), it appears on the basis of an examination of the available information that the existing quarry excavation at Ballinascorney Upper registered to Aidan Bagnall, 34 Maynooth Park, Maynooth, Co Kildare, and in which Roadstone Wood Limited have an interest, was

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largely developed in the period between 1969 and 1979 when active quarrying ceased. It is considered therefore that, as no development was carried out after 26 February 1997, no requirement arises for an examination of the quarry under subsection 261A(2)(a)(ii).

### Conclusion

**Following an examination of the available information it is considered reasonable to conclude, having regard to the Habitats Directive, that no quarry development has been carried out after 26 February 1997 at the unregistered quarry at Ballinascorney Upper registered to Aidan Bagnall, 34 Maynooth Park, Maynooth, Co Kildare, and in which Roadstone Wood Limited have a leasehold interest, and the former quarry site is therefore not subject to the requirements under subsection 261A(2)(a)(ii) in respect of a determination in relation to Habitats Assessment.**

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## **Record of Executive Business and Manager's Order**

**IV**

**DETERMINATION REGARDING WHETHER DEVELOPMENT COMMENCED AFTER 3<sup>rd</sup> JULY 2008**

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Section 261A(5)(a): Determination regarding whether development was carried out after 3 July 2008 which development would have required an environmental impact assessment, a determination in relation to EIA, or an appropriate assessment, having regard to the EIA Directives and the Habitats Directive, but that such were not carried out or made.

The Quarry Guidelines (2012) advise:

3.5 Section 261A(5): Determination by a planning authority and issue of notice under subsection (5)

**Where the planning authority makes a determination under subsection (2)(a) that EIA, a determination in relation to EIA, or an appropriate assessment was required but not carried out/made, it must also make a further determination under subsection (5)(a): under this subsection the planning authority must determine whether development took place after 3 July 2008 (i.e. the date of the ECJ ruling in case C-215/06) which would have required an EIA, a determination in relation to EIA, or an appropriate assessment but such were not carried out/made. A planning authority will only make such a determination where the development that took place after 3 July 2008 would of itself have required EIA, a determination in relation to EIA, or an appropriate assessment. In this case the quarry owner/operator will not be permitted to apply for substitute consent but instead an enforcement notice will be issued by the planning authority requiring the cessation of the unauthorised quarry development.**

**In determining whether EIA would have been required in respect of post 2008 development, the same methodology applies as in making the subsection (2)(a) determination as set out above, that is, ascertaining whether the post 2008 development in itself:**

- brings the entire quarry to a size in excess of 5 hectares and
- represents an increase of over 25% on the pre-July 3 2008 development and
- is in itself in excess of 2.5 hectares

**or**

- would have significant effects on the environment.

**(Section 261A of the Planning and Development Act, 2010 and related provisions - Guidelines for Planning Authorities Jan. 2012 - page 14)**

As concluded previously in relation to the examination under section 261A(2)(a)(i), it appears on the basis of an examination of the available information that the existing quarry excavation at Ballinascorney Upper registered to Aidan Bagnall, 34 Maynooth Park, Maynooth, Co Kildare, and in which Roadstone Wood Limited have a leasehold

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interest, was largely developed in the period between 1969 and 1979 when active quarrying ceased. It is considered therefore that no requirement arises for an examination of the quarry under subsection 261A(5)(a).

### Conclusion

**Following an examination of the available information it is considered reasonable to conclude, having regard to the EIA and Habitats Directives, that no quarry development has been carried out after 3 July 2008 at the unregistered quarry at Ballinascorney Upper registered to Aidan Bagnall, 34 Maynooth Park, Maynooth, Co Kildare, in which Roadstone Wood Limited have a leasehold interest, and the former quarry site is therefore not subject to the requirements under subsection Section 261A(5)(a) in respect of a determination in relation to Environmental Impact Assessment and Habitats Assessment.**

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**V**

**DECISION REGARDING WHETHER THE REGISTRATION REQUIREMENTS OF SECTION  
261 WERE COMPLIED WITH.**

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Section 261A(3)(b): Decision of the planning authority under subsection (3)

Whether the quarry fulfilled the requirements in relation to registration under section 261 (if required to do so).

The Quarry Guidelines (2012) advise:

3.3 Section 261A(3): Decision of the planning authority under subsection (3)<sup>1</sup>  
**Where the planning authority has made a determination under subsection (2)(a) in respect of a quarry that EIA, a determination in relation to EIA, or an appropriate assessment was required but not carried out/made, it must also decide the following in respect of the quarry:**  
**(b) whether the quarry fulfilled the requirements in relation to registration under section 261 (if required to do so).**

**In relation to (b), it may be noted that the requirement is to have fulfilled the requirements in relation to registration as opposed to having “registered”.**

**[Section 261A of the Planning and Development Act, 2010 and related provisions - Guidelines for Planning Authorities Jan. 2012 - page 11]**

### S261 Registration Requirements [see Appendix 6]

The registration requirements to be fulfilled by the owner or operator of a quarry to which section 261 applies are set out in sub-sections 1, 2, 3 and 11 of section 261 as detailed below.

- (1) *The owner or operator of a quarry to which this section applies shall, not later than one year from the coming into operation of this section, provide to the planning authority, in whose functional area the quarry is situated, information relating to the operation of the quarry at the commencement of this section, and on receipt of such information the planning authority shall, in accordance with section 7, enter it in the register.*
- (2) *Without prejudice to the generality of subsection (1), information provided under that subsection shall specify the following—*
  - (a) *the area of the quarry, including the extracted area delineated on a map,*
  - (b) *the material being extracted and processed (if at all),*
  - (c) *the date when quarrying operations commenced on the land (where known),*
  - (d) *the hours of the day during which the quarry is in operation,*
  - (e) *the traffic generated by the operation of the quarry including the type and frequency of vehicles entering and leaving the quarry,*
  - (f) *the levels of noise and dust generated by the operations in the quarry,*

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<sup>1</sup> The Supplementary Guidelines for Planning Authorities issued in July 2012 provide clarification that the phrase “having fulfilled the requirements in relation to registration” means the same as having “registered”, and does not refer to compliance with conditions that may have been imposed under section 261(6). [Guidelines July 2012 page 7]

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- (g) any material changes in the particulars referred to in paragraphs (a) to (f) during the period commencing on the commencement of this section and the date on which the information is provided,*
- (h) whether—*
  - (i) planning permission under Part IV of the Act of 1963 was granted in respect of the quarry and if so, the conditions, if any, to which the permission is subject, or*
  - (ii) the operation of the quarry commenced before 1 October 1964, and*
  - (i) such other matters in relation to the operations of the quarry as may be prescribed.*

*(3) A planning authority may require a person who has submitted information in accordance with this section to submit such further information as it may specify, within such period as it may specify, relating to the operation of the quarry concerned and, on receipt thereof, the planning authority shall enter the information in the register.*

*(11) This section shall apply to—*

- (a) a quarry in respect of which planning permission under Part IV of the Act of 1963 was granted more than 5 years before the coming into operation of this section, and*
- (b) any other quarry in operation on or after the coming into operation of this section, being a quarry in respect of which planning permission was not granted under that Part.*

Section 261 of the Planning & Development Act 2000 requires all owners / operators of quarries to which the section applies to register the quarry by providing details of the quarry operation to the planning authority within one year of the section coming into force.

The quarry at Ballinascorney does not have the benefit of a planning permission. Roadstone submitted an application to register the quarry under S261. Information relating to the quarry operated by Roadstone Dublin Limited at Ballinascorney Upper, was received on 27 April 2005 and was entered in the Planning Register under Register Reference SDQU05A/5.

The application stated that the quarry commenced operations pre-1964, that it is not in operation at the time of the application, that it is not normally used for quarrying operations on a seasonal or temporary basis, that quarrying operations are temporarily suspended and were last carried out in 1979.

By way of a request for further information Roadstone were requested to clarify how the quarry could be considered to come within the scope of S261 having regard to the Quarries and Ancillary Activities Guidelines for Planning Authorities, which state:

*“Failure to register a quarry, or to respond to a request for further information, will have serious consequences for the future of that quarry. From then on, the quarry will be considered an unauthorised development and, as such, may be subject to enforcement proceedings by the planning authority. For that reason, the owner or operator of an existing quarry whose use has been temporarily suspended but is normally in operation, or which is normally used on a seasonal or occasional basis, should register that quarry if they intend to recommence operations at that site. Where this is the case, evidence of that use or the length of time that the operations have*

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*been suspended should also be submitted. However, quarries which have been abandoned for a considerable amount of time (e.g. several years) will not be able to recommence operations without seeking planning permission. It is not possible to register an abandoned quarry in order to recommence its use.<sup>2</sup>*

Roadstone made a submission in response to the request for further information stating that the purpose of registering the quarry within the scope of S261 is to define the extractable / reserve area as they wish to recommence quarrying operations at the site when the registration process has been finalised and subject to a future planning permission.

A notice published in the Irish Times on 19 October 2005 in accordance with Section 261(4) invited submissions from members of the public on the quarry, and stated that the Planning Authority considers that the quarry at Ballinascorney does not come within the scope of S261 as it has been out of operation for approx 25 years. No submissions relating to the subject quarry were received during the specified period.

On further examination and on the basis of legal advice obtained in that regard, it was decided that as the quarry was not in operation at the time of registration and had been out of operation since 1979, the quarry previously operated on this site was not eligible to be registered as a quarry in accordance with Section 261, having regard to subsections (1) and (11) of Section 261. Accordingly the entry in the planning register in respect of the quarry was cancelled.

*[Appendix 8 S261 Manager's order and registration application documents]*

### Conclusion

**Following an examination of the available information, it is considered reasonable to conclude that the requirements in relation to registration under Section 261 of the Planning and Development Act 2000, have not been fulfilled in respect of the disused quarry at Ballinascorney Upper, Bohernabreena, County Dublin, registered to Aidan Bagnall, 34 Maynooth Park, Maynooth, Co Kildare and in which Roadstone Wood Limited have a leasehold interest.**

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<sup>2</sup> Quarries and Ancillary Activities Guidelines for Planning Authorities, DEHLG, April 2004

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### **SUMMARY CONCLUSIONS AND RECOMMENDATIONS**

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### Summary

An examination of all available information relating to the development of the quarry in the townland of Ballinascorney Upper, Bohernabreena, County Dublin, registered to Aidan Bagnall, 34 Maynooth Park, Maynooth, Co Kildare, and in which Roadstone Wood Limited have a leasehold interest, has established the following.

- Limited quarrying was carried out on the subject lands prior to the commencement of the Local Government (Planning and Development) Act 1963.
- The existing quarry excavation, which largely dates from the period between 1969 and 1979, was mainly carried out on the basis of a temporary planning permission for the erection of quarry plant and ancillary buildings on the subject lands granted to Irish Aggregates Limited in 1974, which expired in 1979.
- Quarrying operations ceased in 1979 and have not been recommenced since then.
- As no quarry development has been carried out after the relevant dates no requirement for EIA or Habitats assessment arises under the EIA and Habitats Directives.
- The subject quarry is not a registered quarry under S. 261, as it was deemed not to be eligible for registration because it was not in operation at the commencement of section 261.

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### Conclusions

**Section 261A(3)(a)(i): A decision regarding whether the quarry commenced operation prior to 1 October 1964, or whether planning permission was granted in respect of the quarry.**

Following an examination of the available information it is considered reasonable to conclude that quarry development at the unregistered quarry at Ballinascorney Upper, Bohernabreena, County Dublin, registered to Aidan Bagnall, 34 Maynooth Park, Maynooth, Co Kildare, and in which Roadstone Wood Limited have a leasehold interest, was authorised on the basis of a temporary planning permission granted under Reg. Ref. D. 1082, which expired on 28 February 1979.

**Section 261A(2)(a)(i): Determination in relation to Environmental Impact Assessment**

**Whether development was carried out after 1 February 1990 which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment or a determination as to whether an environmental impact assessment was required, but that such an assessment or determination was not carried out or made.**

Following an examination of the available information it is considered reasonable to conclude, having regard to the EIA Directives, that no quarry development has been carried out after 1 February 1990 at the unregistered quarry at Ballinascorney Upper, Bohernabreena, County Dublin, registered to Aidan Bagnall, 34 Maynooth Park, Maynooth, Co Kildare, and in which Roadstone Wood Limited have a leasehold interest, and the quarry is therefore not subject to the requirements under subsection 261A(2)(a)(i) in respect of a determination in relation to Environmental Impact Assessment.

**Section 261A(2)(a)(ii) Determination in relation to Appropriate Assessment**

**Whether development was carried out after 26 February 1997 which development would have required an appropriate assessment, having regard to the Habitats Directive, but that such an assessment was not carried out.**

Following an examination of the available information it is considered reasonable to conclude, having regard to the Habitats Directive, that no quarry development has been carried out after 26 February 1997 at the unregistered quarry at

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Ballinascorney Upper, Bohernabreena, County Dublin, registered to Aidan Bagnall, 34 Maynooth Park, Maynooth, Co Kildare, and in which Roadstone Wood Limited have a leasehold interest, and the quarry is therefore not subject to the requirements under subsection 261A(2)(a)(ii) in respect of a determination in relation to Habitats Assessment.

**Section 261A(5)(a): Determination regarding whether development was carried out after 3 July 2008 which development would have required an environmental impact assessment, a determination in relation to EIA, or an appropriate assessment, having regard to the EIA Directives and the Habitats Directive, but that such were not carried out or made.**

Following an examination of the available information it is considered reasonable to conclude, having regard to the EIA and Habitats Directives, that no quarry development has been carried out after 3 July 2008 at the unregistered quarry at Ballinascorney Upper, Bohernabreena, County Dublin, registered to Aidan Bagnall, 34 Maynooth Park, Maynooth, Co Kildare, and in which Roadstone Wood Limited have a leasehold interest, and the former quarry site is therefore not subject to the requirements under subsection Section 261A(5)(a) in respect of a determination in relation to Environmental Impact Assessment and Habitats Assessment.

**Section 261A(3)(a)(ii): Decision of the planning authority under subsection (3)**

**Whether the quarry fulfilled the requirements in relation to registration under section 261 (if required to do so).**

Following an examination of the available information, it is considered reasonable to conclude that the requirements in relation to registration under section 261 of the Planning and Development Act 2000, have not been fulfilled in respect of the disused quarry at Ballinascorney Upper, Bohernabreena, County Dublin, registered to Aidan Bagnall, 34 Maynooth Park, Maynooth, Co Kildare, and in which Roadstone Wood Limited have a leasehold interest.

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### Recommendation

Following an examination of all available information it is considered, having regard to the dates of implementation of the EIA Directives and the Habitats Directive, that no quarry development has been carried out after the relevant dates on the unregistered quarry lands at Ballinascorney Upper, Bohernabreena, County Dublin, registered to Aidan Bagnell, 18 Castlawn, Athboy, Co. Meath, and in which Roadstone Wood Limited have a leasehold interest. It is therefore considered that no requirement arises for the relevant determinations or decisions to be made by the Planning Authority under section 261A of the Planning and Development Act 2000 (as amended) in respect of the subject quarry.

It is recommended that an order be made to that effect and that the registered owner of the landholding and leasehold interests be advised that no requirement arises for the relevant determinations or decisions to be made by the Planning Authority under section 261A of the Planning and Development Act 2000 (as amended).

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Robert Matthews**  
**Senior Executive Planner**

**ORDER:** It is hereby authorised that the relevant owner and leasehold interest of the landholding Aidan Bagnell, 34 Maynooth Park, Maynooth, Co Kildare and Aidan Bagnell, 18 Castlawn, Athboy, Co. Meath, and in which Roadstone Dublin Limited, Fortunestown, Tallaght, Dublin 24 have a leasehold interest be advised that no requirement arises for the relevant determinations or decisions to be made by the Planning Authority under section 261A of the Planning and Development Act 2000 (as amended).

Dated: 16 | 8 | 12

*Neil O'Byrne*  
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**Neil O' Byrne**  
**Senior Planner**