

# **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/1

**Correspondence Name and Address:** Tim Paul, John Barrett & Associates, CSA House, 7  
Dundrum Business Park, Windy Arbour, Dublin 14

**Location:** Aghfarrell, Brittas, 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.**

### **Section 261A Review of Quarries**

#### **Shillelagh Quarry**

**Quarry Location:** Aghfarrell,  
Brittas,  
Co. Dublin.

**Owner / Operator:** Shillelagh Quarries Limited.

**Register Reference:** SDQU05A/1

# **Comhairle Chontae Atha Cliath Theas**

---

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

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# Comhairle Chontae Atha Cliath Theas

---

## Record of Executive Business and Manager's Order

### Contents

#### *Introduction and Background*

*Introduction*

*General Overview*

*Relevant Planning History*

*Planning Enforcement History*

*Environmental Health Officer Comments*

*Section 261 Registration of the Quarry*

*Section 261A Submissions*

*Section 261A Determinations / Decisions*

*Guidelines for Planning Authorities (Jan. 2012)*

*Definition of 'quarry'*

*Information Sources*

*Decision regarding whether the quarry is authorised*

*Determination as to whether an environmental impact assessment was required but was not carried out*

*Determination as to whether an appropriate assessment was required but was not carried out*

*Determination as to whether the development commenced after 3 July 2008*

*Decision regarding whether the registration requirements of section 261 were complied with*

*Summary of conclusions*

*Recommendation to issue notice*

# **Comhairle Chontae Atha Cliath Theas**

---

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

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# Comhairle Chontae Atha Cliath Theas

---

## Record of Executive Business and Manager's Order

### Appendices

- Appendix 1* Site location map, and S. 261 site layout plan
- Appendix 2* Relevant extracts from County Development Plan 2010-2016
- Appendix 3* Map illustrating sites of nature conservation interest
- Appendix 4* Oblique aerial photography 2005
- Appendix 5* Planning history documents
- Appendix 6* Planning enforcement history documents
- Appendix 7* An Bord Pleanála S.5 determination PL.06S.RL2473
- Appendix 8* S261A public notice and submissions received
- Appendix 9* Patterson v Murphy, High Court 1977 No. 6215P
- Appendix 10* Drawing RFI 01 dated September 2005
- Appendix 11* OS Map Ref. No. 24-15, scale 1:2,500, revised 1969

# **Comhairle Chontae Atha Cliath Theas**

---

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

*Appendix 12* Aerial photography 1971-2009

*Appendix 13* S. 261 Manager's order and registration application

# **Comhairle Chontae Atha Cliath Theas**

---

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

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# **Comhairle Chontae Atha Cliath Theas**

---

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

### **INTRODUCTION AND BACKGROUND**

# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

### 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 quarries in the county. This report relates to the quarry operated by Shillelagh Quarries Limited on lands at Aghfarrell,

# **Comhairle Chontae Atha Cliath Theas**

---

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

Brittas, County Dublin.

# Comhairle Chontae Atha Cliath Theas

---

## Record of Executive Business and Manager's Order

### General Overview

The Shillelagh quarry is located c. 2.5 kilometres to the east of Brittas village on the north facing slopes of Butter Mountain (465m) within the townland of Aghfarrell. It lies on the southern side of a narrow valley between Butter Mountain to the south and Knockannavea to the north. The Kilsaran quarry is located on lands at Aghfarrell on the opposite side of the valley, to the north of the Shillelagh quarry. The valley is drained by the Brittas river which flows southwards to the Poulaphouca Reservoir, but is also connected to the Camac river catchment to the north via a constructed watercourse linking the river to the Brittas Ponds. A tributary stream rising on the western side of the Shillelagh quarry lands flows northwards to join the Brittas river. The stream marks both the western edge of the quarry lands and the county boundary with County Wicklow. The quarry entrance is located on the L4382 Wicklow County local road. Traffic accessing the quarry from the Brittas direction uses the R 114 which links Brittas to Bohernabreena further to the east. There are a number of dispersed residential properties located along the R 114 and on local roads in the vicinity of the quarry lands.

*[ Appendix 1 Location Map and S. 261 site layout plan ]*

The existing quarry excavation covers an area of c. 30.27 hectares extending from the 325mOD to 425mOD contour lines, and the existing quarry floor lies at c. 320mOD. The quarry lands to the south of the existing excavation lying between the 425mOD and 450mOD contour lines appear to have been prepared for future excavation by the cutting of drainage channels. A large berm has been erected along the western side of the quarry excavation for the purpose of storing overburden. A second berm erected along the western side of the quarry lands to the north of the quarry excavation area was the subject of a refusal of planning permission for its retention under register reference S99A/0016. Weathered rock and other debris have been deposited on an adjacent field located within the registered quarry lands to the north east of the quarry excavation area.

The Shillelagh quarry lands are located within an area designated Zoning Objective 'H' under the South Dublin County Development Plan 2010-2016, with the objective to "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 350mOD contour line. It appears from aerial photography flown in the period 1972 to 1995 that the quarry excavation exceeded the 350mOD contour c. 1990.

The quarry is visible over a wide area as a prominent scar on the landscape and a discordant feature in the context of the smooth rounded topography and mountain heath and woodland character of the surrounding landscape. Views towards the quarry lands from public roads in the vicinity are indicated on the relevant development plan map to be protected in accordance with Policy LHA2 as detailed in the South Dublin County Development Plan 2010-2016.

# Comhairle Chontae Atha Cliath Theas

---

## Record of Executive Business and Manager's Order

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

There are two Special Areas of Conservation (Wicklow Mountain SAC and Glenasmole Valley SAC), located c. 1.5 kilometres to the east and southeast of the quarry respectively, and there are proposed Natural Heritage Areas located within 3 to 4 kilometres to the west (Slade of Saggart) and north (Lugmore Glen). Lands at Gortlum c. 2 kilometres to the east 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.

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

A comprehensive view of the Shillelagh quarry and its surroundings is provided in the oblique aerial photography flown in August 2005.

*[Appendix 4 Oblique aerial photography 2005]*

### Relevant Planning History

#### Reg. Ref. SD07A/0276

Planning permission was refused on appeal on 24 December 2010 for development comprising the following:

- Continuance of use of the existing quarry on lands that have been used for this purpose since before 1<sup>st</sup> October 1964 on a site registered under Section 261 of the Planning and Development Act 2000 (Quarry Reference SDQU05A/1);
- all existing ancillary facilities including the existing processing plant (crushing and screening plant), overburden storage areas, stockpile areas, water management system and the truck/vehicle parking area;
- extension of the existing quarry extraction area by 4.2 hectares, within the registered area, to give a total extraction area of 15.5 hectares within an overall application area of 28.1 hectares;
- provision of a wheelwash and hydrocarbon interceptor; and
- landscaping and final restoration of the site.

Reasons for refusal (An Bord Pleanála Reference Number: PL 06S.231371):

1. On the basis of the submissions made in connection with the planning application and the appeal, the planning history of the site, High Court Judgement Reference Number [1978] ILRM 85 (Frank Patterson and Emily Patterson v. Martha Murphy and Trading Services Ltd.), and available aerial photography, the Board is not satisfied that the existing quarrying operations presently conducted on site, commenced prior to the appointed day, namely, 1<sup>st</sup> October, 1964, nor are they authorised by a grant of planning permission. Accordingly, the Board is precluded from considering a grant of permission for the proposed development in such circumstances.
2. Having regard to:-
  - (a) the planning history of the site,
  - (b) High Court Judgement Reference Number. [1978] ILRM 85 (Frank Patterson and Emily Patterson v. Martha Murphy and Trading Services Ltd.),
  - (c) the nature, scale and extent of activities carried out on site,
  - (d) the provisions of Section 261 of the Planning and Development Act, 2000, as amended, and

# Comhairle Chontae Atha Cliath Theas

---

## Record of Executive Business and Manager's Order

(e) the judgment of the European Court of Justice in Case C-215/06, Commission v. Ireland, delivered on the 3<sup>rd</sup> day of July, 2008, in which it was held that the retention permission system, as it applies in Irish law to projects that are required to be subject to Environmental Impact Assessment under the EIA Directives, does not comply with the Directives, it is considered that, as the proposed development for which permission is sought is of a class that requires Environmental Impact Assessment in accordance with the requirements of EU Directive 85/337/EEC (as amended) and that it includes a significant element of retention permission, the Board is, therefore, precluded from considering a grant of planning permission in this case.

### **Reg. Ref. S99A/0016**

Planning permission was refused by South Dublin County Council on 22 November 1999 for retention of an earth embankment at Shillelagh Quarries for the following reasons:

1. The present quarrying operations on site are unauthorised development in that a planning permission has not been granted nor were the present operations operating prior to October, 1964. As such, it is considered that the retention of an earth embankment which serves the unauthorised development cannot be permitted.
2. It is considered that the proposed development of an earth embankment in an area zoned to protect and enhance the outstanding natural character of the Dublin Mountain Area would be contrary to the policies and objectives of the South Dublin County Development Plan 1998 as the development would not protect nor enhance the natural character of the area and would be seriously injurious to the amenities of the area and property in the area.
3. A satisfactory stability report for the earth embankment has not been submitted. The earth embankment therefore must be considered to pose a possible threat to public safety as its stability cannot be guaranteed.
4. The treatment of watercourses in the area has not been addressed following a request for Additional Information in that regard. As such the proposed development may cause serious water pollution.
5. The full extent of the quarrying operation on site has not been submitted, nor has an embankment stability report, or proposals to treat watercourses in the area. As such it is considered that the application for permission is not sufficiently detailed.

The decision of the planning authority was not appealed.

*[Appendix 5 Planning history documents]*

### **Enforcement History:**

#### Ref. S1560:

File opened in 1994

Description of unauthorised development: construction of a roadway

Further complaint received in 1999 in relation to operation of unauthorised quarry

Surveys of quarry carried out on 29/11/2001 and April 2004

June 2005 decision made to hold further enforcement in abeyance pending consideration of application for registration of quarry.

#### Ref. S4778

Description of unauthorised development: Dumping of waste materials on former agricultural fields.

Warning letter issued on 11 October 2006

File closed in February 2010 – Development deemed to be exempted.

#### Ref. S6004

Description of unauthorised development: Illegal quarrying and dumping subject to ABP appeal PL.06S.231371

File opened March 2009

# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

Awaiting outcome of legal action against decision of An Bord Pleanala on planning application.

*[Appendix 6 Planning enforcement history documents]*

### Section 5 Referrals

PL.06S.RL2473 – Whether intensification of use of quarry, use of explosives, laying of material for a road and a new entrance are or are not development or are or are not exempted development:-

An Bord Pleanala determination;

- insufficient evidence was available to make a decision on the roadway and entrance
- the intensification is development and not exempted development

*[Appendix 7 An Bord Pleanala S.5 determination PL.06S.RL2473]*

### Environmental Health Officer Report

One complaint has been received about this quarry. The complaint was in 2005 and was about dust.

There is no asphalt plant on this site.

### Section 261 Registration of Shillelagh Quarry

Information relating to the Quarry operated by Shillelagh Quarries Limited at Aghfarrell, Brittas, Co. Dublin, was received on 20 April 2005 and was duly entered in the Planning Register under Register Reference SDQU05A/1. By order dated 18th April 2006 a statutory notice was served by the Council under Section 261(7) on Shillelagh Quarries Limited requiring the submission of a planning application and EIS in respect of the quarry at Aghfarrell. Information relating to the section 261 registration of the quarry is summarised in Table 1.

Table 1 S. 261 outline details Shillelagh Quarry

<b>Owner / Operator</b>	Shillelagh Quarries Ltd.
<b>Register Reference Number</b>	SDQU05A/1
<b>Site Area</b>	48 ha.
<b>Extractable Area</b>	27 ha.
<b>Aggregates Extracted</b>	Shale
<b>Annual Output</b>	500,000 tonnes
<b>Planning Status</b>	Pre-1964

# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

### Section 261A Submissions

A total of 92 submissions received relate to the Shillelagh quarry. Of these 89 were positive observations which claim that the quarry provides an important source of aggregate for the construction sector as well as providing direct and indirect employment. Most of the observers have been living in the vicinity of the quarry for years, and it is claimed that the quarry has not affected residential amenity or had significant environmental effects. For these reasons the continued operation of the quarry is supported.

Submission No. 45, by Tim Paul Director, SLR Consulting Ireland on behalf of Shillelagh Quarries Limited, states that Shillelagh Quarries Ltd is currently engaged in court proceedings (Record No.2011/154JR) with An Bord Pleanála in relation to the Board's decision to overturn the grant of planning permission by the Planning Authority. It is submitted in that regard that it would be appropriate to await the outcome of these proceedings before a determination is made on whether an application for substitute consent be made.

Submission No. 46 by Michael McCoy, Secretary Dublin Mountain Conservation and Environmental Group, states that permission granted by the Planning Authority to Shillelagh Quarries Limited (SDQU05A/1) is "Ultra Vires". That the Planning Authority failed to carry out a full investigation of the unauthorised quarry. It also failed to request from Shillelagh Quarries Limited proof of pre-1964 status, ownership of land etc. despite knowing that it was an unauthorised quarry.

Submission No. 91 by William M. Collins states that the Shillelagh Quarry is illegal. The application made under S. 261 was not properly considered and false information was submitted with regard to ownership of lands contained in folios which no longer existed and where unauthorised development was taking place.

### 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, 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.

# Comhairle Chontae Atha Cliath Theas

---

## Record of Executive Business and Manager's Order

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

Guideline 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 provides 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 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.

# **Comhairle Chontae Atha Cliath Theas**

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

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# **Comhairle Chontae Atha Cliath Theas**

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

**I**

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

# **Comhairle Chontae Atha Cliath Theas**

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

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# Comhairle Chontae Atha Cliath Theas

## Record of Executive Business and Manager's Order

**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 with the section 261 registration application states that quarrying operations commenced on the site in the 1930's and that no planning permission was granted for the quarry under the planning acts. The quarry therefore appears to have been in operation since prior to 1 October 1964.

A High Court judgement delivered in May 1978 found that the nature and scale of the quarry operations being carried on in 1977 differed materially from those carried out previously and constituted a material change of use which requires planning permission.<sup>1</sup> As no planning permission was subsequently obtained in that regard the quarrying operations since that time are therefore unauthorised. The unauthorised status of the quarry was not a material consideration in the registration of the quarry.

<sup>1</sup> Patterson v Murphy, High Court 1977 No. 6215P (Costello J.) 4 May 1978

# Comhairle Chontae Atha Cliath Theas

---

## Record of Executive Business and Manager's Order

*[Appendix 8 Patterson v Murphy, High Court 1977 No. 6215P (Costello J.) 4 May 1978]*

The quarry was registered under section 261 of the Planning and Development Act 2000 and a notice was subsequently served in accordance with S. 261(7) requiring the submission of a planning application and an EIS. A planning application and an EIS were duly submitted and registered under Reg. Ref. SD07A/0276. The proposed development comprised of the continuance of use of the existing quarry, all existing ancillary facilities, and extension of the quarry extraction area by 4.2 hectares to give a total extraction area of 15.5 hectares within a site area of 28.1 hectares. A decision to grant permission was made by the planning authority on 23 September 2008.

The decision was appealed and a decision to refuse permission was made by An Bord Pleanála on 24<sup>th</sup> December 2010 under appeal reference PL 06S.231371. The stated reasons are that the nature, scale and extent of the existing quarrying operations are materially different from the activities carried out on the site prior to 1<sup>st</sup> October 1964 and are not authorised by a planning permission, and are therefore unauthorised development, and the Board is precluded from considering a grant of permission for the proposed development in such circumstances. In addition as the proposed development is of a class that requires EIA in accordance with the EIA Directive, and includes a significant element of retention permission the Board is therefore precluded from considering a grant of planning permission, having regard to the judgment of the European Court of Justice in Case C-215/06.

The decision of An Bord Pleanála was the subject of an application to the High Court by Shillelagh Quarries Limited for a judicial review of the decision. A judgement of the High Court given on 6 July 2012 upheld the decision of An Bord Pleanála to refuse a grant of planning permission for the quarry development as proposed under Reg. Ref. SD07A/0276.

### Conclusion

**Following an examination of the available information it is considered reasonable to conclude that the quarry at Aghfarrell operated by Shillelagh Quarries Limited is not authorised having regard to the findings of the High Court that the quarrying operations carried on in 1977 differed materially from those carried on prior to 1 October 1964 and constitute a material change of use. Planning permission is therefore required under the Planning Acts for the continuance of such development, and no valid planning permission has been granted in that regard.**

# **Comhairle Chontae Atha Cliath Theas**

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

**II**

**DETERMINATION IN RELATION TO ENVIRONMENTAL IMPACT ASSESSMENT**

# **Comhairle Chontae Atha Cliath Theas**

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

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# Comhairle Chontae Atha Cliath Theas

---

## Record of Executive Business and Manager's Order

**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)

Drawing RFI 01 dated September 2005 submitted in relation to the S. 261 registration of the quarry, illustrates the location of the existing quarry including the extraction area (c. 11.95 ha.) and the overall workable area (c. 27.0 ha.), within the Shillelagh Quarries Limited landholding (c. 48.5 ha.). The above drawing also illustrates a gravel pit at the northern end of the Shillelagh Quarries landholding.

*[Appendix 9 Drawing RFI 01 dated September 2005]*

The OS Map Ref. No 24-15, scale 1:2,500, revised 1969, used as a base map for the planning register, illustrates that a 'gravel pit' existed on the field at the northern end of the Shillelagh quarry lands at Aghfarrell in 1969. There is no indication on the OS map of any quarry on any other part of the relevant lands. Furthermore it is noted that features illustrated elsewhere on the 1969 edition map are not evident on the edition of 1935-38. It appears to be reasonable to

# Comhairle Chontae Atha Cliath Theas

---

## Record of Executive Business and Manager's Order

conclude on this basis that no quarry excavation existed on the relevant lands in 1969, and that the existing quarry is not a pre-1964 quarry. However it is noted that the application for registration under S. 261 indicates that the quarry operation on the land commenced c. 1930's, and this information formed the basis on which a notice was subsequently served under subsection 261(7)(a) requiring the submission of a planning application and EIS for the continuance of quarrying.

*[Appendix 10 OS Map Ref. No. 24-15, scale 1:2,500, revised 1969]*

Aerial photography flown in 1972 illustrates ground disturbance over an area comprising c. 1.44 hectares on a portion of the lands at Aghfarrell which is within the quarry area as illustrated on drawing RFI 01. This feature appears to comprise the original quarry workings at this location. An examination of seven series of aerial photography flown at intervals over the period from 1972 to 2009 illustrates the progressive extension of this feature in that period (see Table 2).

*[Appendix 11 Aerial photography 1972 – 2009]*

Table 2 Estimated increases in quarry area at the Shillelagh quarry 1972-2009

<b>Year of photography</b>	<b>Estimated quarry area (hectares)</b>	<b>Increase in quarry area (hectares)</b>
1972	1.42	nil
1978	2.96	1.47
1986	3.32	0.36
1995	6.96	3.64
2000	13.75	6.79
2005	17.09	3.34
2009	19.14	2.05

The extent of the quarry area on 1 February 1990 is not known as no aerial photography is available for that year, and there are no maps or drawings available providing such information. From a comparison of aerial photography flown in the period up to 1986 it appears that the quarry area was confined to the three fields comprising 8.2 acres (c. 3.32 ha.) in that period. Aerial photography flown in 1995 illustrates that the quarry area increased by c. 3.64 ha. (108%) in the subsequent period up to 1995. Having regard to the pattern of general economic activity in that period it is likely that most of the increase in the quarry area occurred in the period after 1990, and it appears to be reasonable to conclude that in 1990 the quarry lay largely within the area occupied by the quarry as illustrated in the aerial photography flown in 1986.

# Comhairle Chontae Atha Cliath Theas

## Record of Executive Business and Manager's Order

**The Quarry Guidelines (2012) advise:**

### **3.2.3 Whether post 1990 and/or post 1997 development is authorised?**

When the planning authority has made an assessment of the amount of development that has taken place since 1 February 1990 and/or 26 February 1997 in the case of any quarry, it must decide whether EIA/appropriate assessment would have been required in respect of this development, but was not carried out. ....

Where the quarry has not got a planning permission it will necessary to decide, and this is the third point, whether the post-1990 and/or post-1997 development was authorised by a bona fide pre-1964 use and so might be said to have a "pre-1964 authorisation". Obviously the first step here is establishing whether the quarry commenced prior to 1 October 1964. Planning authorities will already have looked at the pre- or post-1964 status of quarries in the registration process which took place in 2004-2005 and accordingly information gleaned as part of this process should be the first port-of-call. However, other sources of information (see 3.2.1 above) should also be checked; planning authorities are, of course, required to consider submissions made in the 6-week period following the public notice published under subsection (1).

Where the authority is satisfied that the quarry commenced prior to 1 October 1964 it must then further decide whether the post-1990/post 1997 development referred to above could reasonably have been envisaged in 1964 and so may be deemed to be authorised on the basis of its pre-1964 use: the courts have held that a quarry which commenced prior to 1 October 1964 may lawfully complete the quarrying which would have reasonably been envisaged when the quarry commenced. However, where the post 1990 development comprised quarrying in a direction that would not have been anticipated in 1964, this part of the quarry cannot be regarded as covered by the pre-1964 authorisation.

In determining whether post-1990 development was authorised by a bona fide pre-1964 use, the questions of intensification and abandonment may also be relevant. Where a pre-1964 quarry intensified post-1964 to such an extent that a material change of use took place, this essentially changed operation would not be deemed to be covered by the pre-1964 authorisation. Similarly, where a quarry which commenced pre-1964 became abandoned, in the legal sense, and re-commenced at some point post-1964 without obtaining planning permission, this quarry cannot be regarded as being covered by the pre-1964 authorisation. "Abandonment" was defined in the case of *Dublin Co. Council v. Tallaght Block Co. Ltd. (1982)* as "where a previous use of land has not merely been suspended for a temporary and determined period but had ceased for a considerable time, with no evidenced intention of resuming it at any particular time": the intention to abandon is therefore crucial.

(Section 261A of the Planning and Development Act, 2010 and related provisions - Guidelines for Planning Authorities Jan. 2012 pages 6-7)

**The Quarry Guidelines (2012) advise:**

### **3.2.4 Environmental impact assessment**

*Where a planning authority has determined that there has been post-1990 development which was not authorised by a planning permission or a pre-1964 authorisation (or which is not authorised by a*

# Comhairle Chontae Atha Cliath Theas

## Record of Executive Business and Manager's Order

*permission granted under section 261(7)), the planning authority must then decide whether this post-1990 unauthorised development would have required EIA. In deciding whether EIA was required it will be necessary to refer to the relevant thresholds in place at the time the development was carried out and to decide whether, had an application for planning been made at the time, it would have required the submission of an EIS, having regard to the law in place at that time.*

*The EIA Directive was transposed, insofar as quarries are concerned, by the European Communities (Environmental Impact Assessment) Regulations, 1989 (S.I. No. 349 of 1989) and the Local Government (Planning and Development) Regulations, 1990 (S.I. No. 25 of 1990), making EIA mandatory for new quarries in excess of 5 hectares.*

*The second EIA Directive in 1997, 97/11/EC, introduced a requirement for EIA of changes or extensions to projects already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment.*

*This was transposed into Irish law in the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999, (S.I. No. 93 of 1999), which became operative on 1st May 1999, as “Any change or extension of development which would—  
(i) result in the development being of a class listed in Part I or paragraphs 1 to 12 of Part II of this Schedule, and  
(ii) result in an increase in size greater than—  
25%, or an amount equal to 50% of the appropriate threshold, whichever is the greater”.*

*This means that after that date mandatory EIA was required for the extension of a quarry which brought the total quarry to in excess of 5 hectares and represented an increase of over 25% of the existing quarry, provided that the extension in itself exceeded 2.5 hectares.  
It should be noted that the term extension does not include the normal further development of a quarry within its authorisation (whether a planning permission or a “pre-1964 authorisation”).*

(Section 261A of the Planning and Development Act, 2010 and related provisions - Guidelines for Planning Authorities (Jan. 2012) page 8)

On the basis of the conclusion that in 1990 the quarry workings lay largely within the area of the quarry as illustrated in the aerial photography flown in 1986, it appears to be reasonable to conclude that the further extension of the quarry in the period 1990 to 2009 comprises of c. 15.82 hectares. Furthermore it appears that the quarry is unauthorised as no planning permission exists for such development, and the quarry is not a pre-1964 quarry as it has been judicially determined that the quarry development that commenced c. 1977 constituted a material change of use with respect to quarrying operations carried out prior to that time.

Having regard to the advice provided in section 3.2.4 of the Guidelines 2012, it is considered that, had a planning application been made for a proposed quarry development on the scale of the unauthorised quarry development carried out on the relevant lands in the period between 1990 and 2009 comprising c.15.82 hectares, a mandatory EIA would have been required in that regard in accordance with the EIA Directive which came into force on 1 February 1990.

# **Comhairle Chontae Atha Cliath Theas**

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

### **Conclusion**

**Following an examination of the information available it is considered to be reasonable to conclude, having regard to the EIA Directives, that the unauthorised quarry development at Aghfarrell carried out after 1 February 1990, required mandatory EIA in accordance with the EIA Directive which came into force on 1 February 1990 and that no environmental impact assessment was carried out in that regard.**

# **Comhairle Chontae Atha Cliath Theas**

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

### **III**

#### **DETERMINATION IN RELATION TO HABITATS ASSESSMENT**

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# **Comhairle Chontae Atha Cliath Theas**

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

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# Comhairle Chontae Atha Cliath Theas

## Record of Executive Business and Manager's Order

### 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)

#### Furthermore:

*.....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 of the quarry under section 261A(2)(a)(i) in relation to the EIA Directives, it is evident that the quarry at Aghfarrell operated by Shillelagh Quarries Limited has been extended in the period since 26 February 1997. There is no evidence that quarrying operations carried out on the lands since that date were authorised by a planning permission granted prior to 26 February 1997 or by a "pre-1964 authorisation. Furthermore, the examination of the quarry development in relation to the EIA Directives concluded that the extension to the quarry carried out after 1 February 1990 required EIA or screening for EIA but that no such assessment or screening was carried out. Having regard to Section 5.3. of the Appropriate Assessment Guidelines 2009 (see extract below) an examination of the unauthorised quarry development carried out after the relevant date is therefore required under section 261A(2)(a)(ii), with regard to whether such development should have been subject to appropriate assessment and whether such assessment was carried out.

# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

**The Quarry Guidelines (2012) advise:**

### **3.2.7 Appropriate assessment**

*Where the planning authority has determined that development has taken place after 26 February 1997 which was not authorised either by a planning permission granted prior to this date or by a "pre-1964 authorisation" it must then determine whether such development should have been subject to an appropriate assessment as to its possible adverse effects on the integrity of a European site. Planning authorities should refer to the Department's Guidance for Planning Authorities on Appropriate Assessment of Plans and Projects in Ireland, December 2009.*

*It is important to note that in making a determination as to whether an appropriate assessment was required planning authorities should do so on the basis of the designations (cSAC, SPA, etc) in place at the time the development was carried out.*

(Section 261A of the Planning and Development Act, 2010 and related provisions - Guidelines for Planning Authorities Jan. 2012 page 10)

Article 6 (3) of the 'Habitats' Directive 92/43/EEC states that;

*Any plan or project not directly connected with or necessary to the management of a Natura 2000 site i.e. a Special Area of Conservation (SAC) or a Special Protection Area for Birds (SPA) but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the sites conservation objective.*

Article 6(3) therefore requires that an "appropriate assessment" be undertaken of the ecological implications of any plan or project that is likely to have an impact on a Natura 2000 site.

Statutory requirements relating to Appropriate Assessment are set out in Part XAB of the Planning and Development Act 2000<sup>2</sup>.

Section 5.3. of the Appropriate Assessment Guidelines<sup>3</sup> outlines the types of projects and developments that will require consideration for AA. In summary these include (inter alia):

- All development that requires a planning permission process (either through the planning authorities or An Bord Pleanála), including those that require an EIS to be carried out (above- and sub-threshold).
- Exempted development either within a Natura 2000 site or which could potentially have a significant effect on Natura 2000 sites, including excavation of trial holes and other

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<sup>2</sup> as inserted into by Section 57 of the Planning & Development (Amendment) Act 2010

# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

- site/ground investigations;
- All other local authority authorised 'projects' – waste permits, discharge licenses, recreation and amenity projects and road works.

In the screening of a Proposed Development for AA Section 5.5.1 of the guidance document advises that applications for permission where, from the nature, size and location of the development it is clear that an AA will be required, are more likely to be located within or close to, or upstream of, or in the catchment of, a Natura 2000 site, and have the clear potential to have a significant effect on a Natura 2000 site.

Section 2.1.2 of the Appropriate Assessment Guidelines advises that:

*“An application for retention could fall within the definition of project but must be treated with particular caution to ensure that an unauthorised development that has damaged or is likely to damage the integrity of a Natura 2000 site will not be approved subsequently. Article 6(3) establishes a procedure whereby a plan or project may be authorised only to the extent that it will not adversely affect the integrity of the site. In the same way as the EIA Directive, Article 6(3) seeks to prevent activities which would be likely to damage the environment from being authorised without prior consideration and assessment of their effects. This involves prior screening and AA. Retrospective assessments are not favoured by the case law of the ECJ, as they raise obvious questions regarding compliance.”*

There are a variety of processes, projects and activities associated with quarrying (authorised or otherwise) for which an operator may not normally require subsequent planning permission e.g. the relocation of plant and equipment associated with ancillary quarrying activities within the subject site, the replacement or upgrading of plant/ machinery, modifications to storage or disposal of waste water from washing, the extension or realignment of internal haul routes etc..

It is considered however, that some such activities, projects or changes in practices associated with quarrying could have potential to impact negatively on the Natura 2000 network depending on the location of the quarry, the nature of the changed activity and the presence of ecological corridors to protected sites. It is considered that under the broad understanding of Article 6(3) of the Habitats Directive, such activities would require a screening for Appropriate Assessment.

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<sup>3</sup> Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities” (DEHLG 2009)

# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

If such changes or modifications to work practices are indeed regarded by operators or deemed by Planning Authorities not to be subject to planning permission, the obligation to address screening for AA would still lie with the quarry landowner/ operator.

There is no record of the Planning Authority having been consulted regarding such matters in relation to this quarry, and there is no baseline information or evidence available to the Planning Authority on this issue. This issue would therefore be considered to be beyond the remit of the Planning Authority in respect of this review.

South Dublin County has two areas designated as SACs but has no designated SPAs. Both of the County's SACs are located in the Dublin Mountains, bordering with County Wicklow – Glenasmole Valley SAC and a portion of the larger Wicklow Mountains SAC. (see Appendix 3 for locations of nature conservation sites)

The Habitats Directive requires that an assessment also be undertaken to discern if any impacts are likely to arise on Natura 2000 sites in the proximity of the County by virtue of any plan or project implemented within the County. This is also taken to include potential downstream effects. There are two SPAs in County Wicklow which are close to the borders of South Dublin County: the Wicklow Mountains SPA (Site Code 4040) and Poulaphouca Reservoir SPA (Site Code 4063).

All of the streams and rivers in South Dublin County, apart from the Brittas River (which flows southwards, exiting the County and draining into Poulaphouca Reservoir nearby in County Wicklow), drain either northwards into the River Liffey which forms the northern boundary of the County, or they flow north and eastwards through the County into the administrative areas of Dublin City and Dun Laoghaire Rathdown before draining directly into Dublin Bay via the Ringsend Basin. The area of Dublin Bay is notable for its Natura 2000 sites [North Dublin Bay SAC (Site Code 00206), South Dublin Bay SAC (Site Code 00210), North Bull Island SPA (Site Code 4006), South Dublin Bay and River Tolka Estuary SPA (Site Code 4024)].

Any potential impact on any or all of the 4 Dublin Bay Natura 2000 sites relevant to an AA screening process are deemed to arise from water input into Dublin Bay. Poor water quality originating within South Dublin County and entering Dublin Bay is deemed to be the County's principal potential threat to the conservation objectives of the Dublin Bay Natura 2000 sites.<sup>4</sup>

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<sup>4</sup> South Dublin County Habitats Directive Assessment: Screening of the County Development Plan for Appropriate Assessment in accordance with the requirements of Article 6(3) of the EU Habitats Directive (October 2010)

# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

The Shillelagh quarry lands are drained by the Brittas river which flows southwards to the Poulaphouca Reservoir, and are also connected via a constructed watercourse linking the river to the Brittas Ponds which lie within the river Camac catchment and connect the quarry site to the catchment of the Dublin Bay Natura 2000 sites.

Lands at Gortlum, Brittas located within 2 kilometres of the subject quarry site are feeding grounds for Greylag geese, which is a protected bird species under the Special Protection Area for Birds designated at Poulaphouca reservoir. Quarrying operations on the site involving rock blasting, in cumulation with blasting at the Kilsaran and De Selby quarries, has the potential to create disturbance of the protected bird species in the feeding area at Gortlum, Brittas.

As concluded earlier, it is considered that the unauthorised quarry development at Aghfarrell carried out by Shillelagh Quarries Limited after 1<sup>st</sup> February 1990 would come within the scope of the EIA directive requirements. As advised in section 5.3 of the Appropriate Assessment Guidelines<sup>5</sup> all development that requires a planning permission process (either through the planning authorities or An Bord Pleanála), including those that require an EIS to be carried out (mandatory and sub-threshold), will require consideration for AA.

Furthermore the ecological connection of the Shillelagh quarry site to the Dublin Bay Natura 2000 sites, the proximity of the site to the feeding grounds of a protected bird species, and the location of the site in relation to the SAC and pNHA sites in the adjacent area as previously noted, would warrant appropriate assessment of the ecological implications of the unauthorised quarrying operations under the Habitats Directive or a determination as to whether such was required. There is no record to show that any such assessment or determination was carried out or made in respect of the quarry development at Aghfarrell carried out by Shillelagh Quarries Limited.

### Conclusion

**Following an examination of the available information, it is considered reasonable to conclude, having regard to the Habitats Directive, that the quarry development at Aghfarrell carried out by Shillelagh Quarries Limited after 26 February 1997 would have required appropriate assessment or a determination as to whether an appropriate assessment was required, and that no such assessment or determination was carried out or made in that regard.**

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<sup>5</sup> Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities" (DEHLG 2009)

**Comhairle Chontae Atha Cliath Theas**

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

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# **Comhairle Chontae Atha Cliath Theas**

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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**

**Comhairle Chontae Atha Cliath Theas**

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

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# Comhairle Chontae Atha Cliath Theas

## Record of Executive Business and Manager's Order

**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)

There is no evidence available to indicate the extent of the quarry as at 3 July 2008, as no aerial photography was flown in that year and there are no relevant maps or other documents available.

It is estimated from a comparison of aerial photography flown in 2005 and 2009 that c.2.05 hectares was added to the quarry area in that period, are set out in the Table 3 below.

Table 3 Estimated extent of addition to quarry area between 2005 and 2009

Year of	Increase 2005-	Quarry Area	%
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# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

<b>photography</b>	<b>2009 (hectares)</b>	<b>(hectares)</b>	<b>increase</b>
2005	n/a	17.09	n/a
2009	2.05	19.14	12

It appears that the size of the quarry extension carried out between 2005 and 2009 equates to c. 12% of the area of the quarry in 2005. It is likely that much of this extension occurred prior to 3 July 2008 reflecting the significant fall in demand for construction material in the latter part of that period. As it appears likely that any extension to the quarry carried out in the period since 3 July 2008 would not have exceeded the relevant thresholds it is considered reasonable to conclude that an EIA or a determination as to whether EIA was required would not have been warranted in relation to any extension to the quarry carried out after 3 July 2008.

On the basis of an examination of the available information it is considered that no requirement arises under the Habitats Directive for appropriate assessment in relation to any extension to the quarry carried out after 3 July 2008, as no material extension of the existing quarry appears to have been carried after the relevant date.

### **Conclusion:**

**Following an examination of the available information, and having regard to the EIA Directives and the Habitats Directive, it is considered that any extension of the existing quarry at Aghfarrell operated by Shillelagh Quarries Limited, carried out after 3 July 2008, would not have required an environmental impact assessment, or a determination as to whether an environmental impact assessment or an appropriate assessment was required.**

# **Comhairle Chontae Atha Cliath Theas**

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

**v.**

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

# **Comhairle Chontae Atha Cliath Theas**

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

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# Comhairle Chontae Atha Cliath Theas

## Record of Executive Business and Manager's Order

**The Quarry Guidelines (2012) advise:**

**3.3 Section 261A(3): Decision of the planning authority under subsection (3)<sup>6</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]

**Section 261A(3)(a)(ii): Whether the quarry fulfilled the requirements in relation to registration under section 261 (if required to do so).**

### S. 261 Registration Requirements

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,
  - (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.

<sup>6</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]

# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

- (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.

Information relating to the quarry at Aghfarrell operated by Shillelagh Quarries Limited was received on 20 April 2005 and was duly entered in the Planning Register. Information provided included a map of the site, details of the quarry owner / operator, landownership, planning history, and quarry operation details including the type of material being extracted, the hours of operation, daily vehicle movements, and measures to control noise and dust. A revised map and other details were subsequently submitted on 28 September 2005 in response to a request for additional information.

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 was considering requiring Shillelagh Quarries Limited to submit a planning application and EIS in accordance with Section 261(7).

One submission was received in relation to the subject quarry. This stated that Shillelagh Quarries have carried out a massive intensification of works since 1999, and that this development has been an unauthorised activity. The submission requested that:

1. Shillelagh Quarries apply for full planning permission;
2. A full EIS be submitted
3. All quarrying operations above the 350 metre contour line be prohibited.

In accordance with section 261(5)(a)(ii) of the Planning & Development Act 2000, Shillelagh Quarries Limited was advised by letter dated 21st February 2006, that the planning authority intends to require the submission of a planning application accompanied by an environmental impact statement in respect of the quarrying operation at the subject quarry, having regard to:

- (1) the policies and objectives included in the South Dublin County Development Plan 2004-2010, including land use zoning, extractive industry, views and prospects, landscape protection, natural and built heritage, pollution, traffic, and amenities; and
- (2) to the extent of quarrying carried out to date, the nature scale and extent of the existing quarrying operation, and the potential for further quarrying; and

# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

(3) to the selection criteria prescribed by the Minister under Section 176(2)(e).

In response to the above letter a submission was received from John Barnett & Associates dated 7th April 2006, on behalf of Shillelagh Quarries Limited. The submission states that Shillelagh Quarries Limited does not agree with South Dublin County Council's proposal in respect of this quarry. It states that the continued operation of the quarry would not be likely to have 'significant effects on the environment', as evidenced by the submission content. It further contends that section 261(7) requires the planning authority to consider the development only 'having regard to the selection criteria prescribed by the Minister under Section 176(2)(e), i.e. item (3) above. The submission requests the planning authority to reconsider its proposal and to impose conditions on the operation of the quarry in accordance with section 261(6)(a)(i) of the Act.

An order dated 18 April 2006 was subsequently made under Section 261(7) requiring Shillelagh Quarries Limited to submit a planning application and EIS in respect of the quarry at Aghfarrell.

*[Appendix 12 S. 261 Manager's order and 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 been fulfilled in respect of the quarry at Aghfarrell, Brittas, County Dublin operated by Shillelagh Quarries Limited.**

# **Comhairle Chontae Atha Cliath Theas**

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

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# **Comhairle Chontae Atha Cliath Theas**

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

### **SUMMARY CONCLUSIONS AND RECOMMENDATIONS**

**Comhairle Chontae Atha Cliath Theas**

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

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# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

### Summary

An examination of all available information relating to the development of the quarry in the townland of Aghfarrell, Brittas, County Dublin, operated by Shillelagh Quarries Limited, has established the following:

- The OS map revised in 1969 does not illustrate any quarry excavation on the existing quarry site at Aghfarrell at that time, although a 'gravel pit' is illustrated at the northern end of the Shillelagh landholding.
- A High Court judgement delivered in May 1978 found that the nature and scale of the quarry operations being carried on in 1977 differed materially from those carried out previously and constituted a material change of use which requires planning permission.
- An examination of available information, including aerial photography flown at intervals in the relevant period indicates that the unauthorised quarry was extended from an area of c. 1.42 hectares in 1972 to c. 19.14 hectares in 2009.
- There is no record available to show that the unauthorised quarry development carried out after the relevant dates was subjected to either EIA or AA in accordance with the relevant EIA and Habitats Directives.
- The quarry at Aghfarrell, Brittas, County Dublin, operated by Shillelagh Quarries Limited, was registered in accordance with the provisions of section 261 of the Planning and Development Act 2000.
- An application for planning permission for the continuance of quarrying operations at Shillelagh Quarry submitted in compliance with a notice served under section 261(7)(a) was refused on appeal, on grounds of the unauthorised status of the quarry as determined in the high court judgement in 1978 and the restrictions on retention permission arising from the determination under ECJ Case C-215/06.
- The decision of An Bord Pleanála has been upheld in a recent decision of the High Court and the quarry is deemed to be unauthorised in accordance with subsection 261(7)(e).
- As such the quarry is not covered by the requirements under 261A, and should be required to cease operations.

# **Comhairle Chontae Atha Cliath Theas**

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

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# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

### 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 the quarry at Aghfarrell operated by Shillelagh Quarries Limited is not authorised having regard to the findings of the High Court that the quarrying operations carried on in 1977 differed materially from those carried on prior to 1 October 1964 and constitute a material change of use. Planning permission is therefore required under the Planning Acts for the continuance of such development, and no valid planning permission has been granted in that regard.

**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 information available it is considered to be reasonable to conclude, having regard to the EIA Directives, that the unauthorised quarry development at Aghfarrell carried out after 1 February 1990, required mandatory EIA in accordance with the EIA Directive which came into force on 1 February 1990 and that no environmental impact assessment was carried out in that regard.

**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 the quarry development at Aghfarrell carried out by Shillelagh Quarries Limited after 26 February 1997 would have required appropriate assessment or a determination as to whether an appropriate assessment was required, and that no such assessment or determination was carried out or made in that regard.

# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

**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, and having regard to the EIA Directives and the Habitats Directive, it is considered that any extension of the existing quarry at Aghfarrell operated by Shillelagh Quarries Limited, carried out after 3 July 2008, would not have required an environmental impact assessment, or a determination as to whether an environmental impact assessment or an appropriate assessment was required.

**Section 261A(3)(a)(ii): 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 been fulfilled in respect of the quarry at Aghfarrell, Brittas, County Dublin operated by Shillelagh Quarries Limited.

# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

### Recommendation:

**The Quarry Guidelines (2012) advise:**

**3.8 Where notice not required to be issued under section 261A**

Any quarry which is operating having been refused a permission under section 261(7) should be required to cease operations. Such a quarry is not covered by section 261A (because EIA will have been carried out) and it will not be eligible to apply for retention.

[Section 261A of the Planning and Development Act, 2010 and related provisions - Guidelines for Planning Authorities Jan. 2012 - page 18]

Subsection 261(7)(e) of the Planning and Development Act 2000 provides that notwithstanding any other provision of the Act, the continued operation of a quarry in respect of which the owner or operator has been refused permission in respect of an application for permission made on foot of a notice served under subsection 261(7)(a) shall be unauthorised development.<sup>7</sup>

Having regard to section 3.8 of the Quarry Guidelines (2012), it is considered that as planning permission has been refused on appeal in respect of the planning application made in accordance with a notice served under section 261(7)(a) for the continuance of quarrying operations at the quarry operated by Shillelagh Quarries Limited at Aghfarrell, the quarry is not covered by section 261A and it will not be eligible for retention. It is recommended therefore that the quarry be required to cease operations.

It is recommended that a notice be served on Shillelagh Quarries Limited the owner / operator of the quarry at Aghfarrell, Brittas, Co. Dublin under section 154 of the Planning and Development Act 2000 (as amended) requiring it to permanently cease all unauthorised rock extraction and ancillary activities at the subject quarry.

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

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

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<sup>7</sup> Subsection 261(7)(e) of the Planning and Development Act 2000 as amended by section 74 of the Planning and Development (Amendment) Act 2010


# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

**ORDER:** The report of the Senior Executive Planner is noted.

Dated: 16/8/12

  
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Neil O'Byrne  
Senior Planner