

Comhairle Chontae Atha Cliath Theas

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/6

Correspondence Name and Address: Kilsaran Concrete (Ballinascorney) Limited,
Piercetown, Dunboyne, Co. Meath.
Kilsaran Concrete, Piercetown, Dunboyne, Co. Meath.
Kilsaran Concrete Products, Piercetown, Dunboyne,
Co. Meath.

Location: Ballinascorney, 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

Kilsaran Quarry

Quarry Location: Aghfarrell and Ballinascorney Upper,
Brittas,
Co. Dublin.

Owner / Operator: Kilsaran Concrete
Kilsaran Concrete Products
Kilsaran Concrete (Ballinascorney) Limited

Register Reference: SDQU05A/6

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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 quarries in the county. This report relates to the quarry located

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on lands at Aghfarrell and Ballinascorney Upper, operated by Kilsaran Concrete.

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General Overview

The Kilsaran quarry (formerly Tracey's quarry) is located c. 2.5 kilometres to the east of Brittas village on the southern slopes of Knockannaivea (396m). The quarry entrance is located on the R. 114 which links Brittas to Bohernabreena. The quarry lands extend over portions of the townlands of Aghfarrell, Ballinascorney Upper and Mountseskin. The major portion of the existing quarry is located in Aghfarrell and the remainder is located in Ballinascorney Upper. The quarry lands at Mountseskin adjoin the De Selby quarry lands at Corbally to the north. The Shillelagh quarry is located on lands at Aghfarrell to the south west of the Kilsaran quarry. The two quarries at Aghfarrell lie on opposite sides of a narrow valley between Butter Mountain to the south and Knockannaivea to the north. The valley is drained by the Brittas River which mainly flows to the Poulaphouca reservoir to the west, but is also connected to the Camac river catchment to the north via a constructed watercourse linking the river to the Brittas ponds.

[Appendix 1 Location Map]

The existing Kilsaran quarry is located on lands in the townlands of Aghfarrell, Ballinascorney Upper and Mountseskin, and comprises of a large rectangular excavation extending northwards from the R114. The existing quarry floor lies at c. 290mOD and the quarry excavation extends to c. 345mOD at its northern extremity. Ancillary quarry activities including offices and maintenance facilities are located adjacent to the quarry entrance, together with a recently upgraded asphalt plant. A large settlement pond which drains to the Brittas River to the south is located in the adjoining area to the west. The quarry is clearly visible from elevated locations along the L7462 leading to Kilbride military camp to the south, but is otherwise screened from public view by the local topography and roadside boundary walls adjacent to the quarry entrance. Berms erected along the elevated eastern and western perimeters of the quarry void are visible from the local roads as discordant features in a landscape characterised by smooth rounded hills with sparse vegetation. The lands to the north of the quarry excavation are generally used as a commercial forestry. There are a number of dispersed residential properties located along the R 114 and local roads in the vicinity of the quarry lands.

The Kilsaran 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 350m contour line. 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.

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The following four Recorded Monuments are located on the subject quarry lands and are included in the Record of Monuments and Places, Schedule 1 to the South Dublin County Development Plan 2010-2016 as: Cairn (Ref. DU024-024); ii) Cairn (Ref. DU024-025); iii) Cairn (Ref. DU024-026); iv) Mound Site (Ref. DU024-040).

The quarry is located c. 3 kilometres to the west of two Special Areas of Conservation (Wicklow Mountain SAC and Glenasmole Valley SAC), and there are proposed Natural Heritage Areas located within 3 kilometres to the west (Slade of Saggart) and north (Lugmore Glen) of the subject quarry site. Lands at Gortlum and Mountseskin 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.

A comprehensive view of the Kilsaran quarry is provided in the oblique aerial photography flown in August 2005.

[Appendix 2 Oblique aerial photo 2005]

Relevant Planning History

Kilsaran Lands

Planning permission was granted for a 1.6 ha quarry on 9 June 1971 (no file is available).

Reg. Ref. K 3021 - Permission granted for an extension to the quarry workings totalling 9.9 ha. on 20/7/1977, subject to 15 conditions.

Reg. Ref. H 2433 - Permission granted on appeal (Appeal Ref. 6/5/33733) on 25th July 1977 for erection of a bitumen macadam plant at the subject quarry.

Reg. Ref. M.111. E.S.B. substation. Permission granted.

Reg. Ref. TA 908 - Temporary permission granted for vehicle and plant maintenance structure.

Reg. Ref. 85A/533 - Temporary permission granted for retention of office building up to 31/7/90.

Reg. Ref. 85A/976 - Application for retention of plant maintenance structure and offices, Additional information was requested but was not submitted.

Reg. Ref. 90A/1694. Permission granted for E.S.B. substation.

Reg. Ref. 91A/34 - Permission granted for works canteen.

Reg. Ref. 93A/0346 - Permission granted on 17th September, 1993 for 13.7 ha. extension to quarry workings at Ballinascorney Quarry on lands at Aghfarrell Townland, Brittas, for Tracey Enterprises (Dundrum) Ltd. subject to 5 conditions.

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- Reg. Ref. 93A/969 - Permission granted for retention of office building.
- Reg. Ref. 93A/970 - Permission granted for retention of 2 maintenance/store buildings.
- Reg. Ref. SD06A/0430 Permission granted for pre-fabricated office and canteen buildings, relocated weighbridge, new wheel wash, employee and visitor car park, sand storage shed new bunded and covered fuel tanks, a Puraflo secondary treatment system to existing septic tank, percolation area and improvements to quarry entrance.

Adjoining lands

- Reg. Ref. WA/1194 Permission refused by An Bord Pleanála on 15 November 1982 for a quarry on adjoining higher land totalling 137 ha. with access off Mountseskin Road for reasons relating to serious environmental damage to the area, and traffic hazard on Mountseskin Road. Applicant Lockheed Builders Limited.

Details of Planning Permissions for Quarry Development at the Kilsaran Quarry

Reg. Ref. K 3021

Permission granted for an extension to the quarry workings totalling 9.9 ha. on 20/7/1977, subject to 15 conditions:

- Condition 1 Development to be carried out in accordance with plans, particulars and specifications lodged with the application, save as required by other conditions attached.
- Condition 2 The structures shall be removed on or before 31 May 1982 unless prior permission is granted for retention.
[Reason: To enable the effect of the development on the amenities of the area to be reviewed having regard to the conditions then obtaining.]
- Condition 3 Water supply and drainage arrangements to be in accordance with requirements of the Council, and foul drainage to be agreed with Health Inspector.
- Condition 4 Requirements of Fire Officer to be adhered to.
- Condition 5 A detailed scheme for the reinstatement and landscaping of the worked out portions of the quarry and areas at ground level, and areas no longer required for surface plant and buildings, to be submitted within three months of decision. Scheme to provide for making land useful for agricultural or recreational purposes and consistent in appearance with surrounding land, and for carrying out of necessary works within a definite period or periods related to the anticipated rate of operations on the site.
[Reason: To secure the eventual restoration of the land to an appearance and use consistent with the appearance and use of lands in the vicinity of the site in as short a period as possible.]
- Condition 6 A detailed scheme for the works set out in condition No. 5 to be submitted for the agreement of the Council. The scheme to show the proposed location and extent of belts of trees and shrubs to be planted to provide effective screening of the development when viewed from the public roads on the perimeter of the site, and to indicate the proposed timescale for planting.
- Condition 7 Existing or proposed trees or shrubs on the site which provide screening of the development shall not be removed or destroyed without the prior agreement of the Council.
- Condition 8 Not less than 24 hours advance notice of each explosion to be given to occupants of lands adjoining the site. Explosions to be limited to the hours between 8 a.m. and 6 p.m. and best practicable means to be used to minimise the degree of nuisance caused.

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- Condition 9 Any necessary land required for road widening purposes be reserved as such and made available to the Council. Necessary road improvement work along the site frontage, and access arrangements, suitable vision splays, adequate truck storage and car parking to be agreed with the Roads Engineer before development commences.
- Condition 10 Quarrying and other ancillary operations to be contained within the working area as shown on plans submitted and no machinery or debris to be placed on other parts of the site or the public road.
- Condition 11 Security at the rate of £250 per acre for each acre of land to be disturbed by quarrying and other ancillary activities to be given to the Council, the amount to be adjusted as necessary.
- Condition 12 The permission excludes readymix concrete and asphalt preparation and production operations on the land.
- Condition 13 Building Bye-law approval to be obtained before development commences and any modifications required to be adhered to.
- Condition 14 The requirements set out in Conditions Nos. 5, 6 and 7 to be agreed in writing with the Parks Superintendent.
- Condition 15 Conditions Nos. 3, 5, 6, 7, 9, 10, 11, & 12 to be fully discussed and agreed in writing with the Council before the development proposed which is not included in existing permissions is undertaken. The extent of the further extraction works is dependant on this written agreement.

Reg. Ref. 93A/0346 Planning permission for a 13.7 ha. extension to quarry workings, was granted on 17th September, 1993, subject to 5 No. conditions as follows:-

- Condition 1 Development to be carried out in accordance with Additional Information lodged 21st July 1993.
- Condition 2 All extractive and processing operations to cease by 19th September 2010. All buildings plant and machinery to be removed from site and all reclamation works to be completed by 19th September 2013, unless a further grant of planning permission is obtained prior to that date.
- Condition 3 All requirements of EHO, including re permissible levels of noise, dust and vibrations to be complied with.
- Condition 4 Payment of a Roads contribution of £15,000 per annum for 5 years i.e. total of £75,000.
- Condition 5 Satisfactory scheme of landscaping to be submitted and approved within 6 months.

[Appendix 3 Planning History documents]

Planning Enforcement History:

File Ref: S5224

Description of unauthorised development: unauthorised plant and machinery.

File opened 2007.

S152 Warning Letter served October 2007

File closed December 2007- complies with planning permission granted

File Ref: S5535

Description of unauthorised development: (i) Unauthorised development taking place at the northern end of the quarry, (ii) The erection of a mast and the placing of a metal container and generator to the north of these unauthorised works.

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File opened Feb' 2008
Notification sent to owner February 2008
S152 Warning Letter served March 2008
File closed April 2008 – statute barred.

File Ref: S6005
Description of unauthorised development: illegal quarrying
File opened March 2009
Referred to Planning June 2009.
File closed Jan 2010 - no evidence found of extraction works being carried out outside permitted area.

File Ref: S6366
Description of unauthorised development: Importation and dumping of waste materials
File opened April 2010
Notification sent to the owner April 2010
S152 Warning Letter served May 2010
File Closed June 2010 – complies with permission granted

[Appendix 4 Planning enforcement history documents]

Section 5 Referrals to An Bord Pleanála

Register Reference ED07/0031 Lodged: 30/08/2007
An Bord Pleanála Case reference: 06S.RL2486 Lodged: 18/10/2007
Location: Kilsaran Concrete Quarry, Ballinascorney Upper, Brittas, Co. Dublin.
Referring Party: Dublin Mountain Conservation and Environmental Group
Decision Date: 24/07/2008:

Decision: Split decision

Question: Whether the installation of new fixed plant and machinery, the installation of additional new fixed plant and machinery and the expansion of quarrying activity at Ballinascorney Upper, Brittas, County Dublin beyond the 25.2 hectares permitted by condition number 4 of the modified conditions imposed under register reference number SDQU05A/6 is or is not development and is or is not exempted development:

Decision of An Bord Pleanála

- (a) the installation of new replacement fixed plant and new additional fixed plant is exempted development, and
- (b) the expansion of quarrying activity beyond the 25.2 hectares permitted by condition number 4 of the modified conditions imposed under register reference number SDQU05A/6 is not exempted development.

Register Reference: ED08/0020 Lodged: 8-Aug-2008

An Bord Pleanála Case reference: PL06S.RL2577

Location: Kilsaran Quarry, Ballinascorney

Referring Party: Dublin Mountain Conservation and Environmental Group.

Question: Whether the excavation and formation of two earthen mounds, drilling and blasting of rock, processing of stone, excavation of stone, excavation on or near an archaeological monument and excavation of top and subsoil, all outside a permitted 25.2 hectares quarry extraction area at Ballinascorney Upper, Brittas, County Dublin are or are not development and are or are not exempted development:

Decision of An Bord Pleanála

- (a) the excavation and formation of two earthen mounds outside the permitted 25.2 hectares quarry extraction area is development and is exempted development,
- (b) the drilling and blasting of rock outside the permitted 25.2 hectares quarry extraction area is development and is not exempted development,
- (c) the processing of stone from outside the permitted 25.2 hectares quarry extraction area is development and is not exempted development,

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- (d) the excavation of stone from outside the permitted 25.2 hectares quarry extraction area is development and is not exempted development,
(e) excavation on or near an archaeological site outside the permitted 25.2 hectares quarry extraction area is development and is not exempted development,
(f) excavation of top and subsoil outside the permitted 25.2 hectares quarry extraction area is development and is exempted development:

[Appendix 5 An Bord Pleanála S.5 determinations]

Environmental Health Officer Comments

A total of 40 complaints have been received since 2005, of which 8 relate to blasting events and the remainder relate to dust.

Table 1: Environmental Health Office record of complaints by year

Year	Number of complaints received
2005	2
2006	4
2007	13
2008	4
2009	3
2010	8
2011	4
2012 (to July)	2

An application to operate a new Asphalt plant was received on 15/02/2006. This was granted on 9/08/2006 for a period of 3 years. A second application to operate the plant was received on 18/03/2009 and was granted on 01/07/2009, for a period of a year. A third application was received on 15/06/2010; objections were received to the grant of this licence. It was issued on 12/08/2010. This decision was appealed to An Bord Pleanála on 14/09/2010. The Bord confirmed the issue of the license on appeal on 31/05/2011. This license is in perpetuity. Monitoring data submitted has shown mostly compliance with standards set with some minor exceedances.

Section 261 Registration of the Quarry

Information relating to the Quarry operated by Kilsaran Concrete Limited, at Aghfarrell and Ballinascorney Upper, Brittas, Co. Dublin, was received on 27 April 2005 and was duly entered in the Planning Register under Register Reference SDQU05A/6. Information relating to the section 261 registration of the quarry is summarised in Table 2.

Table 2: Outline details Kilsaran quarry (Source: Section 261 registration documents)

Description	Details
Owner / Operator	Kilsaran Concrete Limited
Registered Reference Number	SDQU05A/6
Aggregates Extracted	Dolerite / Greywacke Rock

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Annual Output (tonnes)	300,000 – 600,000
Planning Status	Permissions granted (Reg. Refs. K 3021 and 93A/0346)
Year of Permissions	1971, 1977 & 1993
Site Area 2007	157.7 hectares
Permitted Extraction Area	25.2 hectares
Extracted Area 2005	25.2 hectares
Extractable Area 2005	157.7 hectares

Two submissions relating to the subject quarry were received during the specified period. A submission made on behalf of Dublin Mountain Conservation & Environmental Group stated that they have had a number of complaints about the activities of Kilsaran Concrete at Ballinascorney in relation to bitumen odours over a wide area, use of articulated lorries on the substandard R114 Road, and the road surface in front of the quarry. The submission requested clarification regarding the planning status of the asphalt plant and compliance with statutory air pollution standards. A submission from a local resident objected to very bright and powerful lights left on throughout the night at the quarry, and suggested that a cap be placed on top of the lights to reduce light pollution.

By order dated 25th April 2007 a statutory notice under Section 261(6) to modify conditions and add new conditions was served by the Council on Kilsaran Concrete Limited.

Section 261A Submissions

Two submissions were received in relation to the Kilsaran quarry, in response to the S. 261A public notice advertised in the Irish Times on 7th December 2011.

Submission No. 46 by Michael McCoy, Secretary Dublin Mountain Conservation & Environmental Group

The submission states that the overall size of the quarry that Tracey Enterprises Ltd sold to Kilsaran Concrete was 25.2 hectares, and that the quarry was almost exhausted when acquired by Kilsaran. It is stated that Section 261A will promote further environmental destruction to add to the last decade of what can only be described as the worst Planning and Development in the history of the state. They request they be informed about all quarries that are included and notified by SDCC including Shillelagh Quarries Limited and Kilsaran Concrete Limited.

Submission No. 70 by Fergus Gallagher for and on behalf of Kilsaran Concrete.

The submission states that Kilsaran in good faith submitted plans showing the precise extent of extraction which included the area within the green coloured line indicated on Site Map Sheet KC001,

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and that this was done on the 27th of August 2007. A response was received on the 22nd December 2011. Kilsaran are of the view that Conditions No.'s 1 & 4 under Section 261(6)(b)) authorised development within the 25.2 hectares as if imposed under section 34 of the P&D Act, but the PA are not of this opinion. The submission further states that Kilsaran are prepared to submit to section 261A(3) and prepare an application for substitute consent. Assuming that subsection (3) is applied to the quarry, they will not question a determination that EIA, screening for EIA or AA was required, but not carried out.

[Appendix 6 S. 261A public notice and submissions received]

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.

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,

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(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'

For the purpose of this examination 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.

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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 provided in relation to the registration of the Kilsaran quarry indicates that the quarry did not commence operation prior to 1st October 1964, and is therefore not authorised in that regard.

A number of planning permissions relate to the quarry as detailed previously. With the exception of the most recent planning permission (SD06A/0430) no original files are available relating to the planning history of the quarry. Details outlined below have been obtained from available council records and from documents submitted in relation to the registration of the quarry.

Planning permissions for quarrying operations have been granted at the Kilsaran quarry at Aghfarrell and Ballinascorney Upper in respect of a total area of 25.2 hectares as follows:

- The original permission granted in 1971 (no reference number available) relates to an area of 1.6 hectares, located in the townland of Ballinascorney Upper.
- A subsequent permission granted in 1977 (Reg. Ref. K. 3021) relates to an extension to the quarry on adjoining land in the townland of Aghfarrell comprising 9.6 hectares. The

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permission was subject to the removal of the structures before 31 May 1982, unless a further permission for retention was granted before that date. In this regard it appears from an examination of the available planning history documents that a specific permission for continuance of quarrying operations after 31 May 1982 was not subsequently granted. However, planning permissions relating to structures on the quarry lands were subsequently granted, notwithstanding the absence of a specific permission for continuance of quarrying operations.

- The most recent planning permission for quarrying operations granted on 17 September 1993 (Reg. Ref. 93A/0346) relates to a 13.7 hectares extension to the existing quarry in the townland of Aghfarrell. The permission was subject to a condition that all extractive and processing operations on the overall site cease by 19 September 2010. The application was accompanied by an EIS.

[Appendix 7 Note re duration of planning permissions]

At the time of the registration of the quarry under section 261 no planning register maps or other maps were available showing the boundaries of the permitted quarry sites, however a planning register map for the period relating to the last permission granted (93A/0346) was subsequently discovered. An extract from the planning register map (illustrated in Appendix 7) has been annotated to show the locations of the sites relating to the three existing planning permissions detailed above, indicated as Site A (original permission); Site B (K.3021) and Site C (93A/0346), which correspond to the three areas outlined in red on the register map. Although the register reference numbers of the permissions granted in 1971 and 1977 are not shown on the map, the relevant site areas correspond closely to the areas annotated on the map within each of the redlined areas shown on the map, as set out in the table below.

[Appendix 8 Annotated planning register map extract showing locations of permitted quarry areas]

Table 3 Comparison of redlined areas and stated site areas of the 1971 and 1977 planning permissions

Site location	Red outlined areas		Permission granted	Stated site area (hectares)
	acres	hectares		
A	3.93	1.59	1971	1.6
B	23.49	9.51	1977	9.6

It is noted that a map (Drg. No. JBA 3042 Fig. 2) illustrating the extent of the lands in the ownership of Tracey Enterprises (Dundrum) Limited (the previous owners) and the location of the existing quarry lands with planning permission, was included in a submission to the review of the County Development Plan in February 2003 (submission No. 224). The map illustrates two parcels of land

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with planning permission one of which corresponds to the 1993 permission, and the second area corresponds to the combined areas permitted in 1971 and 1977.

[Appendix 9 Map included in Tracey Enterprises submission to Development Plan Review 2003]

An examination of details of the land registry folios relating to the quarry lands submitted in relation to the Section 261 registration indicates that:

- lands comprising 9.66 hectares were registered to Tracey Enterprises Dundrum Limited on 19 November 1975 under Folio No. 3250F, which appear to conform to the site of the permission granted in 1977 under the planning Reg. Ref. K. 3021, and correspond to area B on the above annotated planning register extract.
- The lands relating to planning Reg. Ref. 93A/0346, corresponding to area C on the above planning register extract, were registered to Tracey Enterprises on 26 March 1990 under Folio No. 75708F.
- The site of the original quarry development, indicated as area A on the annotated planning register extract, is included in lands at Ballinascorney Upper comprising of 24.5 hectares registered to Tracey Enterprises on 23 October 1990, under Folio No. 365.

[Appendix 10 Landownership folio details and maps]

Conclusion

Following an examination of the information available it is considered reasonable to conclude that quarry development on the relevant lands at Aghfarrell and Ballinascorney Upper, comprising a total area of 25.2 hectares, is authorised on the basis of planning permissions granted for a 1.6 ha. quarry in 1971 (no file ref. available), and extensions to the quarry workings comprising 9.9 ha. (granted on 20/7/1977 under Reg. Ref. K 3021) and 13.7 ha. (granted on 17/09/1993 under Reg. Ref. 93A/0346).

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II

DETERMINATION IN RELATION TO ENVIRONMENTAL IMPACT ASSESSMENT

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

Whether, having regard to the EIA Directives, development was carried out after 1 February 1990 which development would have required an environmental impact assessment or a determination as to whether an environmental impact assessment was required, and whether such an assessment or determination was 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)

As previously noted, for the purposes of this examination the term '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".¹ However, for the purpose of the examination relating to the EIA Directives under section 261A(2)(a)(i) the relevant area is the "area of extraction" as specified in Schedule 5, Part 2, Paragraphs 2(b) and 13(a) to the Planning and Development Regulations, 2001.²

Aerial photography flown at intervals during the period from 1971 to 2009, indicates the progressive extension of the quarry workings in that period. Estimates of the extent of the quarry workings, illustrated in aerial photography at the date of each flight, are detailed in Table 4 below.

¹ In accordance with Section 2(1) of the Act of 2000 as amended by Section 16 of the Environment (Miscellaneous Provisions) Act 2011

² S.I. No. 600 of 2001

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[Appendix 11 Aerial photography 1971 to 2009]

Table 4 Estimated extent of change in area of Kilsaran quarry 1971-2009 (hectares)

Year of photography	Quarry Area (hectares)	Extent of change in Quarry Area (hectares)
1971	1.10	-
1978	4.91	3.81
1986	11.73	6.82
1995	17.49	5.76
2000	22.53	5.04
2005	24.95	2.42
2009	31.07	6.12

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.

The first point to note here is that if the development carried out after 1/2/1990 was authorised by a planning permission granted prior to 1/2/1990 EIA is not required in respect of such development under the Directive because the Directive does not apply in respect of projects authorised before the Directive became operative. Any development which obtained planning permission before the EIA Directive came into effect and is operating in accordance with the terms of its planning permission is not affected by the Directive and does not require EIA under the terms of the Directive. Similarly 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 1990 development is authorised by a pre-February 1990 planning permission, or 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.

(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:

[3.2.3 Whether post 1990 and/or post 1997 development is authorised?]

Where a permission was granted post 1 February 1990, or post 26 February 1997 for a quarry, the quarry may have already been subject to an environmental impact assessment and or appropriate assessment. However the planning authority should check whether there has been subsequent development in the quarry which was not authorised by or consistent with the permission granted.

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

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As noted previously the most recent planning permission for quarry development provides for a 13.7 hectares extension to the existing Tracey's quarry at Aghfarrell and was granted on 17th September, 1993 (Reg. Ref. 93A/0346). The proposed extension was subjected to EIA on the basis of an environmental impact statement submitted with the application. As the planning permissions for quarry development granted in 1971 and 1977 pre-date the commencement of the EIA Directives on 1st February 1990 and 1st May 1999, and as the later planning permission was subjected to EIA, no further examination is required under Section 261A(2)(a)(i) in respect of quarry development carried out under the relevant planning permissions. Notwithstanding the above it appears from an examination of relevant documentation that the quarry area of extraction has been extended outside the site area authorised by existing planning permissions on the lands.

A site map ref. KC 0001 received on 28 September 2005 in relation to the Section 261 registration illustrates by means of a green coloured line the extent of the existing area of extraction at that time. It is evident from an examination of the relevant planning register map that the existing quarry at that time was contained within the boundaries of the area permitted for quarrying under the existing planning permissions as detailed previously.

[Appendix 12 Map ref. KC 0001 dated 2005]

A site map drawing reference KC 1001 was received by the planning authority on 27 August 2007 as part of a submission of details for compliance approval in relation to condition No. 4 of the modified conditions under section 261. This drawing illustrates the extent of the quarry excavation area at that time. A letter submitted with the site map states that the map illustrates the full extent of the 25.2 hectares extraction area. From a comparison of the above drawings it is evident that the area of extraction illustrated on the 2007 map extends outside of the area permitted for quarrying under the existing planning permissions. The unauthorised extension is situated in the Townlands of Mountseskin and Ballinascorney Upper adjoining the northern and eastern boundaries of the authorised quarry area.

[Appendix 13 Map ref. KC 1001 dated 2007]

It is estimated that the extension of the area of extraction situated outside the permitted area comprises c. 5.07 hectares. There is no evidence that quarrying operations carried out on lands outside of the permitted area were authorised either by a planning permission granted prior to 1 February 1990 or by a "pre-1964 authorisation.

[Appendix 14 Composite illustration of permitted and unauthorised areas]

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It is noted that in their submission in relation to this review the quarry owner Kilsaran Concrete state (page 3) that “there has been some expansion of the quarry to the north of the original redline boundary of the 1993 permission”, and that “the activities within this area can only have included two earthen mounds and removal of overburden (~2.5 hectares), within which there has been some rock extraction (~1.5 hectares)”.

The submission further asserts that the subject expansion of the quarry is authorised in accordance with conditions No. 1 and 4 of the decision to modify the existing planning conditions made under section 261(6)(a), by virtue of Section 261(6)(b) of the Planning Act 2000 whereby the modified conditions take effect as if imposed under Section 34 of the Act.

[Appendix 15 S. 261A submission by Kilsaran Concrete]

In this regard it is noted that, by letter dated 22 December 2011 in response to details submitted on the 27 August 2007 to comply with condition number 4 of the order made under Section 261(6)(a), the Planning Authority advised the applicant company that the submission is not satisfactory in that the map submitted “...does not accurately indicate the lands the subject of the existing permission and includes other lands that are not subject to permission for quarrying”. In support of the planning authority's view the planning assessment of the compliance details submitted concluded that the intention of the condition was that the extraction of rock be restricted to the lands the subject of the existing planning permissions comprising a total of 25.2 hectares.

[Appendix 16 Compliance report and letter re Condition No. 4 of SDQU05A/6]

This conclusion is based on the statement in the planning report relating to the Section 261 order that “the precise location and extent of the approved extraction area is unclear as the relevant planning files are not available”. In this regard it is noted that the S. 261 planning report further states

“There is no indication in the registration application documents as to the potential quantity of rock remaining to be extracted in the area within the green coloured line on the revised map submitted. However it appears from a recent site visit that the excavations to date have not extended below the general level of the public road, and that further extraction below this level is possible within the area enclosed by the green coloured line. It is noted that the owner / operator has indicated separately to the Area Planner that they intend shortly to apply for planning permission to further extend the quarry operations within their landholding. Having regard to the above it is considered reasonable that a condition be attached restricting quarrying operations to a continuous and total area of not more than 25.2 ha, being the total area of extraction permitted under the existing planning permissions as detailed above, and that rock extraction on lands outside this area be subject to a separate grant of planning permission. A map showing the precise extent of the permitted area of extraction should be submitted for the agreement of the planning authority.”

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[Appendix 17 S. 261 planning report]

It appears from the S. 261 planning report that the restriction of quarrying operations to the precise area of 25.2 hectares permitted under the existing planning permissions clearly reflects the intention to confine quarrying to the area for which permission had previously been granted.

It is noted that, notwithstanding the divergence of views in this regard, the quarry owner in their submission state that they are prepared to submit to Section 261(3) and prepare an application for substitute consent, if that is the determination of the planning authority under this review.

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 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] *emphasis added*

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As previously concluded it is considered that the Kilsaran quarry has been extended outside the permitted area in the period since 2005, and it is estimated that the unauthorised extension comprises of c. 5.07 hectares. This equates to 20.12% of the authorised quarry area of 25.2 hectares.

On the basis that the quarry development carried out on lands in the townlands of Mountseskin and Ballinascorney Upper outside the authorised quarry area constitutes an unauthorised extension of the permitted quarry development, and having regard to the Guidelines 2012; the relevant date for the purposes of deciding whether EIA was required is 1 May 1999.

As the unauthorised extension to the quarry equates to less than 25% of the existing quarry area it is considered reasonable to conclude that the unauthorised extension to the quarry at Aghfarrell and Ballinascorney Upper operated by Kilsaran Concrete, carried out after 1st May 1999 on lands in the townlands of Mountseskin and Ballinascorney Upper, does not constitute an “extension which brought the total quarry to in excess of 5 hectares and represented an increase of over 25% of the existing quarry and that in itself exceeded 2.5 hectares”, and therefore mandatory EIA would not have been required in that regard.

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

Whether a sub-threshold extension to the existing authorised quarry at Aghfarrell and Ballinasorney Upper operated by Kilsaran Concrete carried out after 1 May 1999 would have required a determination as to whether that extension would or would not be likely to have significant effects on the environment, and whether such a determination was made in respect of any such extension.

As the surface area of the unauthorised quarry extension carried out after the relevant date is below the relevant threshold, it is considered appropriate to examine the issue as to whether a sub-threshold extension to the quarry would have required a determination as to whether EIA was required.

The Quarry Guidelines (2012)³ advise:

3.2.5 Sub-threshold EIA

The thresholds are not the only matter to which planning authorities should have regard when deciding whether quarry development would have required EIA. Planning authorities must also consider the matter of environmental impacts. The “criteria for determining whether a development would or would not be likely to have significant effects on the environment” – now set out in the Schedule 7 to the Planning and Development Regulations, 2001, as amended – were introduced into the planning code in European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999, (S.I No. 93 of 1999) (to transpose the addition of Annex IV to the 1985 Directive in Directive 97/11/EC), which became operative on 1st May 1999, and should be applied in the case of development which took place after that date. These criteria can also be a guideline in respect of development before that date. The Department's Environmental Impact Assessment Guidance for Consent Authorities regarding Sub-threshold Development of 2003 will be of assistance in this regard.

3.2.6 Determination in relation to EIA

It will be noted that the requirement under section 261A(2)(a) is to determine not only whether post-1990 development would have required EIA, but whether it would have required a determination as to whether EIA was required. As has been stated above, section 34(12) of the 2000 Act has been amended to remove the possibility of retention permission not only for developments which exceed EIA thresholds but also for developments which would have required a determination as to whether EIA was required (i.e. screening). Section 261A therefore also provides that a quarry development which would have required a determination as to whether EIA was required is treated in the same way as a quarry which would have required EIA. In making this determination (that is, as to whether a quarry development would have required a determination as to whether EIA was required) it is suggested that planning authorities decide whether the need for EIA could be ruled out without any substantial screening; where the need for EIA can be ruled out in this way it is clear that the development did not require a determination as to whether EIA was required. This would not be the case however where it is necessary to carry out a substantial assessment in order to decide if EIA was required, such as might be the case in developments close to the relevant thresholds or located in sensitive sites. In this regard the recent amendments to articles 103 and 109 of the Regulations³, which deal with the matter of screening, by planning authorities and the Board respectively, of planning applications for Schedule 5 sub-threshold development are relevant. Article 103 now reads:

“Where a planning application for sub-threshold development is not accompanied by an EIS,

³ as amended by Supplementary Guidelines for Planning Authorities issued July 2012

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and the likelihood of significant effects on the environment cannot be excluded by the planning authority, the planning authority shall make a determination as to whether the development would be likely to have significant effects on the environment....”.

In other words, where the likelihood of significant effects on the environment can be excluded on the face of it, a screening for EIA is not required.

(Section 261A of the Planning and Development Act, 2010 and related provisions - Guidelines for Planning Authorities Jan. 2012 page 9) as amended by Supplementary Guidelines for Planning Authorities issued July 2012 (emphasis added)

The prescribed selection criteria for determining whether a development would or would not be likely to have significant effects on the environment are set out in Schedule 7 to the Planning & Development Regulations 2001 (S.I. No. 600).

The following criteria included in the prescribed selection criteria are considered relevant to the operation of the subject quarry:-

1. Characteristics of proposed development

The characteristics of proposed development, in particular:

- the size of the proposed development,
- the cumulating with other proposed development,
- the use of natural resources,
- the production of waste,
- pollution and nuisances,
- the risk of accidents, having regard to substances or technologies used.

2. Location of proposed development

The environmental sensitivity of geographical areas likely to be affected by proposed development, having regard in particular to:

- the existing land use,
- the relative abundance, quality and regenerative capacity of natural resources in the area,
- the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (a) wetlands,
 - (b) coastal zones,
 - (c) mountain and forest areas,
 - (d) nature reserves and parks,
 - (e) areas classified or protected under legislation, including special protection areas designated pursuant to Directives 79/409/EEC and 92/43/EEC,
 - (f) areas in which the environmental quality standards laid down in legislation of the EU have already been exceeded,
 - (g) densely populated areas,
 - (h) landscapes of historical, cultural or archaeological significance.

3. Characteristics of potential impacts

The potential significant effects of proposed development in relation to criteria set out under paragraphs 1 and 2 above, and having regard in particular to:

- the extent of the impact (geographical area and size of the affected population),
- the transfrontier nature of the impact,
- the magnitude and complexity of the impact,
- the probability of the impact,
- the duration, frequency and reversibility of the impact.

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Policies and objectives of the South Dublin Development Plan 2004-2010 relevant in considering whether the quarry extension carried out after 1 May 1999 would or would not be likely to have significant effects on the environment, are set out in Appendix 18

[Appendix 18 Relevant extracts from Development Plan 2004 – 2010]

Having regard to the prescribed selection criteria for determining whether a development would or would not be likely to have significant effects on the environment as set out in Schedule 7 to the Planning & Development Regulations 2001 (S.I. No. 600), and to relevant provisions of the South Dublin County Development Plan 2004-2010 (CDP 2004), it is considered that a screening of the proposed development for the purpose of establishing whether an EIA would be required would have regard to the following potential impacts, having regard also to the particular characteristics and long term nature of the likely impacts.

Conservation of Natural Character of the Dublin Mountain area

The Kilsaran quarry lands are located within an area designated under the South Dublin County Development Plan 2004-2010 with the objective “To protect and enhance the outstanding natural character of the Dublin Mountain Area”. Quarrying of rock has the potential to create a permanent visual scar in such locations due to the discordance created by the juxtaposition of vertical rock faces at elevated heights and the smooth rounded appearance of the general local topography, having regard to the limited potential for the effective mitigation of such effects. (refer to CDP 2004 Policies LHA 1, LHA 15, LHA 16, LHA 17, LHA 18)

Protection of Views and Prospects

It is noted that the relevant map relating to the County Development Plan 2004-2010 indicates that views towards the Kilsaran quarry lands from public roads in the vicinity of the quarry are subject to an objective to preserve views. Berms erected along the elevated eastern and western perimeters of the quarry void are visible from local roads in the vicinity of the quarry as discordant visual features in a landscape characterised by smooth rounded hills with sparse vegetation. (refer to CDP 2004 Policy LHA 2)

Sites of nature conservation interest

The quarry is located c. 3 kilometres to the west of the Wicklow Mountain and Glenasmole Valley Special Areas of Conservation, and there are three proposed Natural Heritage Areas located within 3 kilometres to the west and north of the subject quarry site. (refer to CDP 2004 Policy LHA 6).

[Appendix 19 Map illustrating sites of nature conservation interest]

Lands at Gortlum, Brittas located within 1.5 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

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designated at Poulaphouca Reservoir. Quarrying operations on the site in cumulation with blasting at the Shillelagh and De Selby quarries, have the potential to create disturbance of the protected bird species in the feeding area at Gortlum, Brittas.

HGV Traffic

The high volume of HGV traffic generated by the quarry travels on a local road network which is generally inadequate for the purpose of satisfactorily accommodating such traffic, having regard to the cumulative impact of such traffic in conjunction with high volumes of similar traffic generated by the adjacent Shillelagh quarry. In addition, a high volume of HGV traffic generated by the Kilsaran and Shillelagh quarries travels through Brittas village to access the N81 National Route at an uncontrolled junction, giving rise to potentially significant environmental impacts related to road safety and residential amenity. (refer to CDP 2004 Policy T 12)

Preservation and Conservation of Structures and Sites of Archaeological Interest

There are a number of archaeological features located on the quarry lands which are included in the list of buildings, structures and sites to be protected in the South Dublin Development Plan 2004 - 2010. In particular site reference No. DU024-040 is located within 30 metres of the northern boundary of the permitted extraction area. (refer to CDP 2004 Policy AA 1, AA 2, AA 4)

Water Quality Management

It is a primary objective of the Council to implement the EU Water Framework Directive and to conserve and protect surface water catchments and to manage catchment areas where appropriate to protect the surface water drainage infrastructure of the County. The settlement pond located at the south-western corner of the subject quarry site discharges to the Brittas River by means of a culvert and drainage ditch. It is noted that the Brittas River drains to the Poulaphouca reservoir which is a major source of drinking water for Dublin City, and via the Camac river catchment, to Dublin Bay which is subject to protection under the Habitats Directive. (refer to CDP 2004 Policy WD 2, WD 3, WD 4, WD 7)

Recreational Amenity and Tourism

The natural character of the Dublin Mountain area is recognised as a significant asset and a resource for the recreational needs of the population of the county and the wider Dublin region, and for the development of tourism. The protection and enhancement of this resource is a primary objective of the County Development Plan. (refer to CDP 2004 Policy LHA 2, LHA 23, LHA 24, LHA 25)

It is considered likely that a sub-threshold quarry extension to the Kilsaran quarry would have required a determination as to whether EIA was required, having regard to the following considerations:

- The nature and characteristics of quarry development in relation to the environmental sensitivity of the area in which the quarry is located where it is the policy of the Council to

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conserve the natural character of the Dublin Mountain Zone and protect the visual amenity of the area, having regard to the potentially significant adverse impact of such development on the natural character of the area;

- The nature and characteristics of quarry development and the location of the subject quarry site in relation to designated Special Areas of Conservation and Proposed Natural Heritage Areas, and the feeding grounds of a protected bird species in the local area;
- The generation of a high volume of HGV traffic on a sub-standard local network which uses an uncontrolled junction at Brittas village to access the N81 National Route, in cumulation with traffic of a similar nature and volume generated on the same road network by the adjacent Shillelagh quarry;
- The presence on the quarry lands of recorded archaeological features subject to protection under provisions of the County Development Plan;
- The connection of surface water drainage from the quarry to the catchments of both the Poulaphouca reservoir and Dublin Bay Natura 2000 sites, via the discharge of water from the quarry to the Brittas river;
- The potential conflict with Development Plan objectives relating to the promotion of the sustainable recreational and tourism-related use of the natural resources of the Dublin Mountain area.

It is noted that in their submission in relation to this review the quarry owner Kilsaran Concrete state (page 5) that “*no environmental impact statement or Natura impact statement was prepared as part of the registration process under section 261*”, and that they “*will not question a determination that EIA, screening for EIA or AA was required, but not carried out*” in relation to the expansion of the quarry to the north of the original redline boundary of the 1993 permission.

Conclusion

Following an examination of the available information, it is considered reasonable to conclude that the unauthorised extension of the authorised quarry at Aghfarrell and Ballinascorney Upper operated by Kilsaran Concrete, carried out after 1 May 1999 on lands in the townlands of Mountseskin and Ballinascorney Upper, constitutes development which would have required a determination as to whether an environmental impact assessment was required, and that no such determination was made in that regard. This conclusion is based on having regard to the Environmental Impact Assessment Directives, and to the selection criteria set out in Schedule 7 to the Planning & Development Regulations 2001 (S.I. No. 600), and to the relevant provisions of the South Dublin County Development Plan 2004-2010.

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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, having regard to the Habitats Directive, an appropriate assessment, 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 noted previously planning permissions for quarry development at the Kilsaran quarry were granted in 1971, 1977 and 1993, and therefore pre-date the commencement of the Habitats Directive on 26 February 1997. As advised in the Guidelines (2012) appropriate assessment is not required in respect of development authorised by the relevant planning permissions, and it appears therefore that no further examination is required in that regard under section 261A.

However, as concluded previously in relation to the examination of the quarry in relation to the EIA Directives under section 261A(2)(a)(i), it is evident that the Kilsaran quarry at Aghfarrell and Ballinascorney Upper has been extended on lands in the townlands of Mountseskin and Ballinascorney Upper in the period since 2005. There is no evidence that quarrying operations carried out on lands outside of the permitted area were authorised by a planning permission granted prior to 26 February 1997 or by a "pre-1964 authorisation. An examination is therefore required under section 261A(2)(a)(ii) of the unauthorised quarry development carried out after the relevant date, with regard

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to whether such development should have been subject to appropriate assessment and whether such assessment was carried out.

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 2000⁴.

Section 5.3. of the Appropriate Assessment Guidelines⁵ 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 site/ground investigations;

⁴ as inserted by Section 57 of the Planning & Development (Amendment) Act 2010

⁵ Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities (DEHLG 2009)

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- 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.

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 the subject quarry, and there is no baseline information or evidence available to the Planning

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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 (Site Code 001209) and a portion of the larger Wicklow Mountains SAC (Site Code 002122). There are three proposed Natural Heritage Areas located in the local area: Slade of Saggart and Crooksling Glen (Site Code 00211), Lugmore Glen (Site Code 01212) and Dodder Valley (Site Code 00991).

The quarry is located c. 3 kilometres to the west of both Wicklow Mountain SAC and Glenasmole Valley SAC. There are two proposed Natural Heritage Areas located within 2 kilometres to the west (Slade of Saggart) and north (Lugmore Glen and Dodder Valley) of the quarry lands.

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: 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 four Dublin Bay Natura 2000 sites relevant to an AA screening process are deemed to arise from water input into the 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.⁶

The settlement pond located at the south-western corner of the subject quarry site discharges to the Brittas River by means of a culvert and drainage ditch. The Brittas River drains to the Poulaphouca

⁶ 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)

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Reservoir which is a major source of drinking water for Dublin City. The Brittas River downstream of the quarry is also connected to the Camac river catchment to the north via a constructed watercourse linking the river to the ponds at Brittas. The Camac river catchment drains to Dublin Bay which is subject to protection under the Habitats Directive as detailed above.

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 accumulation with blasting at the Shillelagh and De Selby quarries, has the potential to create disturbance of the protected bird species in the feeding area at Gortlum, Brittas.

[Appendix 19 Map illustrating sites of nature conservation interest]

As concluded earlier, it is considered that the unauthorised extension of the subject quarry carried out after 1st May 1999 would come within the scope of the EIA directive requirements. As advised in section 5.3. of the Appropriate Assessment Guidelines⁷ 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 subject 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 local area as previously noted, would warrant the making of a determination as to whether an appropriate assessment of the ecological implications of the unauthorised quarrying operations is required under the Habitats Directive. There is no record available to show that any such determination was made in that regard.

As noted previously, the quarry owner Kilsaran Concrete in their submission in relation to this review state (page 5) that “no environmental impact statement or Natura impact statement was prepared as part of the registration process under section 261”, and they “will not question a determination that EIA, screening for EIA or AA was required, but not carried out”, in relation to the expansion of the quarry to the north of the original redline boundary of the 1993 permission.

Conclusion

Following an examination of the available information, it is considered reasonable to conclude, having regard to the Habitats Directive, that the unauthorised extension to the quarry at

⁷ Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities” (DEHLG 2009)

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Aghfarrell and Ballinascorney Upper operated by Concrete, carried out after 26 February 1997 on lands in the townlands of Mountseskin and Ballinascorney Upper, 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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IV

DETERMINATION REGARDING WHETHER DEVELOPMENT COMMENCED AFTER 3rd 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)

Section 261A(5)(a): Whether development was carried out after 3 July 2008 at the existing quarry at Aghfarrell and Ballinascorney Upper operated by Kilsaran Concrete which development would have required an environmental impact assessment, having regard to the EIA Directives but that such was not carried out.

As concluded previously in relation to the examination of the quarry under section 261A(2)(a)(i) it is considered that an extension of the area of extraction comprising of c. 5.07 hectares on lands outside the area authorised by the relevant planning permissions on the lands, was not authorised either by any planning permissions granted prior to 1 May 1999 or by a pre-1964 authorisation.

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There is no evidence available to indicate the extent of the quarry on 3 July 2008, as no aerial photography was flown in that year and there are no relevant maps or other documents available. In order to determine what quarry development, if any, has been carried at the subject quarry since 3 July 2008 it would be necessary to establish what part of the quarry extension carried out in the period 2005 to 2009 was carried out after 3 July 2008.

It is noted that documentation received on 27 August 2007, in relation to compliance with condition No. 4 of the modified conditions imposed following the registration of the quarry, includes a site map KC 1001. This illustrates an area comprising 25.2 hectares which the submission states complies with the requirement of the condition restricting the extraction of rock to an area of not more than 25.2 hectares. It is noted that the area illustrated on site map KC 1001 is not coterminous with the boundaries of the permitted quarry area as approved under the existing planning permissions, comprising a total of 25.2 hectares.

It appears from information submitted on 29 October 2008 to An Bord Pleanála on behalf of the quarry operator in relation to an application for a determination under section 5 of the Planning and Development Act 2000 (Ref. 06S.RL.2577), that the operations carried out in the relevant area involved the formation of earthen mounds comprising top soil and overburden on quarry lands adjacent to the northern extent of the quarry excavation area illustrated on site map KC 1001. It is not clear from the available information as to when the earthen mounds were constructed, and in particular, whether such operations were carried out after 3 July 2008. However, as it appears that the information submitted in November 2008 in relation to Ref. 06S.RL.2577 is consistent with the compliance details received on 27 August 2007, it appears that no material extension of the quarry was carried out after 3 July 2008.

[Appendix 20 Kilsaran submission re ABP S.5 Ref. 06S.RL.2577]

It appears to be reasonable to conclude that any extension to the quarry carried out in the period since 3 July 2008 does not constitute an extension in excess of 25% of the existing quarry area, and is not in itself in excess of 2.5 hectares.

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Section 261A(5)(a): Whether a sub-threshold quarry extension to the existing authorised quarry at Aghfarrell and Ballinascorney Upper operated by Kilsaran Concrete carried out after 3 July 2008 would have required a determination as to whether that extension would or would not be likely to have significant effects on the environment.

Having regard to the lack of certainty as to the extent of the quarry as at 3 July 2008, and to the fact that it appears that no material extension of the quarry area has been carried out in the period between 2007 and 2009, it is considered reasonable to conclude that 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.

Section 261A(5)(a): Determination in relation to Appropriate Assessment

Whether quarry development carried out after 3 July 2008, was development which would have required an appropriate assessment, having regard to the Habitats Directive, and whether such an assessment was carried out.

Following 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 it appears that no material extension to the existing quarry was 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 to the existing quarry at Aghfarrell, Ballinascorney Upper and Mountseskin operated by Kilsaran Concrete, carried out after 3 July 2008, would not have required an environmental impact assessment, a determination in relation to EIA, or an appropriate 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): 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)⁸

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]

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.

⁸ 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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- (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 and Ballinascorney Upper operated by Kilsaran Concrete Limited, was received on 27 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) stated that the Planning Authority was proposing to re-state, modify or add to the conditions of the existing planning permissions granted under Reg. Ref. K. 3021 and Reg. Ref. 93A/0346 in accordance with Section 261(6) and invited submissions from members of the public on the quarry. Two submissions relating to the subject quarry were received during the specified period.

An Order dated 25th April 2007 was subsequently made under Section 261(6) to modify conditions of the existing planning permissions granted under Reg. Ref. K. 3021 and Reg. Ref. 93A/0346 and to add new conditions, in respect of the quarry at Aghfarrell, Ballinascorney Upper and Mountseskin operated by Kilsaran Concrete Limited.

[Appendix 21 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

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Development Act 2000, have been fulfilled in respect of the quarry operated by Kilsaran Concrete at Aghfarrell, Ballinascorney Upper and Mountseskin, Brittas, County Dublin.

SUMMARY CONCLUSIONS AND RECOMMENDATIONS

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Summary

An examination of all available information relating to the development of the quarry in the townlands of Aghfarrell, Ballinascorney Upper and Mountseskin, Brittas, Dublin, currently operated by Concrete, has established the following:

- The quarry commenced on foot of a planning permission granted in 1971, and extensions subsequently authorised in 1977 and 1993 brought the total authorised area to 25.2 hectares.
- The authorised quarry area was extended by c. 5.07 hectares in the period since the year 2005 on lands in the townlands of Mountseskin and Ballinascorney Upper adjoining the authorised quarry area. This equates to an increase of c. 20.12% of the authorised quarry area of 25.2 hectares.
- There is no record to show that any consent or approval was given to quarry in excess of the permitted area, and the quarry extraction in excess of the permitted area is considered to be unauthorised development.
- As it appears that the extension of the authorised quarry in the period after 1st May 1999 does not exceed the threshold of 25% as provided under the EIA Directive which became effective on that date, it appears not to be subject to mandatory EIA.
- Having regard to the nature and characteristics of the unauthorised quarry development and to the prescribed criteria and relevant development plan provisions it is considered that the post 1st May 1999 unauthorised quarry extension would constitute development which would have required screening for EIA.
- The unauthorised quarry extension carried out after 26th February 1997 also requires consideration for appropriate assessment in accordance with the requirements under the Habitats Directive;
- There is no record available to show that the unauthorised extension to the quarry 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 and Ballinascorney Upper, Brittas, Dublin, currently operated by Kilsaran Concrete, was registered in accordance with the provisions of section 261 of the Planning and Development Act 2000.

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Recommended Decisions / Determinations

Following an examination of all available information relevant for the purpose of this review of the quarry at Aghfarrell, Ballinascorney Upper and Mountseskin, Brittas, County Dublin, operated by Kilsaran Concrete it is recommended that the Planning Authority make the following decisions / determinations, as required in accordance with the relevant provisions of the Planning and Development Act 2000 as amended by the Planning and Development (Amendment) Act 2010 and the Environment (Miscellaneous Provisions) Act 2011, and having regard to the Section 261A of the Planning and Development Act, 2010 and related provisions - Guidelines for Planning Authorities (Jan. 2012)and the Supplementary Guidelines for Planning Authorities issued in July 2012.

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.

Determination

Following an examination of the available information, it is considered reasonable to conclude that the unauthorised extension of the authorised quarry at Aghfarrell and Ballinascorney Upper operated by Kilsaran Concrete, carried out after 1 May 1999 on lands in the townlands of Mountseskin and Ballinascorney Upper, constitutes development which would have required a determination as to whether an environmental impact assessment was required, and that no such determination was made in that regard. This conclusion is based on having regard to the Environmental Impact Assessment Directives, and to the selection criteria set out in Schedule 7 to the Planning & Development Regulations 2001 (S.I. No. 600), and to the relevant provisions of the South Dublin County Development Plan 2004-2010.

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, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.

Determination:

Following an examination of the available information, it is considered reasonable to conclude, having regard to the Habitats Directive, that the unauthorised extension to the quarry at Aghfarrell and Ballinascorney Upper operated by Kilsaran Concrete, carried out after 26 February 1997 on lands in the townlands of Mountseskin and Ballinascorney Upper, would have required appropriate assessment or a

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determination as to whether an appropriate assessment was required, and that no such assessment or determination was carried out or made in that regard.

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

Decision

Following an examination of the information available it is considered reasonable to conclude that quarry development on the relevant lands at Aghfarrell and Ballinascorney Upper, comprising a total area of 25.2 hectares, is authorised on the basis of planning permissions granted for a 1.6 ha. quarry in 1971 (no file ref. available), and extensions to the quarry comprising 9.9 ha. (granted on 20/7/1977 under Reg. Ref. K 3021) and 13.7 ha. (granted on 17/09/1993 under Reg. Ref. 93A/0346).

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

Decision:

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 operated by Kilsaran Concrete Limited at Aghfarrell and Ballinascorney Upper, Brittas, County Dublin.

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.

Determination:

Following an examination of the available information, and having regard to the EIA Directives and the Habitats Directive, it is considered reasonable to conclude that any extension to the existing authorised quarry at Aghfarrell and Ballinascorney Upper operated by Kilsaran Concrete, carried out in the period 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.

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RECOMMENDATION TO ISSUE NOTICE UNDER SECTION 261A(3)(a)

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Recommendation to issue notice under section 261A(3)(a)

Following a detailed examination of all information available to the Planning Authority it is considered that the quarry at Aghfarrell, Ballinascorney Upper and Mountseskin, Brittas, Dublin, currently operated by Kilsaran Concrete, meets the requirements under section 261A for the serving of a notice requiring the owner/operator to apply to An Board Pleanála for a substitute consent in respect of the unauthorised quarrying.

The Quarry Guidelines (2012) advise:

3.3 Section 261A(3): Decision of the planning authority and issue of notice 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).

Where the planning authority decide the answer to questions (a) and (b) above is in the affirmative, it is required (subject to subsection (5)), to issue a notice to the owner or operator within 9 months from the date of commencement of section 261A, requiring him or her to apply for substitute consent in respect of the unauthorised development. It is recommended that the planning authority issue the notice to both the owner and operator of the quarry, where both are known.

It is important to note that the answer to both questions above must be in the affirmative before a notice requiring an application for substitute consent can issue – if a quarry commenced pre-October 1964 or obtained a planning permission but did not fulfil the requirements in relation to registration, it will not be permitted to apply for substitute consent. Similarly, a quarry which fulfilled the requirements in relation to registration will be permitted to apply for substitute consent only if it either obtained a permission at some stage or commenced operation before 1 October 1964.

[Section 261A of the Planning and Development Act, 2010 and related provisions - Guidelines for Planning Authorities Jan. 2012 - page 12]

In accordance with Section 261A(3) of the Planning and Development Act 2000 (as amended) it is recommended that notice in writing be issued to inform Kilsaran Concrete, the owner/operator of the quarry at Aghfarrell, Ballinascorney Upper and Mountseskin, Brittas, County Dublin, Register Reference SDQU05A/6, of the determination under Section 261A(2)(a) of the Planning and Development Act 2000.

This notice is to the effect that an EIA, a determination in relation to EIA, or an appropriate assessment was required but not carried out/made. The Notice also conveys the decisions made under subsection Section 261A (3)(a).

The notice should:

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- state that it is a notice issued under section 261A(3)(a),
- be dated,
- include the name and address of the quarry owner or operator, clearly identify the quarry which is the subject of the notice and must inform the person in question that he/she is required to apply to the Board for substitute consent not later than 12 weeks after the date of the notice or such further period as the Board may allow (it is important that the latter words are included in the notice),
- inform the quarry owner or operator of his/her right to refer the determination and/or the decision of the planning authority to the Board for review not later than 21 days after the date of the notice, and
- inform the person in question that the referral of the notice to the Board for review within the time permitted, by the person to whom it was issued, or by any other person entitled to be given a copy of the notice, will have the effect of suspending the operation of the notice until the review is disposed of by the Board.

It is recommended that the planning authority send a copy of the notice to persons who made submissions in relation to the quarry in question within the time permitted, as is required, on the same day as it issues the notice to the quarry owner or operator, with a covering letter dated with the same date. The covering letter should state that the attached notice has been issued to the quarry owner/operator and that the quarry owner/operator and the person to whom the letter is addressed may refer either the determination of the planning authority under Section 261A (2)(a) (that EIA, a determination in relation to EIA, or an appropriate assessment was required but not carried out/made) or the decision of the planning authority under Section 261A (3)(a), to the Board for review not later than 21 days after the date of the notice. The notice should also inform the person in question that the referral of the notice to the Board for review will have the effect of suspending the operation of the notice until the review is disposed of by the Board. The planning authority must also send a copy of the notice to the Board.

It is noted that advice received from the Planning and Housing Policy section of the Department of the Environment, Community, and Local Government advises that "generic" submissions which do not mention any particular quarry are not valid submissions and persons making the submissions are not entitled to receive copies of notices issued to quarry owners, whether under subsection (3), (4) or (5).

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REG. REF. SDQU05A/6

LOCATION: Ballinascorney, Brittas, Co. Dublin.

Robert Matthews
Senior Executive Planner

ORDER: In accordance with Section 261A(3) of the Planning and Development Act 2000 (as amended) it is hereby approved that notice in writing be issued to inform Kilsaran Concrete, Piercetown, Dunboyne, Co. Meath, Kilsaran Concrete Products, Piercetown, Dunboyne, Co. Meath, and Kilsaran Concrete (Ballinascorney) Limited, Piercetown, Dunboyne, Co. Meath the owner/operators of the quarry at Aghfarrell, Ballinascorney Upper and Mountseskin, Brittas, County Dublin, Register Reference SDQU05A/6, of the determination under Section 261A(2)(a) of the Planning and Development Act 2000 (as amended) as set out in the foregoing report and recommendation of the Senior Executive Planner.

Dated:

7/3/12

Neil O'Byrne
Neil O'Byrne
Senior Planner

Comhairle Chontae Atha Cliath Theas

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