

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/3

Location: De Selby Quarry, Townlands Of Corbally & Lugmore,
Saggart, 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

De Selby Quarry

Quarry Location: Corbally and Lugmore, Saggart, Co. Dublin.

Owner / Operator: Roadstone Wood Limited, Fortunestown, Tallaght, Dublin 24.
Brian Joyce, Mount Seskin Road, Corbally, Saggart
(Registered owner of part of the lands)

Register Reference: SDQU05A/3

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ADDENDUM

Note re appropriate assessment in relation to the feeding grounds of the Greylag Goose at Mountseskin and Gortlum, Brittas, Co. Dublin.

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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) under section 28 of the Planning and Development Act 2000 (as amended). Further Supplementary Guidelines were issued in July 2012.

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

Section 261A requires the planning authority to determine which quarries in its administrative area would, having regard to the dates of implementation of the EIA Directive and the Habitats Directive, respectively, have required an EIA, or an appropriate assessment in relation to possible effects on the integrity of a European site, but which were not subject to such assessment/determination.

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

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

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

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quarries in the county. This report relates to the quarry operated by Roadstone Wood Limited on lands at Corbally and Lugmore, Saggart, County Dublin. Brian Joyce, Mount Seskin Road, Corbally, Saggart is also a registered owner of part of the lands.

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General Overview

The De Selby quarry is located on the north facing slope of Tallaght Hill which is one of a number of prominent hills forming the northern edge of the Dublin Mountains comprising a landscape characterised by smooth rounded hills with sparse vegetation

[Appendix 1 Location map]

The existing quarry comprises an extensive excavation enclosed on the East, South and West sides by steep vertical faces. The southern boundary of the quarry lands adjoins the boundary of the Kilsaran quarry lands in the townland of Mountseskin to the south.

Tallaght Hill is designated in the South Dublin County Development Plan as a prospect to be preserved. It is an objective of the Council to preserve this prospect as seen from viewing points at Blessington Road (Killinarden area), Naas Road, and Garter Lane Saggart. The vertical faces of the quarry are visible as a prominent hilltop scar in the panoramic views looking southwards from areas to the North of the site, and from adjacent areas to the west of the quarry.

The area in which the site is located is zoned in the Development Plan, with the objective "To Protect and Enhance the Outstanding Natural Character of the Dublin Mountain Area", (Objective 'H'). The land use activity 'Industry-Extractive' is 'open for consideration' in areas zoned Objective 'H', 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.

The site is accessed from Mount Seskin Road a minor road linking the N81 at Kiltalown to Brittas village, which joins the N81 at an uncontrolled junction. It is an objective of the Council to initiate works on the extension of the Tallaght By-pass as part of a six year road development programme.

Lands in the vicinity of the quarry are used for sheep and cattle grazing, and there are a number of farms and single houses adjacent to the quarry.

There are a number of Recorded Monuments located on lands in the vicinity of the quarry which are included in the schedule of buildings, structures and sites to be protected in the Development Plan 2010-2016 (Schedules 1).

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There are proposed Natural Heritage Areas located within 2 kilometres to the southwest (Slade of Saggart) and 0.5 kilometres to the east (Lugmore Glen) of the subject quarry site. Lands at Mountseskin and Gortlum located c 2.5 kilometres to the south of the quarry lands are feeding grounds for Greylag geese, which is a protected bird species under the designated Special Protection Area for Birds at Poulaphouca reservoir in County Wicklow. There are two Special Areas of Conservation (Wicklow Mountain SAC and Glenasmole Valley SAC) located within 3-4 kilometres to the southeast of the quarry.

[Appendix 2 Map illustrating sites of nature conservation interest]

It is noted that by letter dated 11 June 2010 Roadstone Wood Limited informed the planning authority that due to the serious economic difficulties currently afflicting their business it has been deemed necessary to temporarily suspend operations at De Selby quarry.

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

[Appendix 3 Oblique aerial photography 2005]

Relevant Planning History

Reg. Ref. 11117

Outline planning permission was granted under Plan No. 11117 on 19 January 1967 for the erection of crushing plant at De Selby quarry, subject to the approval of detailed drawings, and approval of a satisfactory landscaping scheme for the exposed portion of the quarry.

Reg. Ref. SD07A/0409 Appeal Ref. PL06S.228842

Planning permission was granted to Roadstone Dublin Limited by decision of An Bord Pleanála under Appeal Ref. PL.06S.228842 for the continuation of quarrying at Corbally and Lugmore. The planning application was made in compliance with an order made under section 261(7) which required the submission of a planning application and an EIS for such development.

Appendix 4 Planning history documents

Planning Enforcement History:

File Ref. 9812: Complaint received 28 Sept 1994

Lands at: Mount Seskin Road, Tallaght

Description of unauthorised development: operation of a quarry

History:

Further details/ complaint received June 1995

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file is linked to file ref 9706 which refers to lands described as Mount Seskin Road, Tallaght in the ownership of Patrick Healy. Investigations into 1. Dumping, 2. Excavation works
Section 26 Notice was served on 11 September 1996
Notice complied with 22nd October 1996.
Further complaint re dumping & access road 20/03/97
No further action recorded after this point and the file was closed sometime after that.

File Ref. S1782. Complaint received 30 June 2000.

Lands at: Lugmore, Saggart, Co. Dublin

Description of unauthorised development: recommencement of quarrying after a lapse of 15 years approximately and the importation of materials into the quarry

History:

Warning letters dated 9th November 2000 issued to Roadstone Ltd and Austin McHale, requested to cease the unauthorised uses forthwith

Warning Notice dated 19th December 2000, served on Roadstone Ltd. and Austin McHale,

Examination of the lands on 11th January 2001 and again on 30th of January 2001 found that Warning Notice had been complied with. However, the unauthorised use resumed subsequently.

Roadstone Ltd. disputed that the quarrying activity is unauthorised on the basis of usage since the early 1900s and did not accept that these rights were ever abandoned.

No further action taken due to lack of adequate supportive evidence. File Closed 10 May 2007.

Environmental Health Officer Report

Six complaints have been received about this quarry. Four relate to Blasting and two relate to dust.

Table 1: Environmental Health Officer record of complaints by year

Year	Number of complaints received
2003	2
2004	2
2006	2

One dust complaint in 2006 resulted in the service of a notice under the Air Pollution Act 1987 requiring action to prevent air pollution. There is no Asphalt plant in this quarry.

Appendix 5 Notice served under the Air Pollution Act 1987 Section 26 (1)

Section 261 Registration of De Selby Quarry

Information relating to the quarry operated by Roadstone Dublin Limited at Corbally and Lugmore, Saggart, Co. Dublin, was received on 22 April 2005 and was duly entered in the Planning Register under Register Reference SDQU05A/3. By order dated 21 April 2006 a statutory notice was served by the Council under Section 261(7) on Roadstone Dublin Limited requiring the submission of a planning application and an EIS for the continuation of

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quarrying operations at De Selby quarry. Information relating to the section 261 registration of the quarry is summarised in Table 2.

Table 2 Outline Details De Selby Quarry (source: S. 261 application)

Owner / Operator	Roadstone Wood Limited ¹
Registered Reference Number	SDQU05A/3
Aggregates Extracted	Dolerite
Annual Output (tonnes)	100,000
Planning Status	Pre-1964
Year of Permission	2009
S261 Stated Site Area 2005	51 hectares
Permitted Extraction Area June 2009	5 hectares

Section 261A Submissions

One submission (submission No. 44) was received in relation to De Selby quarry in response to the public notice. The submission which was made by Shane Geraghty, on behalf of Roadstone Wood Limited, states that on the 11th June 2010 operations at the quarry were suspended on a temporary basis due to the economic downturn and this has been communicated to the Planning Authority. In addition to the active boundary of the quarry, the applicants have an interest also in the lands coloured in magenta on a map attached, by way of a lease to quarry same dated 10 November 1913. Brian Joyce, Mount Seskin Road, Corbally, Saggart is also a registered owner of part of these lands.

[Appendix 5 Submission No. 44 - Roadstone Wood Limited]

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).

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;

¹ Brian Joyce, Mount Seskin Road, Corbally, Saggart is also a registered owner of part of the lands.

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- 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

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

Definition of 'Quarry'

In accordance with Section 2(1) of the Act of 2000 as amended by Section 16 of the Environment (Miscellaneous Provisions) Act 2011, the term 'quarry' has the meaning assigned to it in section 3(3) of the Mines and Quarries Act 1965. This provides that a 'quarry' includes "any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals including the breaking, crushing, grinding, screening, washing or dressing of such minerals but subject thereto does not include a place at which any manufacturing process is carried on".

Information Sources

This assessment for the purposes of Section 261A of the Planning and Development Acts 2000-2010 is based on information available at the time of writing. The principal sources drawn upon include the available council records,

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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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I

DECISION REGARDING WHETHER THE QUARRY IS AUTHORISED:

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

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)

The application submitted in relation to the registration of the De Selby quarry under Section 261 indicates that quarrying was in operation on the subject lands prior to 1st October 1964. Information submitted with the S. 261 application states that the quarry has been in operation since c. 1913 and that Roadstone has operated the quarry continuously since 1955. In this regard it is noted that the submission received from Roadstone Wood Limited in relation to this examination under Section 261A, includes a copy of a lease registered in November 1913 to the De Selby Quarries Company Limited to quarry stone on lands at Corbally comprising a total of 116 acres in which Roadstone advise they have an interest. Brian Joyce, Mount Seskin Road, Corbally, Saggart is also a registered owner of part of the lands.

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By order dated 20 April 2007 a statutory notice was served by the Council under Section 261(7) on Roadstone Dublin Limited requiring the submission of a planning application and an EIS for the continuation of quarrying operations at De Selby quarry. Planning permission for the continuation of quarrying at De Selby quarry was subsequently authorised by decision of An Bord Pleanála on 26 June 2009 under Appeal Reference PL 06S.228842.

[Appendix 6 An Bord Pleanála decision Appeal Reference PL 06S.228842]

On the basis of the available information, it is considered that quarry development carried out prior to the grant of planning permission under register reference SD07A/0409 granted on 26 June 2009 is authorised on the basis of a pre-1964 commencement, and that the continuation of further quarrying is authorised on the basis of the decision of An Bord Pleanála on 26 June 2009 under appeal reference PL 06S.228842 (Register Reference SD07A/0409)

Conclusion

On the basis of an examination of the available information it is considered reasonable to conclude that quarry development carried out prior to the 26 June 2009 at the De Selby quarry operated by Roadstone Wood Limited at Corbally and Lugmore, Saggart, County Dublin, is authorised on the basis of a pre-1964 commencement, and that the continuation of quarrying is authorised on the basis of the decision of An Bord Pleanála on 26 June 2009 under appeal reference PL 06S.228842 (Register Reference SD07A/0409).

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

The Quarry Guidelines (2012) advise:

3.2.1 General

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

3.2.2 Development after 1 February 1990/26 February 1997

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

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

On the basis of aerial photography flown in the period 1971 to 2009 it appears that the extent of the quarry workings at De Selby has increased from an area comprising 6.41 hectares in 1971 to 9.63 hectares in 2009, as detailed in Table 3.

Table 3 Estimated increase in quarry area at De Selby quarry 1971-2009

Year of photography	Estimated quarry area (hectares)	Increase in quarry area (hectares)
1971	6.41	nil
1978	7.74	1.33
1986	8.86	1.12
1995	8.93	0.07
2000	9.63	0.70
2005	9.63	nil
2009	9.63	nil

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[Appendix 7 *Aerial photography 1971-2009*]

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.

The second point to note is that any quarry which applied for and obtained planning permission under section 261(7) will not be caught by this subsection, in respect of the EIA requirement, unless there has been recent further development in the quarry, which was not authorised by the permission granted under section 261(7) and which would require EIA or appropriate assessment.

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

It is noted that a copy of ordnance survey Dublin Sheet 21 surveyed in 1837 and revised in 1937 submitted in relation to the application to register the quarry illustrates a quarry comprising c. 3 acres at this location. Aerial photography flown in the period between 1995 and 2009 illustrates a quarry at this location comprising of c. 8.93 hectares in 1995, and 9.63 hectares in 2000, 2005 and 2009.

[Appendix 8 *Ordnance survey Dublin Sheet 21 surveyed in 1837 and revised in 1937*]

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As concluded previously, it is considered on the basis of an examination of the available information that quarry development carried out prior to the 26 June 2009 at the De Selby quarry is authorised on the basis of a pre-1964 commencement, and the continuation of quarrying is authorised by decision of An Bord Pleanála on 26 June 2009 under Appeal Reference PL06S.228842, which was subject to environmental impact assessment.

As noted previously, the planning application for the continuation of quarrying under Register Reference SD07A/0409 was made in compliance with an order made under Section 261(7) of the Planning and Development Act 2000 requiring the submission of a planning application and EIS in that regard.

The Guidelines (2012) advise that any quarry which applied for and obtained planning permission under section 261(7) will not be subject to subsection 261A(2)(a)(i) in respect of the EIA requirement, unless there has been recent further development in the quarry, which was not authorised by the permission granted under section 261(7) and which would require EIA or appropriate assessment.

On the basis of information available to the Council it appears that there has been no recent further development in the quarry which was not authorised either by the pre-1964 commencement or by the permission granted under section 261(7), and which would require EIA.

Conclusion

On the basis of an examination of the available information it is considered reasonable to conclude that the quarry at Corbally and Lugmore, Saggart, operated by Roadstone Wood Limited, and authorised by decision of An Bord Pleanála on 26 June 2009 under Appeal Reference PL06S.228842, is not subject to the requirements under subsection 261A(2)(a)(i) for a determination in relation to Environmental Impact Assessment.

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III

DETERMINATION IN RELATION TO HABITATS ASSESSMENT

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

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

The Quarry Guidelines (2012) advise:

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

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

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

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

The Quarry Guidelines (2012) advise:

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

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

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

As concluded previously, it is considered on the basis of an examination of the available information that quarry development at the De Selby quarry carried out prior to the 26 June 2009 is authorised on the basis of a pre-1964 commencement, and the continuation of quarrying from that date is authorised on the basis of the planning permission granted by An Bord Pleanála on 26 June 2009 under Register Reference SD07A/0409 which was subject to environmental impact assessment.

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In this regard it is noted that Regulation 27 of the European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94/1997) states:

27. (1) A local authority when duly considering an application for planning permission, or the Board when duly considering an appeal on a application for planning permission, in respect of a proposed development that is not directly connected with, or necessary to the management of, a European site but likely to have a significant effect thereon either individually or in combination with other developments, shall ensure that an appropriate assessment of the implications for the site in view of the site's conservation objectives is undertaken.

(2) An environmental impact assessment in respect of a proposed development prepared in accordance with a requirement of or under the Local Government (Planning and Development) Regulations, 1994 (S.I. No. 86 of 1994), shall be an appropriate assessment for the purposes of paragraph (1).

As noted previously, the planning application for the continuation of quarrying under Register Reference SD07A/0409 was made in compliance with an order made under Section 261(7) of the Planning and Development Act 2000 requiring the submission of a planning application and EIS in that regard.

The Guidelines (2012) advise that any quarry which applied for and obtained planning permission under section 261(7) will not be subject to subsection 261A(2)(a)(ii) in respect of the Habitats Assessment requirement, unless there has been recent further development in the quarry, which was not authorised by the permission granted under section 261(7) and which would require EIA or appropriate assessment.

On the basis of information available to the Council it appears that there has been no recent further development in the quarry which was not authorised by the permission granted under section 261(7) and which would require EIA or appropriate assessment.

Conclusion

On the basis of an examination of the available information it is considered reasonable to conclude, having regard to the Habitats Directive, that the quarry at Corbally and Lugmore, Saggart, operated by Roadstone Wood Limited, and authorised by the planning permission granted by An Bord Pleanála on 26 June 2009 under Register Reference SD07A/0409, is not subject to the requirements under subsection 261A(2)(a)(ii) in respect of a determination in relation to appropriate assessment under the Habitats Directive.

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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)

As previously concluded on the basis of an examination of the available information under subsections 261A(2)(a)(i) it is considered reasonable to conclude that the quarry at Corbally and Lugmore, Saggart, operated by Roadstone Wood Limited, and authorised by the planning permission granted by An Bord Pleanála on 26 June 2009 under Register Reference SD07A/0409, is not subject to the requirements under subsection 261A(2)(a)(i) and (ii) in respect of a determination in relation to the Environmental Impact Assessment or appropriate assessment having regard to the EIA and the Habitats Directives.

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It is considered therefore that no requirement arises for an examination of the quarry under subsection 261A(5)(a).

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V

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

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

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

The Quarry Guidelines (2012) advise:

3.3 Section 261A(3): Decision of the planning authority under subsection (3)²

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

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

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

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

S261 Registration Requirements

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—

² 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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- (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
 - (iii) such other matters in relation to the operations of the quarry as may be prescribed.
- (3) A planning authority may require a person who has submitted information in accordance with this section to submit such further information as it may specify, within such period as it may specify, relating to the operation of the quarry concerned and, on receipt thereof, the planning authority shall enter the information in the register.
- (11) This section shall apply to—
- (a) a quarry in respect of which planning permission under Part IV of the Act of 1963 was granted more than 5 years before the coming into operation of this section, and
 - (b) any other quarry in operation on or after the coming into operation of this section, being a quarry in respect of which planning permission was not granted under that Part.

Information relating to the quarry at Corbally and Lugmore operated by Roadstone Dublin Limited, was received on 22 April 2005 and was duly entered in the Planning Register. Information provided included a map of the site, details of the quarry owner / operator, landownership, planning history, and quarry operation details including the type of material being extracted, the hours of operation, daily vehicle movements, and measures to control noise and dust. A revised map and other details were subsequently submitted on 28 September 2005 in response to a request for additional information.

A notice published in the Irish Times on 19 October 2005 in accordance with Section 261(4) invited submissions from members of the public on the quarry, and stated that the Planning Authority was proposing to require that a planning application and EIS be submitted in accordance with Section 261(7). No submissions relating to the subject quarry were received during the specified period.

An Order dated 21 April 2006 was subsequently made under Section 261(7) requiring the owner/operator to apply for planning permission and to submit an environmental impact statement in respect of the continued operation of the De Selby quarry at Corbally and Lugmore, Saggart, Co. Dublin. An application for planning permission and an EIS were subsequently received from Roadstone on 1 June 2007 for development comprising the proposed continuation of quarrying activities including the processing of aggregates, landscaping, restoration and associated works within an area of 31.25 hectares.

[Appendix 9 S261 order, report and conditions]

Conclusion

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On the basis of 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 Roadstone Wood Limited at Corbally and Lugmore, Saggart, Co. Dublin.

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SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

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Summary

An examination of all available information relating to the development of the quarry in the townland of Corbally and Lugmore, Saggart, County Dublin, operated by Roadstone Wood Limited, has established the following:

- Information submitted with the S. 261 registration application states that the quarry has been in operation since c. 1913 and that Roadstone has operated the quarry continuously since 1955.
- Information submitted by Roadstone in relation to the S. 261A review includes a copy of a lease registered in November 1913 to the De Selby Quarries Company Limited to quarry stone on lands at Corbally comprising a total of 116 acres in which Roadstone advise they have an interest. Brian Joyce, Mount Seskin Road, Corbally, Saggart is also a registered owner of part of the lands.
- OS survey Dublin Sheet 21 surveyed in 1837 and revised in 1937 illustrates a quarry comprising c. 3 acres at this location.
- The subject quarry appears to have the benefit of a pre-1964 commencement.
- The quarry was registered in accordance with the provisions of section 261 of the Planning and Development Act 2000.
- A statutory notice was served under Section 261(7) on Roadstone Dublin Limited requiring the submission of a planning application and an EIS for the continuation of quarrying operations at De Selby quarry. An application and EIS were subsequently submitted.
- Planning permission for the continuation of quarrying at De Selby quarry was subsequently authorised by a decision of An Bord Pleanála on 26 June 2009.
- It appears that there has been no recent further development in the quarry which was not authorised by the permission granted under section 261(7) and which would require EIA or appropriate assessment.
- As planning permission was granted on foot of an application made in accordance with a notice served under section 261(7) the quarry is not subject to the requirements under section 261A.

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Conclusion

The Quarry Guidelines (2012) advise:

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

The second point to note is that any quarry which applied for and obtained planning permission under section 261(7) will not be caught by this subsection, in respect of the EIA requirement, unless there has been recent further development in the quarry, which was not authorised by the permission granted under section 261(7) and which would require EIA or appropriate assessment.

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

As concluded previously, it is considered on the basis of an examination of the available information that quarry development carried out prior to 26 June 2009 at the De Selby quarry is authorised on the basis of a pre-1964 commencement, and the continuation of quarrying is authorised by decision of An Bord Pleanála on 26 June 2009 under Appeal Reference PL06S.228842, which was subject to environmental impact assessment.

As noted previously, the planning application for the continuation of quarrying under Register Reference SD07A/0409 was made in compliance with an order made under Section 261(7) of the Planning and Development Act 2000 requiring the submission of a planning application and EIS in that regard.

The Guidelines (2012) advise that any quarry which applied for and obtained planning permission under section 261(7) will not be subject to subsection 261A(2)(a)(i) in respect of the EIA requirement, unless there has been recent further development in the quarry, which was not authorised by the permission granted under section 261(7) and which would require EIA or appropriate assessment.

On the basis of information available to the Council it appears that there has been no recent further development in the quarry which was not authorised either by the pre-1964 commencement or by the permission granted under section 261(7), and which would require EIA. It is considered therefore that no requirement arises under S. 261A in respect of the subject quarry.

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Recommendation

Following an examination of all available information it is considered, on the basis of an examination of the available information that quarry development carried out prior to 26 June 2009 at the De Selby quarry is authorised on the basis of a pre-1964 commencement, and the continuation of quarrying is authorised by decision of An Bord Pleanála on 26 June 2009 under Appeal Reference PL06S.228842, which was subject to environmental impact assessment.

As noted previously, the planning application for the continuation of quarrying under Register Reference SD07A/0409 was made in compliance with an order made under Section 261(7) of the Planning and Development Act 2000 requiring the submission of a planning application and EIS in that regard.

The Guidelines (2012) advise that any quarry which applied for and obtained planning permission under section 261(7) will not be subject to subsection 261A(2)(a)(i) in respect of the EIA requirement, unless there has been recent further development in the quarry, which was not authorised by the permission granted under section 261(7) and which would require EIA or appropriate assessment.

On the basis of information available to the Council it appears that there has been no recent further development in the quarry which was not authorised either by the pre-1964 commencement or by the permission granted under section 261(7), and which would require EIA. It is considered therefore that no requirement arises under S. 261A in respect of the subject quarry.

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

Dated: _____


Robert Matthews
Senior Executive Planner

Comhairle Chontae Atha Cliath Theas

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ORDER: It is hereby authorised that the relevant owners and or operators of the landholding Roadstone Wood Limited, Fortunestown, Tallaght, Dublin 24 and Brian Joyce, Mount Seskin Road, Corbally, Saggart (Registered owner of part of the lands) be advised that no requirement arises for the relevant determinations or decisions to be made by the Planning Authority under section 261A of the Planning and Development Act 2000 (as amended).

Dated: 16 / 8 / '12



Neil O' Byrne
Senior Planner