

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/4

Correspondence Name and Address: L. Behan & Sons Ltd. Windmill House, Rathcoole, Co. Dublin.

Location: Windmill Hill, Rathcoole, 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 Regulations 3(a), 3(b) and 3(c) of the European Union (Environmental Impact Assessment and Habitats) Regulations 2012.

Section 261A Review of Quarries

Behan's Quarry

Quarry Location: Windmill Hill, Rathcoole, Co Dublin

Owner / Operator: L. Behan & Sons Limited, Windmill House, Rathcoole, Co Dublin

Register Reference: SDQU05A/4

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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 on lands at Windmill Hill, Rathcoole, County Dublin, operated by L. Behan & Sons Limited.

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General Overview (see Appendices 1-3 and 20)

The Behan quarry site is located on the northern slopes of Windmill Hill (elevation 217m OD) in the townland of Windmill Hill, adjoining the southern side of the N7 Naas dual carriageway c. 1.8 kilometres to the west of Rathcoole Village. The quarry is accessed directly from the southbound carriageway of the N7.

Information submitted in relation to the S. 261 registration of the quarry states that the quarry landownership comprises of a total of 73 hectares, and extends to local roads to the south (Windmill Road) and west. The main quarry excavation is located between the 178m and 210m contours, and extends to a depth of c. 60 metres (c. 120m. OD). The southern face of the quarry excavation is c. 90 metres in height and is located c. 50 metres to the north of the stone windmill ruin which marks the hill top. The upper portion of this quarry face is prominent in views southwards to the Dublin Mountains from areas to the north, and is visible from elevated locations to the north of the river Liffey which marks the county boundary with Fingal County.

The central portion of the site is occupied by processing, storage, maintenance, and stone coating facilities. A smaller area of excavation is located on the eastern portion of the site. The adjacent rising ground and a line of mature Leylandi cypress trees located in the vicinity of the N7 substantially screen views of the quarry from the N7 Naas dual carriageway. The general layout of the quarry is illustrated on the oblique aerial view taken in August 2005.

[see Appendix 1 Location map]

[see Appendix 2 Context aerial photo, and oblique photo 2005]

The quarry at Windmill Hill is located within an area zoned in the South Dublin County Development Plan 2010-2016 with the objective “to protect and improve rural amenity and to provide for the development of agriculture” (Zoning Objective ‘B’). Extractive Industry is permitted in principle within areas zoned ‘B’.

[see Appendix 3 Relevant maps Development Plan 2010-2016]

Both Newcastle village to the north and Rathcoole village to the east lie within a range of three kilometres from the quarry at Windmill Hill. Lands zoned for residential development at Rathcoole village extend to within one kilometre of the quarry. There are numerous dispersed single houses located in the vicinity of the quarry, and a substantial cluster of houses located on elevated lands at Red Gap c. 1.5 kilometres to the southeast of the quarry. Casement aerodrome, operated by the

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Department of Defence, is located to the northeast of the quarry and the nearest runway extends to within 4 kilometres of the quarry.

There are proposed Natural Heritage Areas located within c. 3.5 kilometres (Slade of Saggart) and c. 8 kilometres (Glenasmole Valley) to the southeast of the quarry lands, and 6 kilometres (Lugmore Glen) and 9.5 kilometres to the east (Dodder Valley). Lands at Mountseskin and Gortlum located c. 5.2 kilometres to the southeast 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 located 8.5 and 9 kilometres respectively to the southeast of the quarry (Wicklow Mountain SAC and Glenasmole Valley SAC). There are no watercourses on the quarry lands. Lands in the vicinity of the quarry are drained by watercourses within the catchment area of the river Camac which joins the river Liffey in Dublin city. (see Appendix 20)

The Stone Windmill (ruin) located on the quarry lands is a recorded monument, and is included in the Record of Protected Structures, Schedule 2 in the South Dublin County Development Plan 2010-2016 (map ref. no. 358). It is the policy of the Council (Policy AA7) to conserve buildings, structures and sites contained in the Record of Protected Structures. This protected structure stands c. 50 metres from the southern edge of the existing quarry excavation area.

Relevant Planning History (see Appendix 4)

Reg. Ref. A.14

Planning permission for a quarry at Windmill Hill was granted to Laurence Behan in 1968.

Reg. Ref. SA. 1936

Planning permission was granted on 26 February 1980 to L. Behan for Machinery Store at Windmill Hill House, Rathcoole.

Reg. Ref. 88A/709

Planning permission was granted on 20 December 1988 to Laurence Behan for Mobile Asphalt Mixing Plant in Existing Quarry at Windmill Hill, Rathcoole.

An Bord Pleanála Ref. 06S.PA0006

Permission refused by An Bord Pleanála for a Resource Recovery Facility (N7RRP) for the thermal treatment of 365,000 tonnes per annum of non-hazardous residual municipal waste and construction and demolition (C&D) waste; the recovery of materials (metals [11,500 tonnes – comprising 6,600 tonnes of ferrous and 4,900 tonnes of nonferrous metals per annum] and boiler aggregate/bottom ash [23,000 tonnes per annum]); manufacture of concrete products; and the generation of 28MW of electricity for export to the national grid. The proposal sought to utilize the existing access and egress point from the N7 National Primary Road.

The reasons for refusal were as follows;

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1. The Waste Management Plan for the Dublin Region 2005 – 2010, the objectives of which are deemed to be included in the South Dublin County Development Plan 2004 – 2010, has as an objective the provision of one waste to energy facility for the Region at Poolbeg. Having regard to the approval granted under Section 175 of the Planning and Development Act 2000, as amended, for the facility at Poolbeg, it is considered that the additional facility as proposed would be in conflict with the integrated approach to waste management for the Dublin Region as set out in the said Waste Management Plan and would therefore be contrary to the development plan for the area and to the proper planning and sustainable development of the area.
2. The proposed development of a new and large scale industrial type facility with associated significant traffic generation, including a large percentage of Heavy Commercial Vehicles, with direct access onto the N7 National Primary Route (Dublin – Naas section, six lane dual carriageway), albeit using an existing established quarry entrance would, by reason of the additional traffic generated using direct access to the National Primary Route, be contrary to the objectives of the planning authority (which objectives are considered reasonable) to preserve the level of service and carrying capacity of the National Primary Road and to protect the public investment in the road.
3. The site of the proposed development is located in complex (hilly) terrain, within a quarry void and where the proposed stack height is low relative to adjacent ground levels to the southeast and where, due to the location and orientation of the site relative to Casement Aerodrome, there are constraints on the height of the stack in the interest of air traffic safety. Due to the lack of site specific meteorological measurements and the use of meteorological measurements from Casement Aerodrome to input into the air dispersion models, the Board is not satisfied that sufficiently accurate data has been used in the modelling or that the models can reliably predict the effect of process emissions on ambient air quality close to the proposed stack. The proposed development would constitute an unacceptable risk of pollution of the environment and would, therefore, be unacceptable on environmental grounds having regard to the proper planning and sustainable development of the area.

Reg. Ref. SD11A/0271

Planning permission refused on 18 January 2012 by South Dublin County Council for the establishment of a waste management facility with a maximum intake volume of 10,000 tonnes per annum to accept inert waste material including waste bituminous mixtures, waste concrete and waste gravel and crushed rocks for recycling and reuse in the existing tarmacadam manufacturing plant located on the site.

The reasons for refusal were as follows;

1. The proposed development of a waste management facility with associated significant traffic generation, including a large percentage of Heavy Commercial Vehicles, with direct access onto the N7 National Primary Route (Dublin – Naas section, six lane dual carriageway), albeit using an existing established quarry entrance would, by reason of the additional traffic generated using direct access to the National Primary Route, be contrary to the objectives of the Planning Authority and the National Roads Authority which seeks to preserve the level of service and carrying capacity of the National Primary Road and to protect the public investment in the road and as such would not accord with proper planning and sustainable development of the area.
2. The proposed development would lead to an unacceptable intensification of the use of an existing access to the heavily-trafficked National Primary Road N7. Such intensification of vehicular movements onto/off a national primary road would endanger public safety by reason of a traffic hazard as it would give rise to traffic movements that would interfere with safety/free flow of traffic along a heavily trafficked National Route.

[see Appendix 4 Planning History documents]

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Reg. Ref. SD12A/0059

Permission sought for a waste management facility. Additional information was requested on 22 of May 2012

Planning Enforcement History (see Appendix 5)

File Ref: S1414

Lands at: Behan Quarry, Windmill Hill, Rathcoole, Co. Dublin.

Description of unauthorised development: quarry in operation - blasting and removal of hedgerow - blasts less than 50m away.

File was opened in the 90's.

No planning permission was granted as the development pre-dated the Planning Act 1963.

Matter was referred to the Gardaí and the E.H.O regarding any noise issues.

Lands were monitored.

File was closed.

No Warning Letter or Enforcement Notice served

File Ref: S4432

Lands at: Behan Quarry, Windmill Hill, Rathcoole, Co. Dublin.

Description of unauthorised development: Telecommunication masts on protected structure Stone Windmill

Section 154 Enforcement Notice served 9 November 2005

File closed as unauthorised development removed. 2008

File Ref: S5940

Lands at: Behan Quarry, Windmill Hill, Rathcoole, Co. Dublin.

Description of unauthorised development: Entrance and access to Behans quarry and dual carriageway without the benefit of planning permission.

Section 152 Warning Letter served February 2010

File closed- works deemed to be Exempted Development, as they were carried out as part of N7 Road Improvement scheme.

[see Appendix 5 Planning enforcement history documents]

Environmental Health Officer Reports

A total of 10 complaints (see Table 1) have been received since 2005, all of which relate to blasting.

Table 1: Environmental Health Office record of complaints by year

Year	Number of complaints received
2005	5
2006	2
2008	2
2010	1

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The asphalt manufacturing plant was replaced. The exact date of this is unknown. An application for a license to operate it under the Air Pollution Act 1987 (Licensing of Industrial Plant) Regulations 1988, was received on 05/08/09 and a license was granted on 17/11/09. The license requires quarterly monitoring of air pollutants to be undertaken and submitted to the council. The monitoring submitted has been compliant, however the plant is not currently in use.

Section 261 Registration of the Quarry (see Appendices 6-7)

Information relating to the Quarry operated by L. Behan & Sons Limited at Windmill Hill, Rathcoole was received on 25 April 2005 and was duly entered in the Planning Register under Register Reference SDQU05A/4. By order dated 23rd April 2007 a statutory notice under Section 261(6) to modify conditions and add new conditions was served by the Council on L. Behan & Sons Limited. Information relating to the section 261 registration of the quarry is summarised in Table 2.

Table 2: Outline details Behans Quarry (Source: Section 261 Application)

Owner / Operator	L. Behan & Sons Limited
Registered Reference Number	SDQU05A/4
Aggregates Extracted	Crushed Aggregate
Annual Output (tonnes)	500,000
Planning Status	Planning Permission (Reg. Ref. A.14)
Year of Permission	1968
Site Area 2005	73 ha.
Extractable Area 2005	39.27 ha.

[see Appendix 6 Map of survey of existing quarry revised 22 September 2005]

No submissions were received relating to the section 261 registration of the quarry at Windmill Hill in response to public notices advertised in the Irish Times on 19 October 2005 and 22 January 2007. However concerns outlined in motions to Council meetings in 2009 and 2010 as follows are noted.

A report on a motion (Motion No. 9) to the County Council meeting on 12 January 2009 regarding dust pollution on the N7 at the entrance to the quarry noted that no complaints were received in this regard, and that no breaches of the waste facility permit have occurred, and no specific evidence supporting enforcement action had been found.

A complaint received 24 February 2010 from Rathcoole Community Council Limited regarding non-compliance with conditions imposed under section 261 was the subject of a motion (Motion No. 5) to the Lucan Clondalkin area committee meeting on 16 June 2010. The report to the committee noted that the process of approving compliance details was on-going and that there was no current enforcement record relating to any complaints arising from activities at the quarry.

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[see Appendix 7 Motions and reports to Council meetings regarding Behan's quarry]

Section 261A Submissions

No submissions were received relating to the quarry at Windmill Hill in response to the public notice advertised in the Irish Times on 7th December 2011 in accordance with section 261A.

[see Appendix 8 S. 261A Public notice]

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 an environmental impact assessment was required but was not carried out
- III A determination as to whether an appropriate assessment was required but was not carried out
- IV A determination as to whether the development commenced after 3 July 2008
- V A decision regarding whether the registration requirements of section 261 were complied with

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

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

Definition of 'quarry'

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

Information Sources

This assessment for the purposes of Section 261A of the Planning and Development Acts 2000-2010 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 received in April 2005 in relation to the registration of the quarry under section 261 stated that no planning permission existed for the quarry and that the quarry commenced operation prior to 1 October 1964. A subsequent submission received on 28 October 2005 informed the Council that contrary to the previous submission the quarry had the benefit of a planning permission granted in May 1968 under Reg. Ref. A. 14 and enclosed a copy of the relevant decision notice. This confirms that notification of a decision to grant planning permission for a quarry at Windmill Hill was issued to Laurence Behan on the 20th May 1968 under Register Reference A. 14 subject to five conditions as follows (see Appendix 10):

Condition No. 1 Requires that the access road where it crosses the Dublin Corporation Waterworks Department culvert be adequately strengthened or reinforced, in order to protect the culvert from damage due to undue loading.

Condition No. 2 Details of any blasting operations to be submitted to Dublin Corporation and Dublin County Council and approved before any blasting takes place.

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Condition No. 3 Adequate visibility lines to be provided where the access road joins the Naas Road dual carriageway.

Condition No. 4 The operator to ensure that no debris, mud, slurry or water be deposited on the carriageway in the vicinity of the junction by vehicles entering or leaving the site, to avoid the creation of hazardous road surface conditions.

Condition No. 5 That the site be reinstated and adequately landscaped to the requirements of the Council on completion of the quarrying operations, for the purpose of preserving the amenities of the area.

[See Appendix 9 Planning permission notice Reg. Ref. A.14]

There is no record available of any previous or subsequent planning permissions having been granted for quarrying at this location.

Conclusion

Following an examination of the available information it is considered reasonable to conclude that planning permission was granted for quarry development on lands at Windmill Hill, Rathcoole, on the 20th May 1968 under Register Reference A. 14, and that quarry development on the relevant lands is therefore authorised on the basis of the planning permission granted.

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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)

Extent of Quarry Area 1971-2009

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 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 In the case of the subject quarry it appears that the entire extent of the current

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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quarry area has been extracted to some degree over the life of the quarry and is therefore relevant for the purpose of the assessment in relation to the requirements under the EIA Directives.

An examination of seven series of aerial photography flown at intervals over the period from 1971 to 2009 indicates the progressive extension of the quarry in that period (see Table 3 below and Appendix 10.)

Table 3: Estimated extent of change in area of Behan quarry 1971-2009

Year of photography	Quarry Area (hectares)	Extent of change in Quarry Area (hectares)
1971	6.63	-
1978	6.84	0.21
1987	6.98	0.14
1996	10.41	3.43
2000	15.76	5.35
2005	17.45	1.69
2009	19.12	1.67

[See Appendix 10 Aerial photos 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.

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

Extent of authorised quarry at Windmill Hill (see Appendices 11-17)

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No site map is available illustrating the boundaries of the site authorised for quarry development at Windmill Hill under the planning permission Reg. Ref. A. 14. The permitted extent of the quarry development is not detailed in either the description of the permitted development or in the conditions attached to the permission. In the absence of such information documents retrieved from council records and relevant aerial photography have been examined to ascertain the likely area of the quarry development authorised by the planning permission under Reg. Ref. A. 14.

In this regard the following is noted:

- The OS Map Ref. No 21-13, scale 1: 2,500, 1938 does not contain any annotations indicating the existence of a quarry on this part of the applicants lands in 1938, although a number of minor quarry excavations are indicated elsewhere on the lands. It appears on the basis of this map that no quarry excavation existed at this location in 1938.
- The OS Map Ref. No 21, scale 1: 10,560, 1957 (used as a base map and annotated by the Council's Environmental Services Department for records purposes) does not contain any annotations indicating the existence of a quarry on this part of the applicants lands in 1957.
- The OS Map Ref. No 21-13, scale 1: 2,500, 1968 (used as a base map for the planning register) illustrates an area of excavation on the quarry lands at Windmill Hill denoted by 'change in level' annotations, and indicates that a substantial quarry excavation existed at this location in 1968.

[see Appendix 11 OS Map Ref. No 21-13, scale 1: 2,500, 1938]

[see Appendix 12 OS Map Ref. No XXI, scale 1: 10,560, 1957]

[see Appendix 13 OS Map Ref. No. 21-13, scale 1: 2,500, 1968]

Based on the foregoing it appears that the subject quarry on the Behan lands commenced in the period between 1957 and 1968.

A planning report dated 28 February 1968 relating to the planning application for a proposed quarry at Windmill Hill for Laurence Behan under Reg. Ref. A.14, retrieved from Council microfiche records, states as follows:

“The applicant proposes to quarry stone on his land at Windmill Hill, Rathcoole, and has submitted copies of a site map only with two fields coloured thereon. It is not clear whether these fields represent the total extent of the applicant's holding or whether they are part of his holding in relation to which the permission is sought.”

A subsequent planning report dated 20 May 1968 under Manager's Order No. P/709/68, states as follows:

“The two fields proposed for development lie between the 500 feet and 700 feet contours. There is an existing quarry on the site with an average floor level of 552 O.D.”

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Aerial photography flown in 1971 annotated to show the location of the relevant contour lines indicates that the quarry workings illustrated in the aerial photography lie within the stated contours.

[See Appendix 14 Planning reports relating to Reg. Ref. A.14 and annotated aerial photography]

A further indication of the likely location and extent of the surface area of the quarry authorised under the planning permission Reg. Ref. A. 14 is provided in the planning report attached to Managers Order No. P/3879/88 dated 7 November 1988 relating to Reg. Ref. 88A/0709 (mobile Asphalt Mixing Plant) which states:

“The site is an existing gravel quarry west of Rathcoole and several hundred metres in off the Naas Dual Carriageway. The site is approx. 9 acres in area.”

[See Appendix 15 Managers Order No. P/3879/88]

The area within the site red line boundary relating to the planning application under Reg. Ref. 88A/0709 is illustrated on the relevant Planning Register map (Appendix 13). Scaled measurements from the register map confirm a site area measuring 9 acres, including a linear strip extending northwards to the Naas Road which includes the site access road. On the basis of this documentation it appears that in 1988 the quarry excavation was located in the field of 6.82 acres which is annotated 'quarry' on the OS base map Ref. No. 21-13 surveyed in 1968.

A site layout sketch drawing extracted from planning application documents held on microfiche relating to Reg. Ref. SA. 1936 (machinery store in quarry at Windmill Hill) illustrates the location in 1979 of quarry faces in the existing quarry at Windmill Hill operated by L. Behan and Sons Limited. This appears to show that the existing quarry extended over the field of 6.82 acres and the adjoining field to the north (shown as 7.870 acres on the OS map). In this regard it is noted that the relevant planning register map is not available, however the site boundary relating to Reg. Ref. SA. 1936 is illustrated on the relevant Roads Department map record (Appendix 11) as comprising the field of 7.877 acres.

[See Appendix 16 Site layout sketch drawing Reg. Ref. SA1936]

It appears from the above that in 1988 the existing quarry at Windmill Hill extended over the combined area of the two fields comprising in total c. 5.95 hectares. This is confirmed by reference to the aerial photography flown in 1987. It should be noted that the area of the quarry illustrated in the aerial photography of 1987 includes lands on the eastern side of the quarry located outside the two fields described above which appear not to have formed part of the lands authorised for quarrying.

It appears from this examination of the referenced documents and the 1987 aerial photography that prior to at least 1987, and probably including the further period up to the submission of application

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Reg. Ref. 88A/0709 in June 1988, the quarry development at Windmill Hill was confined to the area of the quarry illustrated in the 1987 aerial photography.

On the basis of the foregoing examination it appears to be reasonable to infer that the planning permission Reg. Ref. A. 14 only applied to the area of the two fields comprising c. 5.95 hectares including the related access road from the Naas Dual Carriageway. The relevant lands are illustrated on the Composite Illustration. Furthermore, it appears that in the period up to 1988 the quarry workings remained substantially within the area occupied by the workings as illustrated in the 1971 aerial photograph (estimated to comprise c.7 hectares).

[See Appendix 17 Composite illustration of conclusions]

Quarry development carried out after 1 February 1990

It is evident from the aerial photography flown in 1996 that in the period from 1987 to 1996 quarrying activity was extended into the adjoining land to the west of the area authorised for quarry development under Reg. Ref. A. 14. An examination of aerial photography flown in 1993, which illustrates only the northern portion of the quarry lands, shows an access road extending into the adjoining field to the west which indicates that quarry development had already commenced on the adjoining lands to the west at that time. As no other council records, or aerial photography of the entire lands, are available for the period between 1987 and 1996, the actual extent of the quarry development as at 1 February 1990 is not known.

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

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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)

On the basis that the new quarry development carried out in the period after 1988 on adjoining lands to the east and west of the authorised quarry site, constitutes an extension of the quarry development authorised under Reg. Ref. A.14, and having regard to the Guidelines 2012, the relevant date for the purposes of deciding whether EIA was required is 1 May 1999. As no aerial photography is available for 1999 and as no maps or other drawings are available illustrating the extent of the quarry at 1 May 1999, the extent of the further extension of the quarry surface area after that date has been estimated on the basis of aerial photography flown in 2000 and 2009.

The overall quarry workings as illustrated in the aerial photography flown in 2009 comprises of c. 19.12 hectares. The authorised quarry comprises of c. 5.95 hectares, as detailed above. Quarry development carried out on lands outside of the authorised quarry area in the period up to 2009 is estimated to comprise a total of c. 13.17 hectares, and is considered to be an unauthorised extension of the authorised quarry. It is estimated that c. 12.07 hectares of this extended area was developed in the period between 1987 and 2009, the remaining unauthorised portion comprising c. 1.1 hectares having been developed prior to 1987.

It is estimated on this basis that the extension to the authorised quarry development carried out in the period 2000 to 2009 comprises of c. 3.36 hectares. This represents an extension equivalent to c. 21.32% of the existing quarry area as illustrated in the aerial photography of 2000. This estimate does not take account of any extension of the overall quarry workings in the period between 1st May 1999 and the date in 2000 when the aerial photography was flown. On this basis it appears that the unauthorised extension to the quarry carried out after 1 May 1999 did not exceed the area of the existing quarry by more than 25%. The authorised and unauthorised portions of the quarry development are illustrated in the Composite Illustration (Appendix 17) which also highlights the unauthorised quarry extension developed in the period 2000 to 2009.

Conclusion

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Following an examination of the available information and having regard to the EIA Directives, it is considered reasonable to conclude that the unauthorised extension to the quarry at Windmill Hill operated by L. Behan and Sons Limited, carried out after 1st May 1999 does not appear to 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 the extension in itself exceeded 2.5 hectares. On this basis an environmental impact assessment would not have been required.

Section 261A(2)(a)(i): Whether, having regard to the EIA Directives, a sub-threshold extension to the existing authorised quarry at Windmill Hill operated by L. Behan and Sons Limited, 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.

Having regard to the lack of certainty as to the extent of the quarry as at 1st May 1999, and to the fact that it appears that the size of the quarry extension carried out after the relevant date is below the relevant threshold, it is considered prudent to examine the issue as to whether a sub-threshold quarry extension would have required a determination as to whether EIA was required.

The Quarry Guidelines (2012) 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

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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, 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:-

The characteristics of proposed development.

in particular:

- the size of the proposed development,
- the cumulation with other proposed development,
- the use of natural resources,
- the production of waste,
- pollution and nuisances

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:
 - mountain and forest areas,
 - areas classified or protected under legislation, including special protection areas designated pursuant to Directives 79/409/EEC and 92/43/EEC
 - landscapes of historical, cultural or archaeological significance.

Characteristics of potential impacts

The potential significant effects of proposed development in relation to criteria set out above and having regard in particular to:

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

The policies and objectives of the South Dublin County Development Plan 1998 are 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. In particular the policy to protect National Routes, and objectives to secure the preservation of the Stone Windmill ruin on the lands and to protect prospects in the area, are considered relevant in this regard.

The following policies and objectives of the South Dublin County Development Plan 1998 are particularly relevant to an assessment of the environmental effects of an extension to the quarry:

[See Appendix 18 Development Plan 1998 zoning map]

Land Use Zoning Objectives

The subject quarry lands are located within an area zoned with the objective “to protect and improve rural amenity and to provide for the development of agriculture” (Zoning Objective ‘B’). Extractive Industry is permitted in principle in areas subject to Zoning Objective ‘B’, and subject to compliance with the relevant policies, standards and requirements set out in the development plan are generally acceptable.

Extractive Industry

Policy T12: Extractive Industry

It is the policy of the Council to facilitate the operation of extractive industry in suitable locations subject to the protection of amenity and the maintenance of environmental quality.

Paragraph 2.4.15.i states:

The Council recognises the importance of the extractive industry and will facilitate its operation in suitable locations. However such industry can have severely damaging environmental effects and permission will only be granted where the Council is satisfied that environmental quality and amenity will be fully protected. In addition the proposal must make appropriate provision for the reinstatement of the landscape. Details of the proposed reinstatement should accompany planning applications for extractive developments.

Paragraph 3.5.9.i Extractive Industry states:

In dealing with applications for new development, intensification of use or diversification of activity, the Council will have regard to the nature of the proposal, the scale of the activity proposed, the impact on the adjoining road network and its effect on the environment.

Paragraph 3.5.9.ii states:

Applications for development within this category will be expected to be accompanied by an Environmental Impact Statement and a detailed landscaping plan. The plan should indicate proposed screening for the life of the site and set out a programme for the reinstatement of the landscape.

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National Routes

Policy T12: National Routes

It is the policy of the Council to protect all National Routes from frontage access and to keep the number of junctions to a minimum consistent with good traffic management.

Paragraph 2.6.12.i states:

The National routes are of vital importance to the economic and social development of the Country. It is therefore the Council's intention that this investment should be safeguarded by preventing the premature obsolescence of these roads as a result of inadequate control on frontage development. In the implementation of this policy the Council will have regard to the policy of the National Roads Authority.

Preservation and Conservation of Buildings, Structures and Sites

Policy H3 Preservation and Conservation of Buildings, Structures and Sites states:

It is the policy of the Council to preserve and protect buildings, structures and sites of architectural, historic, artistic or archaeological interest and which contribute to the character and heritage of the County.

The Stone Windmill (ruin) located on the quarry lands at Windmill Hill is included in the list of Buildings, Structures and Sites to be preserved and protected under Policy H3 (List 1 item Ref. No. 050).

Paragraph 2.7.3.i of the Development Plan Written Statement (page 35) states that

It is the intention of the Council to secure the preservation of the houses, buildings and other structures and sites specified in List 1.

Protection of Views and Prospects

Policy H27: Views and Prospects states;

It is the policy of the Council to protect views and prospects of special amenity value or special interests.

Paragraph 2.7.27.i states:

The County contains many scenic areas and vantage points from which views over areas of great natural beauty, over adjoining counties, over local landmarks and traditional lands and over the City of Dublin may be obtained. In addition to scenic views, the County also contains important "prospects" i.e. prominent landscapes or areas of special amenity value or special interest which are visible from the surrounding area.

In this regard it should be noted that Windmill Hill is not included in the list of protected prospects in the South Dublin County Development Plan 1998, however it is prominent in the foreground of views towards the Dublin Mountains. (It is noted that Windmill Hill is now included in the list of prospects to be protected under the County Development Plan 2010-2016)

It is considered that the unauthorised extension to the quarry carried out after 1 May 1999 would have been considered to have potentially significant environmental effects, having regard to:

- the size of the quarry, and its proximity to numerous residential properties in the vicinity of the quarry lands, and to lands zoned for residential development to the west of Rathcoole village;
- the direct connection of the quarry access/egress to the N7 National Primary Route, and to the nature and volume of the vehicular traffic generated by the quarry operation, and the potential

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impact of the traffic generated on the level of service and carrying capacity of the National Primary Road and the public investment in the road;

- the visual prominence of the elevated quarry lands at Windmill Hill in relation to a number of the prospects listed in the County Development Plan, in cumulation with the De Selby quarry located on Tallaght Hill to the east of the Behan quarry; and
- the policy of the planning authority to preserve and protect the ruined stone windmill on Windmill Hill which is a significant local landmark in the surrounding area.

It is considered reasonable to conclude that a determination under the EIA Directives would have been required as to whether the unauthorised extension carried out after 1 May 1999 to the existing authorised quarry at Windmill Hill operated by L. Behan and Sons Limited would or would not be likely to have significant effects on the environment, and that no such determination was made in that regard.

Conclusion

Following an examination of the available information it is considered reasonable to conclude that the unauthorised extension carried out after 1st May 1999 to the quarry operated by L. Behan and Sons Limited at Windmill Hill, constitutes development which would have required a determination as to whether an environmental impact assessment was required, and that there is no information available to indicate that any such determination was made in that regard. This conclusion is based on having regard to the EIA Directives and to the selection criteria set out in Schedule 7 to the Planning & Development Regulations 2001 (S.I. No. 600) as amended, and to the relevant provisions of the South Dublin County Development Plan 1998.

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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 at the quarry 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:

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

Section 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 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 permission for quarry development at the Behan quarry was granted in 1968 which pre-dated the commencement of the Habitats Directive on 26 February 1997. Therefore as advised in the Guidelines (2012) appropriate assessment is not required in respect of development authorised by the relevant planning permission, and no further examination is required in that regard under section 261A.

However, as concluded previously in relation to the examination of the quarry under section 261A(2)(a)(i), it is evident that the Behan quarry at Windmill Hill has been extended in the period after 1988. There is no evidence available to show 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 of the unauthorised quarry development carried out after the

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relevant date is therefore required under section 261A(2)(a)(ii), with regard to whether such development should have been subject to appropriate assessment and whether such assessment was carried out.

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)

Assessment of Projects under the Habitats Directive (see Appendix 19)

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 2000³.

Section 5.3. of the Appropriate Assessment Guidelines⁴ outlines the types of projects and developments that will require consideration for AA. These include (inter alia):

³ as inserted into by Section 57 of the Planning & Development (Amendment) Act 2010

⁴ Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities" (DEHLG 2009)

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

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

Section 2.1.2 of the Appropriate Assessment Guidelines advises that:

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

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

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

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

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

South Dublin County has two areas designated as SACs but has no designated SPAs. Both of the County's SACs are located in the Dublin Mountains, bordering with County Wicklow – Glenasmole Valley SAC and a portion of the larger Wicklow Mountains SAC. These are located 8 kilometres and 8.5 kilometres respectively from the quarry.

[See Appendix 19 Map illustrating sites of nature conservation interest]

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

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

Any potential impact on any or all of the 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

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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.⁵

It is noted that there are no watercourses on the quarry lands, and no ecological corridors that connect the quarry site to any stream or watercourse within the catchment of the Dublin Bay Natura 2000 sites.

As noted earlier, it is considered to be reasonable to conclude that the planning permission Reg. Ref. A. 14 only applied to the area of the two fields comprising c.5.95 hectares and the related access road from the Naas Dual Carriageway as illustrated on the Composite Illustration (Appendix 17). Therefore the subsequent quarry development on the adjoining lands to the east and west of the authorised quarry, as illustrated on the Composite Illustration, was not authorised by the planning permission Reg. Ref. A. 14. The new quarry development carried out on lands to the east and west of the authorised quarry is considered to be an unauthorised extension of the existing authorised quarry, and is estimated to comprise of approximately 11.7 hectares in 2009.

As no aerial photography or other documentary evidence is available in that regard the actual extent of the quarry working as at 26 February 1997 is not known. Aerial photography flown in 1996 illustrates that the extent of the quarry at that time was c. 10.41 hectares. A comparison of the extent of the quarry in 1996 and 2009 indicates that the subsequent further extension of the quarry after 1996 comprises of c. 8.79 hectares.

As noted earlier, it is considered that the extension of the 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 Guidelines⁶ 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), will require consideration for AA.

There is no information available to indicate that any such assessment or determination was carried out or made in respect of any unauthorised extension to the quarry carried out after 26 February 1997.

Conclusion

Following an examination of the available information, it is considered reasonable to conclude, having regard to the Habitats Directive, that the extension to the quarry operated by L. Behan

⁵ 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)

⁶ Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities" (DEHLG 2009)

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and Sons Limited at Windmill Hill carried out after 26 February 1997, would have required consideration for appropriate assessment, and there is no information available to indicate that any such screening for appropriate assessment was carried out 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

Whether development was carried out after 3 July 2008 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:

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

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

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

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

or

- would have significant effects on the environment.

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

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

It is estimated from a comparison of aerial photography flown in 2005 and 2009, that c.1.41 hectares was added to the quarry area in that period. This equates to an increase in that period of c. 8.0% in the extent of the existing quarry in 2005. The relevant areas are set out in Table 4 below.

Table 4: Estimated extent of addition to quarry area between 2005 and 2009

Year of photography	Quarry Area (hectares)	Increase 2005-2009 (hectares)	% increase
2005	17.45	n/a	n/a

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2009	19.12	1.67	9.57%
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As concluded previously in relation to the examination of the quarry under section 261A(2)(a)(i), on the basis of the available information it is considered that quarry development comprising of approximately 13.17 hectares in 2009, carried out on lands outside the area authorised by the planning permission, was not authorised either by the planning permission Reg. Ref. A14 granted prior to 1 May 1999 or by a “pre-1964 authorisation” .

A drawing illustrating an Existing Topographic Survey of the quarry dated 16 January 2012, submitted by the applicant for compliance approval under Condition 2 of Reg. Ref. SDQU05A/4, illustrates the present extent of the quarry. A comparison of the quarry area illustrated on the above drawing with the extent of the quarry illustrated on the 2009 aerial photography, as shown on the Composite Illustration indicates that no substantial extension of the quarry area has been carried out in the intervening period.

[See Appendix 20 Topographic Survey Drawing of the quarry dated 16 January 2012]

It appears therefore 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.

Conclusion:

On the basis of the above examination of the available information and having regard to the EIA Directives, it is considered reasonable to conclude that any extension to the existing quarry at Windmill Hill operated by L. Behan and Sons Limited, carried out after 3 July 2008 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.

Section 261A(5)(a): Whether a sub-threshold quarry extension to the existing authorised quarry at Windmill Hill operated by L. Behan and Sons Limited, 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 the size of the quarry extension carried out between 2005 and 2009 equates to c. 8% of the area of the quarry in 2005, and to the likelihood that much of this extension occurred prior to 3

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July 2008, reflecting the significant fall in demand for construction material in the latter part of that period, 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.

Conclusion:

Following an examination of the available information and having regard to the EIA Directives, it is considered reasonable to conclude that any extension to the existing quarry at Windmill Hill operated by L. Behan and Sons Limited, carried out in the period after 3 July 2008, would not have required a determination as to whether that extension would or would not be likely to have significant effects on the environment.

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

Whether 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.

As noted earlier, it is considered that any extension to the quarry carried out after 3 July 2008 would not 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 (above - and sub-threshold), will require consideration for AA.

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. As noted 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.

Having regard to the likely minor scale of any such extension, and to the fact that there are no ecological corridors that connect the quarry site to any stream or watercourse within the catchment of the Dublin Bay Natura 2000 sites, it is considered that no requirement arises under the Habitats

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

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Directive for appropriate assessment in relation to any extension to the quarry carried out after 3 July 2008.

Conclusion

Following an examination of the available information it is considered reasonable to conclude that any extension to the quarry at Windmill Hill operated by L. Behan and Sons Limited, carried out after 3 July 2008 was not development which would have required consideration for appropriate assessment, having regard to the Habitats Directive.

Recommended 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 carried out after 3 July 2008 to the existing quarry at Windmill Hill operated by L. Behan and Sons Limited, does not constitute development which would 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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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)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 [see Appendix 21]

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

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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(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 Windmill Hill, Rathcoole, operated by L. Behan & Sons Limited, was received on 25 April 2005 and was duly entered in the Planning Register under register reference SDQU05A/4. 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. The information stated that no permission existed for the subject quarry, and that the quarry commenced operation prior to 1 October 1964. A revised map and other details were subsequently submitted on 10 October 2005 in response to a request for additional information.

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

A letter dated 27 October 2005 subsequently submitted on behalf of the quarry operator stated that a planning permission for the operation of the above quarry had been issued under Register Reference A.14 on 20 May 1968, and enclosed a copy of the permission notification. On foot of this new information a new notice was published in the Irish Times on 22 January 2007 stating that as a planning permission exists for the quarry operation it was now proposed to restate, modify or add to the conditions of the existing planning permission in accordance with Section 261(6), and not to require the submission of a planning application as previously notified. No submissions were received in response to the new public notice. An order dated 23 April 2007 was subsequently made under Section 261(6) to modify conditions and add new conditions in respect of the operation of the quarry at Windmill Hill.

[Appendix 21 S. 261 Manager's Order and application]

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Recommended 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 L. Behan and Sons Limited at Windmill Hill, Rathcoole, 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 at Windmill Hill, Rathcoole, County Dublin, operated by L. Behan and Sons Limited, has established the following:

- L. Behan and Sons Limited commenced the existing quarry on these lands after 1957 and prior to receiving planning permission for such development in 1968;
- Aerial photography flown in 1971 illustrates an existing working area at that time of approximately c. 6.63 hectares, including a quarry extraction area and ancillary processing facilities;
- From an examination of aerial photography and relevant maps, drawings and documentation retrieved from Council records it is estimated that the quarry authorised in 1968 comprised of approximately 5.95 hectares;
- Subsequent aerial photography flown at intervals since 1971 illustrates the progressive extension of the quarry excavation which now comprises c. 19.12 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 appears to be unauthorised development;
- An examination of available information indicates that the quarry extraction area was extended by c. 3.36 hectares in the period since the year 2000. This equates to c. 22% of the existing quarry excavation area at that time;
- As it appears that the extension of the quarry in the period after 1st May 1999 might not have exceeded 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;
- An examination of the characteristics of the quarry in relation to the prescribed criteria and relevant development plan provisions concludes that the post 1st May 1999 quarry extension would constitute development which would have required screening for EIA;
- The 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 extension to the authorised quarry excavation area carried out after the relevant dates was subjected to either EIA or AA in accordance with the relevant EIA and Habitats Directives;
- The Behan quarry at Windmill Hill, 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 Windmill Hill, Rathcoole, County Dublin, operated by L. Behan and Sons Limited 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 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.

Recommended Determination

Following an examination of the available information it is considered reasonable to conclude that the unauthorised extension carried out after 1st May 1999 to the quarry operated by L. Behan and Sons Limited at Windmill Hill, Rathcoole, County Dublin, constitutes development which would have required a determination as to whether an environmental impact assessment was required, and that there is no information available to indicate that any such determination was made in that regard. This conclusion is based on having regard to the EIA Directives and to the selection criteria set out in Schedule 7 to the Planning & Development Regulations 2001 (S.I. No. 600) as amended, and to the relevant provisions of the South Dublin County Development Plan 1998.

Section 261A(2)(a)(ii) Determination in relation to whether development was carried out after 26 February 1997 at the quarry which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.

Recommended Determination

Following an examination of the available information, it is considered reasonable to conclude, having regard to the Habitats Directive, that the extension to the quarry operated by L. Behan and Sons Limited at Windmill Hill, Rathcoole, County Dublin, carried out after 26 February 1997, would have required consideration for appropriate assessment, and there is no information available to indicate that any such screening for appropriate assessment was carried out in that regard.

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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.

Recommended Decision

Following an examination of the available information it is considered reasonable to conclude that planning permission was granted for quarry development on lands at Windmill Hill, Rathcoole, on the 20th May 1968 under Register Reference A. 14, and that quarry development on the relevant lands is therefore authorised on the basis of the planning permission granted.

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

Recommended 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 L. Behan and Sons Limited at Windmill Hill, Rathcoole, Co. Dublin.

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

Recommended 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 carried out after 3 July 2008 to the existing quarry at Windmill Hill, Rathcoole, County Dublin, operated by L. Behan and Sons Limited, does not constitute development which would 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)

Following a detailed examination of all information available to the Planning Authority it is considered that the quarry at Windmill Hill, Rathcoole, Co. Dublin, currently operated by L. Behan and Sons Limited, meets the requirements under section 261A for the serving of a notice requiring the owner/operator to apply to An Board Pleanala 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 L. Behan and Sons Limited Windmill Hill, Rathcoole, Co. Dublin, the owner/operator of the quarry at Windmill Hill Register Reference SDQU05A/4, 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: :

- state that it is a notice issued under section 261A(3)(a),
- be dated,

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- 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/4

LOCATION: Windmill Hill, Rathcoole, 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 L. Behan and Sons Limited Windmill Hill, Rathcoole, Co. Dublin, the owner/operator of the quarry at Windmill Hill Register Reference SDQU05A/4, 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:

9/8/12


Neil O'Byrne
Senior Planner

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