

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/2

Correspondence Name and Address: Roadstone Wood Limited, Fortunestown, Tallaght,
Dublin 24

Location: Belgard Quarry, Fortunestown, Tallaght, Dublin 24

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

Section 261A Review of Quarries

Belgard Quarry

Quarry Location: Belgard and Cheeverstown, Clondalkin, Dublin.

Owner / Operator: Roadstone Wood Limited, Fortunestown, Tallaght,
Dublin 24.

Register Reference: SDQU05A/2

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

This page is intentionally left blank

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Contents

Introduction and Background

Introduction

General Overview

Relevant Planning History

Planning Enforcement History

Environmental Health Officer Comments

Section 261 Registration of Belgard Quarry

Section 261A Submissions

Section 261A Determinations / Decisions

Guidelines for Planning Authorities

Definition of 'quarry'

Information Sources

Decision regarding whether the quarry is authorised

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

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

Determination as to whether the development commenced after 3 July 2008

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

Summary, Conclusions and Recommendations

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

This page is intentionally left blank

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Appendices

- Appendix 1* Location Map
- Appendix 2* Context Aerial Photo and Oblique Photo 2005
- Appendix 3* Archaeological impact assessment report
- Appendix 4* Relevant maps Development Plan 2010-2016
- Appendix 5* S. 261 proposed development and restoration of the quarry
- Appendix 6* Planning history documents
- Appendix 7* Drawing Figure 1_F11 (Rev. A Feb. 2007),
and landownership details
- Appendix 8* Third party concerns relating to Belgard quarry
- Appendix 9* Public Notice relating to S. 261A
- Appendix 10* Correspondence relating to Reg. Refs. A.435
and B.1117
- Appendix 11* Aerial photography 1971 to 2009
- Appendix 12* Drawings and landscape details relating to
Reg. Ref. C.1488
- Appendix 13* Roadstone response to Muintir na Tire objections
- Appendix 14* Drawing Figure 2_F12 dated September 2005
- Appendix 15* Composite illustration of conclusions
- Appendix 16* Relevant extracts from Development Plan 1998
- Appendix 17* Map illustrating sites of nature conservation interest
- Appendix 18* S. 261 Manager's Order and Application documents

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

This page is intentionally left blank

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

INTRODUCTION AND BACKGROUND

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Introduction

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

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

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

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

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

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

The availability of the above data sources was explored for all quarries. All available data was compiled, examined and evaluated in accordance with the Guidelines issued. A separate report has been prepared for each of the relevant quarries in the county. This report relates to the quarry located on lands at Belgard and Cheeverstown, Clondalkin, operated by Roadstone Wood Limited.

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

General Overview [see Appendices 1-5]

The Belgard Quarry is located to the south of the N7 Naas Dual Carriageway and extends for approximately 1,500 metres westwards along the N7 to its junction with the outer Ring Road at Kingswood. The quarry lands are otherwise bounded to the West by the recently constructed Outer Ring Road, to the East by Belgard Road and to the South by Cookstown Road. The overall lands comprise of c. 305 hectares. Lands to the northwest of the quarry are largely occupied by public open space at Corkagh Regional Park. Lands to the north east and south are primarily developed for residential purposes. Lands to the west form part of the City West Business Park, and most of the undeveloped lands lying to the east of Belgard Road are zoned for green belt purposes. The lands adjoin the Newlands Golf Course to the northeast.

[Appendix 1 Location map]

The quarry lands occupy all or most of the Townlands of Bedlesshill, Belgard and Cheeverstown, and portions of the Townlands of Buckandhounds, Kingswood and Whitehall. The lands rise southwards, from c.100mOD adjacent to the N7 to a high point of 117mOD in the southwestern corner, and rising further to c.128mOD in the southeastern portion adjacent to the Cookstown Road.

The existing quarry extraction area comprises c. 50 hectares and is located on the northern portion of the quarry lands adjacent to the N7. The existing quarry floor is stated to be at 34mOD. Stone processing, storage and ancillary facilities are located to the south of the quarry void. Access/egress to and from the site is provided from the N7 (using a dedicated underpass), Cookstown Road, and a new entrance on the recently constructed Outer Ring Road. The quarry is largely screened from views from adjacent roads by screen planting, boundary walls and berms. It is most clearly visible from the recently constructed Outer Ring Road overpass at Kingswood from where substantial parts of the quarry working are open to view. The existing linear berms extending along much of the southern boundary of the quarry lands are a prominent feature in views towards the quarry from housing areas at Fettercairn to the south. A comprehensive view of the entire quarry lands is provided in the oblique aerial photography flown in August 2005

[Appendix 2 Context Aerial Photo and oblique photo 2005]

The Recorded Monuments / Protected Structure detailed below are located on the quarry lands and are included in the buildings, structures and sites to be protected in the Development Plan 2010-2016 (Schedules 1 and 2). These sites were also listed in the South Dublin County Development Plan 1998. Ref. No. DU021-024 *Tower House, Well Possible, Bawn Possible*, located at Cheeverstown; Ref. No. DU021-025 *Ringfort (Rath/Cashel) Possible*, located at Belgard;

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Map Ref. No. 206 *Castellated House, Stone Tower House, Out-Offices & Gazebo (RM)*, located at Belgard Castle. (Also designated a Protected Structure)

In this regard it is noted that the archaeological impact assessment submitted for compliance approval under Condition No. 34 of the S. 261 consent noted that the Tower House (DU021-02401), a recorded monument, was levelled sometime between 1978 and 1986 and the site occupied by quarry plant, and the sites of DU021-02402, DU021-02403 and DU021-025 are occupied by stored soil.

[Appendix 3 Archaeological impact assessment report]

The quarry lands are zoned “to protect and improve Rural Amenity and to provide for the development of Agriculture” (Zoning Objective ‘B’) in the South Dublin County Development Plan 2010-2016. These lands have functioned for many years as part of a green belt between Tallaght and Clondalkin in conjunction with the designated Green Belt lands to the east of Belgard Road. On the instigation of the quarry owners the quarry lands were re-zoned in 1993 as part of the county development plan review, from Zoning Objective ‘GB’ (To preserve a green belt between development areas) to Zoning Objective ‘B’. The County Development Plan 2010-2016 includes an objective to facilitate the Metro West LRT scheme which is proposed to travel along Belgard Road to the east of the quarry lands.

[Appendix 4 Relevant maps Development Plan 2010-2016]

Details submitted for compliance with conditions No. 28 and No. 29 imposed following the S. 261 registration indicate that the quarry extraction area is planned to ultimately extend over an area of 102 hectares and down to +5.0mOD or deeper, and to be eventually filled with water to provide a water/amenity/reservoir in the resulting void. No details have been given as to the feasibility of such a scheme and the engineering requirements that would likely arise. The submission notes that the quarry would have an expected life of 55 years based on an annual extraction rate of 1.15 million cubic metres, and that depending on market conditions planning permission might be sought to quarry a further 90 hectares of land within the site. On that basis it appears that the quarry could potentially continue to be worked for a further c. 100 years from the present.

[Appendix 5 S. 261 compliance submission re proposed development and restoration of the quarry]

It appears from an examination of the relevant documentation that the permission granted under C.1488 did not envisage the extensive surface area and depth, and the protracted life, of the existing and proposed future quarrying operations on the lands. Condition number 4 of the planning permission under Reg. Ref. C.1488 envisages “the eventual restoration of the land to an appearance and use consistent with the appearance and use of lands in the vicinity of the site in as short a period as

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

possible". Furthermore it is noted that decision order TP/333/63 relating to the 1963 general permission under Reg. Ref. P.C. 9459, noted that "the type of development proposed is suitable to a rural area...."

As noted above, the Belgard Quarry lands initially formed part of a 'green finger' extending westwards from the Ballymount area, the open character of which was envisaged in the Myles Wright Plan (1967) to be preserved for the purpose of providing a permanent green belt separating the Tallaght and Clondalkin development areas. Subsequent re-zoning of agricultural lands to the west for industrial development in the early 1990's has resulted in the quarry lands now being largely surrounded by the extensive Citywest industrial area to the west and residential housing estates to the north and south. The Landscape Character Assessment included in the current South Dublin County Development Plan notes that the area in which Belgard quarry is located (Landscape Character Area 8 – Tallaght) "while physically quite open does not retain any of its rural character due to high levels of development in the form of housing, roads and industry".

The quarry lands now lie within the urban area of Dublin city which presents significant challenges, both for the future operation of the quarry, and for the sustainable development of the area in the vicinity of the quarry and the wider Metropolitan area.

In relation to concrete product manufacturing activities being carried out at Belgard quarry it is noted that the S. 261 application listed the non-ancillary activities as concrete, blocks, paving, asphalt, mortar, dry mortar, pre-cast wall panel, and flag manufacturing. These activities appear to be located to the south and east of the quarry-related operations area.

It is noted that the development proposed under Reg. Ref. C. 1488 is described in Council Decision Order Number P/63/71 dated 12 January 1971 as "proposed quarrying development and ancillary buildings and processes (readymix plant and asphalt plant)". Having regard to the meaning of the term 'quarry', as defined in accordance with Section 2(1) of the Act of 2000 as amended by Section 16 of the Environment (Miscellaneous Provisions) Act 2011, the readymix and asphalt plants do not constitute ancillary quarrying operations for the purpose of this examination.

With the exception of the readymix and asphalt plants noted above, there is no record of planning permission having been granted for such product manufacturing facilities on the quarry lands. Furthermore, no planning permission has been identified relating to the existing product display and sales facility and offices located to the east of the ancillary operations area. In this regard it is noted that planning permission for a product sales and display park appears to have been refused in July 1978 (Reg. Ref. RA 745). An application in April 2001 for development of a plant for the manufacture of precast concrete products was not pursued following a request for additional information regarding the planning status of existing development on the lands and other details. (Reg. Ref. S01A/0195).

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Planning permissions were later granted for an asphalt plant (Reg. Ref. SD06A/0915) and a waste recovery facility, both located adjacent to the western boundary of the quarry lands (Reg. Ref. SD02A/0167).

Relevant Planning History [see Appendix 6]

Reg. Ref. P.C. 9459

A general permission was granted in 1963 to Roadstone Limited under the Town and Regional Planning Acts 1934 /1939 decision order ref. TP/333/63, for development of a limestone quarry and ancillary development of asphalt plant and storage bins for quarry produce at Belgard, subject to the submission of detailed plans for approval before any constructional work on buildings is commenced, and to the height of the proposed buildings not exceeding 50 feet.

Reg. Ref. A. 435

Outline planning permission was granted to Roadstone Limited for quarry development at Cheeverstown, Clondalkin, under Order No. P/789/68 dated 4 June 1968, subject to conditions, including that no constructional work to be put in hand until detailed drawings have been approved by the planning authority, and the height of any proposed structures or buildings shall not, unless under exceptional circumstances, exceed 50 feet.

Reg. Ref. B. 1117

Planning permission was refused on 25 May 1970 for development of a Limestone quarry at Belgard / Cheeverstown, Clondalkin, for Roadstone Limited, on grounds that the proposed development is not in accordance with the conditions of the outline permission granted under Order Ref. P/789/68 limiting the height of any structures, and failure to submit details for approval, including a programme for reinstatement and landscaping, details of a satisfactory access at the Cheeverstown Road junction with the Naas Road dual-carriageway and at the Cookstown Road junction, and design details of the proposed structures.

Reg. Ref. B. 1775

Permission refused on 8 February 1970 under decision order ref. P/270/70 for proposed T-junction at Cheeverstown Lane, Naas Road. Reason for refusal stated that the proposed development, which includes a further median break on the existing dual carriageway and crossing movements by heavy commercial vehicles to and from Cheeverstown Lane, would create a serious traffic hazard. Applicant Roadstone Limited.

Reg. Ref. C. 1488

A planning permission Reg. Ref. C. 1488 was granted by the Minister for Local Government to Roadstone Limited on appeal, under Decision Order PL. 6/5/16175 dated 28th April 1972, for development consisting of the erection of buildings and the utilisation of land for quarrying and ancillary purposes on a site at Belgard and Naas Road, Clondalkin, subject to 10 conditions.

Reg. Ref. G. 614

Application for workshop and offices at Belgard Quarry dated 22 March 1974, subsequently withdrawn on 26 March 1974. Applicant Roadstone Limited.

Reg. Ref. G. 1085

Application for workshop and offices at Belgard Quarry dated 15 May 1974, subsequently withdrawn on 30 January 1985. Applicant Roadstone Limited.

Reg. Ref. G. 1350

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Permission granted on 25 September 1974 for direction signs at the Naas Road and Fortunestown Lane (Cookstown Road) entrances to Belgard Quarry. Applicant Roadstone Limited.

Reg. Ref. RA. 745

Permission refused on 7 July 1978 under decision order ref. P/2608/78 for development of a products display park for Cement Roadstone Limited at Cheeverstown House Lodge, Naas Road for the following reasons:

1. The proposed commercial development would materially contravene the zoning objective "to provide for the further development of agriculture" and would militate against the preservation of the rural environment.
2. Public piped services not available to serve the proposal.
3. The proposed development would be premature by reason of existing deficiency in the provision of sewerage facilities, and the proposal to provide a private treatment plant is not acceptable.
4. The proposed development would endanger public safety by reason of traffic hazard due to the generation of additional traffic turning movements on the heavily trafficked Naas Road Dual Carriageway National Primary Route N7.

Reg. Ref. S01A/0195

Application received from Roadstone (Dublin) Limited on 4 April 2001 for development of a plant for the manufacture of precast concrete products with associated offices (approximate gross floor area of 4,831 sq.m); batching plant incorporating cement silo and aggregate storage bins. No response was received to a request for additional information. The information requested included details of existing buildings in the vicinity of the application site and the relevant planning history; details of activities/processes carried out on the site prior to and subsequent to the proposed development being carried out; and whether an Environmental Impact Statement is required in respect of the proposed development and to submit one if considered necessary.

Reg. Ref. SD02A/0167

Planning permission granted on 3 July 2002 under decision order ref. P/2401/02 for use of a 3.9 hectares site for the recovery of pre-sorted construction and demolition waste, namely concrete, bricks, tiles and ceramics, asphalt and topsoil.

Reg. Ref. SD06A/0915

Planning permission granted on 25 September 2007 for an asphalt plant and ancillary facilities on a site area c. 3 acres at Belgard Quarry. Applicant SIAC Bituminous Products Ltd.

Reg. Ref. SD07A/1047

Planning permission granted on 1 April 2008 for construction of a new site access onto the outer ring road, and related new internal roadway, office building, canteen and toilet facilities, security hut, wheelwash weighbridges, oil interceptor, septic tank and associated percolation area, car parking spaces, and signage.

Reg. Ref. SD08A/0731

Permission granted on 10 February 2009 for installation of an ESB 38kV overhead line switching compound on part of the Belgard Quarry lands at Cheeverstown.

Reg. Ref. SD12A /0137

Planning application received 10 July 2012 for proposed completion of landscaping to an existing partially completed screening berm at Belgard quarry in Bedlesshill townland. (no decision available at time of writing)

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Planning Enforcement History:

File Ref. S0369 (complaint received 25 April 1996)

File Ref. S0685 (complaint received 30 January 1997)

Lands at : Roadstone Quarry, Belgard, Dublin 24.

Description of unauthorised development: Vibrations from Roadstone Quarry causing problems to the new house at Bushfield Avenue, possible damage may be caused to structure of dwellings.

History: Both files are very old and were opened regarding the same unauthorised development taking place. The matter was referred to the E.H.O and they recommended the file be closed.

Environmental Health Officer Comments

A total of 42 complaints (see Table 1) have been received since 2004, of which 24 relate to blasting, 17 relate to dust, and 1 relates to noise.

Table 1: Environmental Health Officer records of complaints by year

Year	Number of complaints received
2004	5
2005	5
2006	5
2007	8
2008	5
2009	6
2010	3
2011	4
2012 (to date)	1

An application to operate a new asphalt plant was received on 29/01/07. The license was granted on 17/04/07 for a period of a year. The license conditions require quarterly monitoring data to be submitted. This has been done and the monitoring data has shown compliance with the standards set. A further application for a license was received on 03/03/08. A further license was issued on 01/04/08. This license was issued in perpetuity.

Section 261 Registration of Belgard Quarry (see Appendices 7-8)

Information relating to the quarry operated by Roadstone Dublin Limited at Belgard and Cheeverstown was received on 22 April 2005 and was duly entered in the Planning Register under Register Reference SDQU05A/2. By order dated 18 April 2007 a statutory notice under Section 261(6) to modify conditions and add new conditions was served by the Council on Roadstone Dublin Limited.

Information relating to the section 261 registration of the quarry is summarised in Table 2.

Details of the extent of the overall site area and of the extent of the extracted portions as provided in documentation submitted in relation to the S. 261 registration of quarries are set out in Table 2. The extent of the extraction area authorised by new conditions under section 261(6) represents the maximum surface area of land which is permitted to be extracted under the section 261 consent.

Table 2: Outline details - Belgard quarry (Source: Section 261 Application)

Description	Details
Owner / Operator	Roadstone Dublin Limited

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Registered Reference Number	SDQU05A/2
Aggregates Extracted	Limestone
Annual Output (tonnes)	Not stated
Planning Status	Permission granted (Reg. Ref. C.1488)
Year of Permission	1972
Site area (rev. 2007)	305 hectares
Permitted extraction area 1968	20.25 hectares.
Existing extracted area 2005	48.2 hectares

Appendix 7 Site layout plan Figure 1_F11 (Rev. A) dated Feb. 2007, and landownership details
It is noted that, while no submissions were received by the Council in response to the public notice inviting submissions regarding the section 261 registration of the quarry, concerns regarding the operation of the quarry were subsequently outlined in a letter to the Council from Newlands Golf Club, and in a report entitled *Taking the First Steps to a Healthier Fettercairn* (pages 15-17) published by the Fettercairn Community Health Project Management Committee in 2007. A report to the meeting of South Dublin County Council on 13 November 2006 is also noted in this regard.

[Appendix 8 Third party concerns relating to Belgard quarry]

Section 261A Submissions

No submissions were received relating to the quarry operated by Roadstone Dublin Limited, at Fortunestown, Tallaght, Dublin 24, in response to the S. 261A C.1488 advertised in the Irish Times on 7th December 2011.

[Appendix 9 Public Notice relating to S. 261A]

Section 261A Determinations / Decisions

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

- I A decision regarding whether the quarry is authorised;
- II A determination as to whether development was carried out after 1 February 1990 which development would have required, having regard to the Environmental Impact Assessment Directive, an EIA or a determination as to whether an EIA was required, but that such an assessment or determination was not carried out or made;

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

- III A determination as to whether development was carried out after 26 February 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out;
- IV A determination as to whether the development commenced after 3 July 2008;
- V A decision regarding whether the registration requirements of section 261 were complied with.

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

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

Definition of 'Quarry'

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

Information Sources

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

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

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

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

I

DECISION REGARDING WHETHER THE QUARRY IS AUTHORISED:

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

This page is intentionally left blank

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

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

The Quarry Guidelines (2012) advise:

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

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

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

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

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

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

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

Planning history of quarry development at Belgard (see Appendices 6, 7 and 10)

Information provided in relation to the S. 261 registration of the Belgard quarry indicates that the quarry did not commence operation prior to 1st October 1964, and is therefore not authorised in that regard.

Available information relating to the early planning history of the Belgard quarry, retrieved from the Council's microfiche records, is limited to copies of the planning register record, decision reports and orders, and some related correspondence.

A general permission was granted in 1963 under the Town and Regional Planning Acts 1934 /1939 decision order ref. TP/333/63 (Reg. Ref. P.C. 9459) to Roadstone Limited for development of a limestone quarry and ancillary development of an asphalt plant and storage bins for quarry produce at

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Belgard, subject to the submission of detailed plans for approval before any constructional work on buildings is commenced. From correspondence retrieved from the Council's microfiche records it appears that Roadstone subsequently acquired further lands at Cheeverstown and applied for outline permission to quarry on lands to the southwest of the area permitted for quarrying under the outline permission previously granted (Reg. Ref. P.C. 9459). The two locations are indicated by the letters 'A' and 'B' respectively on a map submitted with the letter dated 4 April 1968.

By Order No. P/789/68 dated 4 June 1968 outline planning permission was granted by Dublin County Council for quarry development at Cheeverstown, Clondalkin under Reg. Ref. A.435, subject to conditions, including that no constructional work to be put in hand until detailed drawings have been approved by the planning authority, and the height of any proposed structures or buildings shall not, unless under exceptional circumstances, exceed 50 feet. It appears from a letter to Roadstone Limited dated 29 September 1969 in relation to the application under Reg. Ref. B.1117 that no planning approval has been granted on foot of the 1968 outline permission (Reg. Ref. A.435).

Planning permission was subsequently refused under Reg. Ref. B.1117, by order reference number P/946/70 dated 25 May 1970, for a proposed limestone quarry at Belgard / Cheeverstown. Furthermore the letter of 29 September 1969 notes that work had already commenced on the proposed development and stated "as no planning approval has been granted you are directed to cease work forthwith pending a decision on your application." It appears therefore that, notwithstanding that no valid planning permission existed for quarry development at this location prior to the permission subsequently granted under Reg. Ref. C. 1488, quarrying operations were being carried out on the lands since at least 1969.

[Appendix 10 Correspondence relating to Reg. Ref. A.435 and Reg. Ref. B.1117]

A planning permission under Reg. Ref. C. 1488 was subsequently granted by the Minister for Local Government to Roadstone Limited on appeal, under Decision Order PL. 6/5/16175 dated 28th April 1972, for development consisting of the erection of buildings and the utilisation of land for quarrying and ancillary purposes on a site at Belgard and Naas Road, Clondalkin, subject to the following conditions:

- Condition No. 1 required that a proposed access from Kingswood be omitted;
- Condition No. 2 required revisions to proposed road junction arrangements;
- Condition No. 3 limited quarrying initially to a continuous and total area of 50 acres, further quarrying operations to be subject to the prior agreement of the planning authority;
- Condition No. 4 required a detailed scheme for reinstatement and landscaping of the worked out portions of the quarry to be submitted within 12 months of the granting of permission, the scheme to provide for making the land useful for agricultural or recreational purposes and consistent in appearance with the surrounding land;
- Condition No. 5 required a detailed scheme showing the location and extent of screening belts of trees and shrubs to be submitted within 6 months of the granting of permission;

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

- Condition No. 6 required retention of existing screening vegetation unless otherwise agreed;
- Condition No. 7 required that noise attenuation measures be provided to limit noise levels along the perimeter of the site to not more than 45dbA between 08.00 a.m. and 10.00 p.m., and 35dbA between 10.00 p.m. and 08.00 a.m.;
- Condition No. 8 required 24 hours advance notice of each explosion be given to adjoining occupants, and limited use of explosives to the period between 08.00 a.m. and 10.00 p.m., subject to use of best practicable means to minimise degree of nuisance caused by explosions;
- Condition No. 9 required that quarrying and ancillary operations be contained within the working area of the site as shown on lodged plans and prohibited the placing of machinery and debris on other parts of the site;
- Condition No. 10 required security at the rate of £250 per acre to ensure satisfactory completion of reinstatement and landscaping works, subject to adjustment of the amount in line with the current rates for horticultural and general landscape work.

Conclusion

Following an examination of the available information it is considered reasonable to conclude that planning permission was granted by the Minister for Local Government to Roadstone Limited, under Decision Order PL. 6/5/16175 dated 28th April 1972, for development consisting of the erection of buildings and the utilisation of land for quarrying and ancillary purposes on lands at Belgard and Naas Road, Clondalkin, and that quarry development on the relevant lands is therefore authorised in accordance with the terms and conditions of the planning permission granted under Reg. Ref. C. 1488.

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

This page is intentionally left blank

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

II

DETERMINATION IN RELATION TO ENVIRONMENTAL IMPACT ASSESSMENT

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

This page is intentionally left blank

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

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

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

The Quarry Guidelines (2012) advise:

3.2.1 General

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

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

3.2.2 Development after 1 February 1990/26 February 1997

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

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

The extent of quarry development at Belgard and its planning status (see Appendices 11-15)

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

An examination of the seven series of aerial photography flown at intervals during the period from 1971 to 2009, indicates the progressive extension of the area of extraction at Belgard quarry in that period (see Table 3 below).

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

² S.I. No. 600 of 2001

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

[Appendix 11 Aerial photography 1971 to 2009]

Table 3: Estimated increase in area of extraction at Belgard quarry 1971-2009

Year of photography	Estimated area of extraction (hectares)	Increase in area of extraction (hectares)
1971	10.40	-
1978	35.51	25.11
1986	46.29	10.78
1995	56.26	9.97
2000	62.92	6.66
2005	77.56	14.64
2009	82.62	5.06

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)

It appears from the planning history outlined previously that unauthorised quarry development had commenced at Belgard quarry prior to the granting of the permission under Reg. Ref. C.1488 in 1972. Aerial photography flown in 1971 shows an extensive working area of approximately c. 20 hectares (c. 50 acres) on the lands, including a quarry extraction area and ancillary processing facilities.

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

No site map is available illustrating the boundaries of the area authorised for quarry development at Belgard under the planning permission Reg. Ref. C.1488. However, condition No. 3 of the permission states:

Quarrying shall be limited initially to a continuous and total area of not more than 50 acres in line with the intended pattern of development as shown on the lodged drawing number RS.2 dated 14 August 1970. No quarrying operations shall be undertaken on any part of the site outside the said area of 50 acres without the prior agreement of the planning authority or, in the event of a dispute, without the prior agreement of the Minister for Local Government. Reason: To control the extent and location of quarrying on the site in order to permit evaluation of the effects of the operations on the environment of the area.

Furthermore, condition No. 9 of the permission states:

Quarrying and other ancillary operations shall be contained within the working area of the site as shown on drawing No. 70/35/7 dated August 1970, and no machinery or debris shall be placed on other parts of the site or on any public road. Reason: In the interest of the general amenities of the area.

It is noted that no information is available confirming that any agreement was given by the planning authority or the Minister to the undertaking of quarry extraction outside the permitted area of 50 acres. Also it appears from an examination of council records that no planning permission was subsequently granted for an extension of quarrying outside the area permitted under Reg. Ref. C. 1488.

A copy of drawing RS 2 has been retrieved from Council microfiche records. This appears to be a sketch drawing of the lands at Belgard and Cheeverstown in the ownership of Roadstone outlining landscaping proposals for the entire Roadstone landholding. An area on the drawing is annotated as '75 acres - area to be reinstated' and appears to be the location of the proposed extraction area. An adjacent rectangular area located immediately to the south of the area to be reinstated appears to be the site of ancillary operations. Other annotations on the drawing indicate general landscaping measures to be undertaken. The drawing No. 70/35/7 referred to in Condition No. 9 is not available. In the absence of that drawing or other relevant maps it is not possible to determine the precise extent of the specific areas permitted under C.1488 for quarrying operations (crushing and screening etc.) and other non-ancillary operations (i.e. manufacturing operations).

Appendix 12 Drawings and landscape details relating to C.1488

In this regard it is noted that documentation retrieved from Council microfiche records relating to Reg. Ref. C.1488, includes a document dated 15 October 1970 which appears to be a response by Roadstone to objections raised by Muintir na Tire to the proposed quarry at Belgard. Paragraphs 9, 10 12 and 13 of the document provide clear evidence indicating that the proposed quarry development was intended to comprise a relatively small portion of the overall Roadstone landholding. Furthermore it appears from the document that the balance of the lands was to be used to provide landscaping measures

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

including substantial tree planting. This would ensure that the quarry would not be visible from any adjacent area, and that the lands would be developed in a manner consistent with the retention of the rural character of the lands as part of the amenity green belt between the planned Clondalkin and Tallaght development areas. In this regard it is noted that paragraph 10 of the document refers to landscaping proposals for the site and appears to clearly indicate the intended small scale of the quarry development proposed on the overall landholding, stating as follows:

“Far from destroying vegetation in the area, Roadstone plan an intensive tree planting programme on the site. We enclose copies of landscaping proposals prepared by our landscape architect. These emphasise once again the uniquely small size of the development relative to the size of the site, and the large areas of grassland and tree plantations.”

[Appendix 13 Roadstone response to Muintir na Tire objections dated 15 October 1970]

An examination of the 1971 aerial photography confirms the locations of the quarry extraction area and other operations as indicated on drawing No. RS.2, as they existed in 1971. It appears from information submitted as part of the S. 261 registration and from an examination of the available aerial photography that the ancillary quarrying operations (i.e. non-manufacturing operations) have occupied the same area of the site since the quarry commenced. This is located immediately to the south of the extraction area. Details of the locations of the ancillary quarry activities are illustrated on the Roadstone drawing reference 3371 Figure 2_F12 dated September 2005 submitted as part of the S. 261 registration application documents. The above details appear to confirm the general layout of the development permitted under C. 1488 in accordance with the details shown on drawing RS. 2. No details have been provided of the non-ancillary manufacturing and sales operations carried out on the Roadstone landholding at Belgard.

[Appendix 14 Drawing Figure 2_F12 dated September 2005]

On the basis of an examination of available aerial photography flown in the period 1971 to 2009 it appears that the quarry extraction area was extended to its present northern limit in the period prior to 1986, and it was subsequently extended westwards after 1986, with the major portion of the westwards extension occurring after 1995. It appears therefore that a substantial portion of the overall quarry extraction was carried out after the relevant date in 1990, and that this extended extraction area substantially exceeds the area comprising 50 acres permitted to be extracted under Reg. Ref. C. 1488.

It is considered reasonable to conclude on the basis of the information available that since the mid-1970's quarrying operations at Belgard have been substantially extended beyond the 50 acres (20.25 hectares) permitted by the planning permission granted under Reg. Ref. number C.1488, and that a substantial portion of the extension was carried out after 1 February 1990. This extension is considered to be an unauthorised extension of the authorised quarry.

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

The Quarry Guidelines (2012) advise:

3.2.4 Environmental impact assessment

Where a planning authority has determined that there has been post-1990 development which was not authorised by a planning permission or a pre-1964 authorisation (or which is not authorised by a permission granted under section 261(7)), the planning authority must then decide whether this post-1990 unauthorised development would have required EIA. In deciding whether EIA was required it will be necessary to refer to the relevant thresholds in place at the time the development was carried out and to decide whether, had an application for planning been made at the time, it would have required the submission of an EIS, having regard to the law in place at that time.

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

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

*This was transposed into Irish law in the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999, (S.I. No. 93 of 1999), which became operative on **1st May 1999**, as “Any change or extension of development which would—*

- (i) result in the development being of a class listed in Part I or paragraphs 1 to 12 of Part II of this Schedule, and*
- (ii) result in an increase in size greater than—*
25%, or an amount equal to 50% of the appropriate threshold, whichever is the greater”.

This means that after that date mandatory EIA was required for the extension of a quarry which brought the total quarry to in excess of 5 hectares and represented an increase of over 25% of the existing quarry, provided that the extension in itself exceeded 2.5 hectares.

It should be noted that the term extension does not include the normal further development of a quarry within its authorisation (whether a planning permission or a “pre-1964 authorisation”).

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

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

In order to assess the extent of change in the area of extraction in the period after 1 May 1999 a composite illustration has been prepared based on aerial photography flown in 2000 and 2009. This shows the extent of the area of extraction as illustrated in the aerial photography flown in 2000, and the further extension of the area of extraction in the period between 2000 and 2009 as it appears in the

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

aerial photography of the latter year. The composite illustration also illustrates an area comprising 50 acres equating to the area of extraction permitted under C.1488, and the area annotated as '75 acres - area to be reinstated' on drawing RS. 2, which appears likely to be the proposed area of extraction.

Based on measurements taken from the composite illustration it is estimated that the area illustrated as the existing area of extraction in 2000 comprises c. 62.92 hectares, and that the extension to the area of extraction in the period between 2000 and 2009 comprises c. 19.7 hectares.

This represents an extension equivalent to 31.3 % of the existing quarry extraction area as illustrated in the aerial photography of 2000. This estimate does not take account of any extension of the area of extraction in the period between 1st May 1999 and the date in mid-2000 when the aerial photography was flown.

As the existing quarry extraction area exceeds 5 hectares, and the estimated area of the unauthorised extension of the area of extraction carried out after 1 May 1999 exceeds 2.5 hectares and is greater than 25% of the existing quarry area, it is considered that mandatory EIA would be required in respect of the unauthorised extension. There is no record available to show that the extension to the authorised area of extraction carried out after the relevant date was subjected to EIA.

[Appendix 15 Composite illustration of conclusions]

Conclusion

Following an examination of the available information it is considered reasonable to conclude, having regard to the EIA Directives, that the unauthorised extension of the area of extraction at the Belgard and Cheeverstown quarry operated by Roadstone Dublin Limited, carried out after 1 May 1999, brought the total area of extraction to in excess of 5 hectares and in itself exceeded 2.5 hectares and represented an increase of over 25% of the existing area of extraction, and that mandatory EIA was therefore required in that regard, and there is no record available to show that any such assessment was carried out.

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Section 261A(2)(a)(i): Whether, having regard to the EIA Directives, a sub-threshold extension to the existing authorised quarry at Belgard operated by Roadstone Dublin 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, 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)³ advise:

3.2.5 Sub-threshold EIA

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

3.2.6 Determination in relation to EIA

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

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

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

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), as amended.

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
- the risk of accidents, having regard to the substances or technologies used.

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:

- 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 extension of the area of extraction carried out after 1 May 1999 would or would not be likely to have significant effects on the environment.

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Policies and objectives of the South Dublin County Development Plans 1998 of particular relevance to an assessment of the environmental effects of an extension to the quarry during the period 1999 to 2009 are included in Appendix 16.

[Appendix 16 Relevant extracts from Development Plan 1998]

It is considered likely that an extension of the quarry at Belgard and Cheeverstown would have been considered to have potentially significant environmental effects, having regard in particular to:

- the size of the quarry, including its extensive surface area and depth;
- the location of the quarry within an urban area characterised by extensive residential and amenity areas proximate to the quarry lands, and the potential of existing undeveloped lands in the area being developed for residential purposes;
- the nature and scale of the quarrying operations involving rock blasting and crushing, and extensive visually prominent berms, and the high potential for the creation of nuisance due to noise, vibration, flyrock and dust, having regard to its urban location and the close proximity of residential and amenity areas to the quarry;
- the protracted life of the quarry having regard to the potential surface area and depth of future quarrying operations;
- the problematic nature and scale of the resulting quarry void for the purpose of achieving the satisfactory reinstatement and landscaping of the worked out portions of the quarry, and the effective integration of the lands within an urban area after the quarry development is completed;
- 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 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 policy of the planning authority to preserve and protect the recorded archaeological features on the lands.

Conclusion

Following an examination of the available information it is considered reasonable to conclude that the unauthorised extension to the quarry at Belgard and Cheeverstown operated by Roadstone Dublin Limited, carried out after 1 May 1999, constitutes development which would have required a determination as to whether an environmental impact assessment was required, and 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

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

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.

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

This page is intentionally left blank

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

III

DETERMINATION IN RELATION TO HABITATS ASSESSMENT

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

:

This page is intentionally left blank

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

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

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

The Quarry Guidelines (2012) advise:

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

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

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

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

Furthermore:

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

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

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

As noted previously a planning permission for quarry development at the Belgard quarry was granted in 1972 and 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) in relation to the EIA Directives, it is evident that the quarry at Belgard and Cheeverstown has been substantially extended in the period since 26 February 1997. There is no information 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. Furthermore, the previous examination of the quarry development in relation to the EIA Directives concluded that the extension of the area of extraction carried out after 1 May 1999 would

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

have required to be subjected to EIA or screening for EIA but that no such assessment or screening was carried out. Having regard to Section 5.3. of the Appropriate Assessment Guidelines 2009 (see extract below) an examination of the unauthorised quarry development carried out after the relevant date is therefore required under section 261A(2)(a)(ii), with regard to whether such development should have been subject to appropriate assessment and whether such assessment was carried out.

The Quarry Guidelines (2012) advise:

3.2.7 Appropriate assessment

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

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

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

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

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

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

Statutory requirements relating to Appropriate Assessment are set out in Part XAB of the Planning and Development Act 2000⁴.

Section 5.3. of the Appropriate Assessment Guidelines⁵ outlines the types of projects and developments that will require consideration for AA. In summary these include (inter alia):

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

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

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

- 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.

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

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

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

There are proposed Natural Heritage Areas located within c. 4 kilometres to southwest (Slade of Saggart) and c. 4.3 kilometres to the southeast (Glenasmole Valley) of the quarry lands, and 2.3 kilometres to the south (Lugmore Glen) and 3 kilometres to the southeast (Dodder Valley). Lands at Mountseskin and Gortlum located within c. 6.5 kilometres to the southwest 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.

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 4.3 kilometres and 6.3 kilometres respectively from the quarry.

[Appendix 17 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 on Natura 2000 sites in the proximity of the County by virtue of any plan or project implemented within the County. This is also taken to include potential downstream effects. There are two SPAs in County Wicklow which are close to the borders of South Dublin County: the Wicklow Mountains SPA (Site Code 4040) and Poulaphouca Reservoir SPA (Site Code 4063).

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

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Dublin Bay SAC (Site Code 00210), North Bull Island SPA (Site Code 4006), South Dublin Bay and River Tolka Estuary SPA (Site Code 4024).

Any potential impact on any or all of the 4 Dublin Bay Natura 2000 sites relevant to an AA screening process are deemed to arise from water input into the Bay. Poor water quality originating within South Dublin County and entering Dublin Bay is deemed to be the County's principal potential threat to the conservation objectives of the Dublin Bay Natura 2000 sites.⁶ In this regard it is noted that there are watercourses in the southwestern corner of the quarry lands which lie within the river Camac catchment and connect the quarry site to the catchment of the Dublin Bay Natura 2000 sites.

As stated previously it is considered to be reasonable to conclude on the basis of the information available that the area of extraction at Belgard has been substantially extended beyond the 20.25 hectares (50 acres) permitted by the planning permission granted in 1972 under Reg. Ref. C.1488, and that this extension is therefore unauthorised.

As noted earlier, it is considered that the extension of the area of extraction carried out after 1st May 1999 would come within the scope of the EIA directive requirements. As advised in section 5.3. of the Appropriate Assessment Guidelines⁷ all development that requires a planning permission process (either through the planning authorities or An Bord Pleanála), including those that require an EIS to be carried out (above and sub-threshold), will require consideration for AA. Furthermore water discharges to watercourses in the southwestern corner of the quarry lands, including treated effluent, constitute a potential threat to the conservation objectives of the Dublin Bay Natura 2000 sites.

It is considered therefore that the unauthorised extension of the Belgard quarry carried out after 26 February 1997 would have required appropriate assessment or a determination as to whether an appropriate assessment was required. 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 of the quarry at Belgard and Cheeverstown operated by Roadstone Dublin Limited carried out after 26 February 1997 would

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

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

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

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

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

This page is intentionally left blank

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

IV

**DETERMINATION REGARDING WHETHER DEVELOPMENT COMMENCED AFTER
3rd JULY 2008**

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

This page is intentionally left blank

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

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

The Quarry Guidelines (2012) advise:

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

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

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

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

or

- would have significant effects on the environment.

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

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

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.

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

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

approximately 19.7 hectares in 2009, carried out on lands outside the area authorised by the planning permission under Reg. Ref. C.1488, was not authorised either by any planning permission granted prior to 1 May 1999 or by a "pre-1964 authorisation" .

In the absence of precise information regarding the extent of the quarry extraction area as at 3 July 2008, and having regard to the availability of substantial rock reserves within the existing area of extraction at that date, it is considered reasonable to conclude that it is likely that no material extension of the quarry extraction area has been carried out after that date. It is considered therefore that any extension of the extraction area after that date 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, and would not have required to be subjected to EIA.

Section 261A(5)(a): Whether a sub-threshold quarry extension to the existing authorised quarry at Belgard and Cheeverstown operated by Roadstone Dublin 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 likelihood that no material extension of the quarry extraction area has been carried out after 3 July 2008, 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 extraction area carried out after 3 July 2008.

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

Conclusion:

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Following an examination of the available information, and having regard to the EIA Directives and the Habitats Directive, it is considered that any extension of the existing quarry at Belgard and Cheeverstown operated by Roadstone Dublin Limited, carried out after 3 July 2008, would not have required an environmental impact assessment, a determination in relation to EIA, or an appropriate assessment.

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

This page is intentionally left blank

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

V

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

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

This page is intentionally left blank

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

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 Appendices 18)

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

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]

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

- (ii) the operation of the quarry commenced before 1 October 1964, and
- (iii) such other matters in relation to the operations of the quarry as may be prescribed.

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

(11) This section shall apply to—

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

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

A notice published in the Irish Times on 19 October 2005 in accordance with Section 261(4) invited submissions from members of the public on the quarry and stated that the Planning Authority was proposing to re-state, modify or add to the conditions of the existing planning permission Reg. Ref. C.1488 in accordance with Section 261(6). No submissions relating to the subject quarry were received during the specified period.

An Order dated 18 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 Belgard.

[Appendix 18 S. 261 Manager's Order and application documents]

Conclusion

Following an examination of the available information, it is considered reasonable to conclude that the requirements in relation to registration under Section 261 of the Planning and Development Act 2000, have been fulfilled in respect of the quarry operated by Roadstone Dublin Limited at Belgard and Cheeverstown, Clondalkin, Dublin.

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

This page is intentionally left blank

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Summary

An examination of all available information relating to the development of the quarry at Belgard and Cheeverstown, Clondalkin, currently operated by Roadstone Wood Limited, has established the following:

- Roadstone Limited commenced quarrying activity on these lands in the late 1960's prior to receiving a valid planning permission for such development;
- Aerial photography flown in 1971 illustrates an extensive working area of approximately c. 20 hectares (50 acres) on the lands, including a quarry extraction area and ancillary processing facilities;
- Full planning permission for development of a quarry was first granted in April 1972, and was subject to a requirement that further consent be obtained to quarry in excess of the permitted 50 acres;
- Subsequent aerial photography flown at intervals since then illustrates the progressive extension of the quarry excavation which now comprises c. 50 hectares (c. 125 acres);
- There is no record to show that any consent or approval was given to quarry in excess of the permitted c. 20 hectares (50 acres), and the quarry excavation carried out in excess of the permitted area is considered to be unauthorised development;
- An examination of available information indicates that the quarry extraction area was extended by c. 19.7 hectares in the period since the year 2000. This equates to an increase of c. 31.3% of the existing quarry excavation area in 2000;
- As the extension of the quarry exceeds the threshold of 25% as provided under the EIA Directive which became effective on 1st May 1999 and in itself exceeded 2.5 hectares, it is subject to the requirement that EIA or screening for EIA be carried out or made in that regard before the development is commenced;
- 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 Roadstone quarry at Belgard and Cheeverstown, Clondalkin, was registered in accordance with the provisions of section 261 of the Planning and Development Act 2000.

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Recommended decisions / determinations

Following an examination of all available information relevant for the purpose of this review of the quarry at Belgard and Cheeverstown operated by Roadstone Dublin Limited (now Roadstone Wood 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 Guidelines and the Supplementary Guidelines for Planning Authorities issued to planning authorities in January 2012 and July 2012.

Section 261A(2)(a)(i): Determination in relation to Environmental Impact Assessment
Whether development was carried out after 1 February 1990 which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment or a determination as to whether an environmental impact assessment was required, but that such an assessment or determination was not carried out or made.

Recommended Determination

Following an examination of the available information it is considered reasonable to conclude that the unauthorised extension of the area of extraction at the Belgard and Cheeverstown quarry operated by Roadstone Dublin Limited, carried out after 1 May 1999, constitutes development which would have required an environmental impact assessment or a determination as to whether an environmental impact assessment was required, and there is no information available to indicate that any such assessment or determination was carried out or 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 Appropriate Assessment
Whether development was carried out after 26 February 1997 which development would have required an appropriate assessment, having regard to the Habitats Directive, but that such an assessment was not carried out.

Recommended Determination

Following an examination of the available information, it is considered reasonable to conclude, having regard to the Habitats Directive, that the unauthorised extension to the quarry at Belgard and Cheeverstown operated by Roadstone Dublin Limited carried out after 26 February 1997 would have

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

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

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.

Recommended Decision

Following an examination of the available information it is considered reasonable to conclude that planning permission was granted by the Minister for Local Government to Roadstone Limited, under Decision Order PL. 6/5/16175 dated 28th April 1972, for development consisting of the erection of buildings and the utilisation of land for quarrying and ancillary purposes on lands at Belgard and Naas Road, Clondalkin, and that quarry development on the relevant lands is therefore authorised in accordance with the terms and conditions of the planning permission granted under Reg. Ref. C. 1488.

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).

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 Roadstone Dublin Limited at Belgard and Cheeverstown, Clondalkin, Dublin.

Section 261A(5)(a): Determination regarding whether development was carried out after 3 July 2008

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

Recommended Determination

Following an examination of the available information, it is considered reasonable to conclude that any extension to the existing authorised quarry at Belgard and Cheeverstown operated by Roadstone Dublin Limited, carried out in the period after 3 July 2008, would not have required an environmental impact

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

assessment or a determination in relation to environmental impact assessment, or an appropriate assessment, having regard to the EIA Directives and the Habitats Directive.

This page is intentionally left blank

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

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 Belgard and Cheeverstown, Clondalkin, Dublin, currently operated by Roadstone Wood 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 Roadstone Wood Limited, Fortunestown, Tallaght, Dublin 24, the owner and operator of the quarry at Belgard and Cheeverstown, Clondalkin, Dublin, Register Reference SDQU05A/2, 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,

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

- 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).

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

REG. REF. SDQU05A/2

LOCATION: Belgard Quarry, Fortunestown, Tallaght, Dublin 24.



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 Roadstone Wood Limited, Fortunestown, Tallaght, Dublin 24, the owner and operator of the quarry at Belgard and Cheeverstown, Clondalkin, Dublin, Register Reference SDQU05A/2, 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:

4/8/12



Neil O'Byrne
Senior Planner