

# Shillelagh Quarry Ballinascorney, Co. Dublin

Section 261A Review of Quarries  
Planning & Development Act 2000  
(As Amended)

Report & Appendices



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

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

### **Shillelagh Quarry**

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

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

**Register Reference:** SDQU05A/1



County Hall,  
Tallaght,  
Dublin 24.

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**INTRODUCTION AND BACKGROUND**

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

### **Shillelagh Quarry**

#### **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

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operated by Shillelagh Quarries Limited on lands at Aghfarrell, Brittas, County Dublin.

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### Shillelagh Quarry

#### General Overview

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

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

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

The Shillelagh quarry lands are located within an area designated Zoning Objective 'H' under the South Dublin County Development Plan 2010-2016, with the objective to "To protect and enhance the outstanding natural character of the Dublin Mountain Area". Extractive industry is 'open for consideration' in the 'H' zone, but is not permitted above the 350mOD contour line. It appears from aerial photography flown in the period 1972 to 1995 that the quarry excavation exceeded the 350mOD contour c. 1990.

The quarry is visible over a wide area as a prominent scar on the landscape and a discordant feature in the context of the smooth rounded topography and mountain heath and woodland character of the surrounding landscape. Views towards the quarry lands from public roads in the vicinity are

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indicated on the relevant development plan map to be protected in accordance with Policy LHA2 as detailed in the South Dublin County Development Plan 2010-2016.

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

There are two Special Areas of Conservation (Wicklow Mountain SAC and Glenasmole Valley SAC), located c. 1.5 kilometres to the east and southeast of the quarry respectively, and there are proposed Natural Heritage Areas located within 3 to 4 kilometres to the west (Slade of Saggart) and north (Lugmore Glen). Lands at Gortlum c. 2 kilometres to the east are feeding grounds for Greylag geese, which is a protected bird species under the designated Special Protection Area for Birds at Poulaphouca reservoir in County Wicklow.

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

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

*[Appendix 4 Oblique aerial photography 2005]*

### **Relevant Planning History**

#### **Reg. Ref. SD07A/0276**

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

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

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

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

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- (c) the nature, scale and extent of activities carried out on site,
- (d) the provisions of Section 261 of the Planning and Development Act, 2000, as amended, and
- (e) the judgment of the European Court of Justice in Case C-215/06, Commission v. Ireland, delivered on the 3<sup>rd</sup> day of July, 2008, in which it was held that the retention permission system, as it applies in Irish law to projects that are required to be subject to Environmental Impact Assessment under the EIA Directives, does not comply with the Directives, it is considered that, as the proposed development for which permission is sought is of a class that requires Environmental Impact Assessment in accordance with the requirements of EU Directive 85/337/EEC (as amended) and that it includes a significant element of retention permission, the Board is, therefore, precluded from considering a grant of planning permission in this case.

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

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

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

The decision of the planning authority was not appealed.

*[Appendix 5 Planning history documents]*

#### **Enforcement History:**

##### Ref. S1560:

File opened in 1994

Description of unauthorised development: construction of a roadway

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

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

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

##### Ref. S4778

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

Warning letter issued on 11 October 2006

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

##### Ref. S6004

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

File opened March 2009

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

*[Appendix 6 Planning enforcement history documents]*

### Section 5 Referrals

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

An Bord Pleanala determination;

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

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

### Environmental Health Officer Report

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

There is no asphalt plant on this site.

### Section 261 Registration of Shillelagh Quarry

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

Table 1 S. 261 outline details Shillelagh Quarry

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

### Section 261A Submissions

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

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

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

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

[see Appendix 8: S261A Public Notice and Submissions received]

### Section 261A Determinations / Decisions

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

- I A decision regarding whether the quarry is authorised;
- II A determination as to whether development was carried out after 1 February 1990 which development would have required, having regard to the Environmental Impact Assessment Directive, an EIA or a determination as to whether an EIA was required, but that such an assessment or determination was not carried out or made;
- III A determination as to whether development was carried out after 26 February 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out;
- IV A determination as to whether the development commenced after 3 July 2008;
- V A decision regarding whether the registration requirements of section 261 were complied with.

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

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

#### **Definition of ‘Quarry’**

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

#### **Information Sources**

This assessment for the purposes of Section 261A of the Planning and Development Acts 2000-2011 is based on information available at the time of writing. The principal sources drawn upon include the available council records, particularly those relating to planning applications, and documents submitted in relation to the Section 261 registration of quarries from 2005 to the present date. Other sources / documents are used as appropriate where they provide relevant information. In the absence of suitable historic mapping information in council records, historic aerial photography in the possession of the Council has been used as a basis for assessing the likely extent of development at a particular time.

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

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**I**

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

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

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

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

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

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

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

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

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

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

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

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

[Appendix 9 *Patterson v Murphy, High Court 1977 No. 6215P (Costello J.) 4 May 1978*]

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

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

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

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

**Conclusion**

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

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**II**

**DETERMINATION IN RELATION TO ENVIRONMENTAL IMPACT ASSESSMENT**

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

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

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

**3.2.1 General**

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

**3.2.2 Development after 1 February 1990/26 February 1997**

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

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

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

*[Appendix 10 Drawing RFI 01 dated September 2005]*

The OS Map Ref. No 24-15, scale 1:2,500, revised 1969, used as a base map for the planning register, illustrates that a 'gravel pit' existed on the field at the northern end of the Shillelagh quarry lands at Aghfarrell in 1969. There is no indication on the OS map of any quarry on any other part of the relevant lands. Furthermore it is noted that features illustrated elsewhere on the 1969 edition map are not evident on the edition of 1935-38. It appears to be reasonable to conclude on this basis that no quarry excavation existed on the relevant lands in 1969, and that the existing quarry is not a pre-1964 quarry. However it is noted that the application for registration under S. 261 indicates that

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the quarry operation on the land commenced c. 1930's, and this information formed the basis on which a notice was subsequently served under subsection 261(7)(a) requiring the submission of a planning application and EIS for the continuance of quarrying.

*[Appendix 11 OS Map Ref. No. 24-15, scale 1:2,500, revised 1969]*

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

*[Appendix 12 Aerial photography 1972 – 2009]*

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

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

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

**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. ....

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

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

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

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

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

##### ***3.2.4 Environmental impact assessment***

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

## Section 261A Review of Quarries

### Shillelagh Quarry

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

*“Any change or extension of development which would—*

*(i) result in the development being of a class listed in Part I or paragraphs 1 to 12 of Part II of this Schedule, and*

*(ii) result in an increase in size greater than—*

*25%, or an amount equal to 50% of the appropriate threshold, whichever is the greater”.*

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

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

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

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

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

### Conclusion

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

**Section 261A Review of Quarries  
Shillelagh Quarry**

**III**

**DETERMINATION IN RELATION TO HABITATS ASSESSMENT**

:

**Section 261A Review of Quarries**  
**Shillelagh Quarry**

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## Section 261A Review of Quarries

### Shillelagh Quarry

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

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

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

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

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

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

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

##### **Furthermore:**

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

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

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

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

## Section 261A Review of Quarries

### Shillelagh Quarry

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

##### **3.2.7 Appropriate assessment**

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

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

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

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

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

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

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

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

- All development that requires a planning permission process (either through the planning authorities or An Bord Pleanála), including those that require an EIS to be carried out (above- and sub-threshold).
- Exempted development either within a Natura 2000 site or which could potentially have a significant effect on Natura 2000 sites, including excavation of trial holes and other site/ground investigations;
- All other local authority authorised ‘projects’ – waste permits, discharge licenses, recreation and amenity projects and road works.

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

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

**Section 261A Review of Quarries**  
**Shillelagh Quarry**

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

Section 2.1.2 of the Appropriate Assessment Guidelines advises that:

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

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

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

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

There is no record of the Planning Authority having been consulted regarding such matters in relation to 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.

## Section 261A Review of Quarries

### Shillelagh Quarry

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

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

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

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

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

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

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

**Section 261A Review of Quarries**  
**Shillelagh Quarry**

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

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

**Conclusion**

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

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

**Section 261A Review of Quarries  
Shillelagh Quarry**

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**Section 261A Review of Quarries  
Shillelagh Quarry**

**IV**

**DETERMINATION REGARDING WHETHER DEVELOPMENT COMMENCED AFTER  
3<sup>rd</sup> JULY 2008**

**Section 261A Review of Quarries**  
**Shillelagh Quarry**

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**Section 261A Review of Quarries  
Shillelagh Quarry**

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

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

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

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

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

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

or

- would have significant effects on the environment.

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

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

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

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

<b>Year of photography</b>	<b>Increase 2005-2009 (hectares)</b>	<b>Quarry Area (hectares)</b>	<b>% increase</b>
2005	n/a	17.09	n/a
2009	2.05	19.14	12

## Section 261A Review of Quarries

### Shillelagh Quarry

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

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

#### **Conclusion:**

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

**Section 261A Review of Quarries  
Shillelagh Quarry**

**V.**

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

**Section 261A Review of Quarries**  
**Shillelagh Quarry**

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## Section 261A Review of Quarries

### Shillelagh Quarry

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

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

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

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

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

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

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

### S. 261 Registration Requirements

The registration requirements to be fulfilled by the owner or operator of a quarry to which section 261 applies are set out in sub-sections 1, 2, 3 and 11 of section 261 as detailed below.

- (1) The owner or operator of a quarry to which this section applies shall, not later than one year from the coming into operation of this section, provide to the planning authority, in whose functional area the quarry is situated, information relating to the operation of the quarry at the commencement of this section, and on receipt of such information the planning authority shall, in accordance with section 7, enter it in the register.
- (2) Without prejudice to the generality of subsection (1), information provided under that subsection shall specify the following—
  - (a) the area of the quarry, including the extracted area delineated on a map,
  - (b) the material being extracted and processed (if at all),
  - (c) the date when quarrying operations commenced on the land (where known),
  - (d) the hours of the day during which the quarry is in operation,
  - (e) the traffic generated by the operation of the quarry including the type and frequency of vehicles entering and leaving the quarry,
  - (f) the levels of noise and dust generated by the operations in the quarry,
  - (g) any material changes in the particulars referred to in paragraphs (a) to (f) during the period commencing on the commencement of this section and the date on which the information is provided,
  - (h) whether—
    - (i) planning permission under Part IV of the Act of 1963 was granted in respect of the quarry and if so, the conditions, if any, to which the permission is subject, or
    - (ii) the operation of the quarry commenced before 1 October 1964, and
  - (i) such other matters in relation to the operations of the quarry as may be prescribed.

<sup>6</sup> The Supplementary Guidelines for Planning Authorities issued in July 2012 provide clarification that the phrase “having fulfilled the requirements in relation to registration” means the same as having “registered”, and does not refer to compliance with conditions that may have been imposed under section 261(6). [Guidelines July 2012 page 7]

## Section 261A Review of Quarries

### Shillelagh Quarry

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

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

A notice published in the Irish Times on 19 October 2005 in accordance with Section 261(4) invited submissions from members of the public on the quarry and stated that the Planning Authority was considering requiring Shillelagh Quarries Limited to submit a planning application and EIS in accordance with Section 261(7).

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

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

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

- (1) the policies and objectives included in the South Dublin County Development Plan 2004-2010, including land use zoning, extractive industry, views and prospects, landscape protection, natural and built heritage, pollution, traffic, and amenities; and
- (2) to the extent of quarrying carried out to date, the nature scale and extent of the existing quarrying operation, and the potential for further quarrying; and
- (3) to the selection criteria prescribed by the Minister under Section 176(2)(e).

**Section 261A Review of Quarries**  
**Shillelagh Quarry**

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

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

*[Appendix 13 S. 261 Manager's order and application documents]*

**Conclusion**

**Following an examination of the available information, it is considered reasonable to conclude that the requirements in relation to registration under Section 261 of the Planning and Development Act 2000, have been fulfilled in respect of the quarry at Aghfarrell, Brittas, County Dublin operated by Shillelagh Quarries Limited.**

**Section 261A Review of Quarries**  
**Shillelagh Quarry**

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**Section 261A Review of Quarries  
Shillelagh Quarry**

**SUMMARY CONCLUSIONS AND RECOMMENDATIONS**

**Section 261A Review of Quarries**  
**Shillelagh Quarry**

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**Section 261A Review of Quarries**  
**Shillelagh Quarry**

**Summary**

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

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

**Section 261A Review of Quarries**  
**Shillelagh Quarry**

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**Section 261A Review of Quarries**  
**Shillelagh Quarry**

**Conclusions:**

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

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

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

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

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

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

**Section 261A Review of Quarries**  
**Shillelagh Quarry**

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

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

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

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

**Section 261A Review of Quarries  
Shillelagh Quarry**

**Recommendation:**

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

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

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

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

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

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

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

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Senior Executive Planner**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Senior Planner**

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

**Section 261A Review of Quarries**  
**Shillelagh Quarry**

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# Shillelagh Quarry Aghfarrell, Brittas, Co. Dublin

Section 261A Review of Quarries  
Planning & Development Act 2000  
( As Amended )

Appendices to Report

SHILLELAGH QUARRY  
AGHFARRELL, BRITTAS,  
CO.DUBLIN

SOUTH DUBLIN COUNTY COUNCIL

SECTION 261A PLANNING AND DEVELOPMENT ACT 2000  
REVIEW OF QUARRIES

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**APPENDICES TO REVIEW OF SHILLEALAGH QUARRY**

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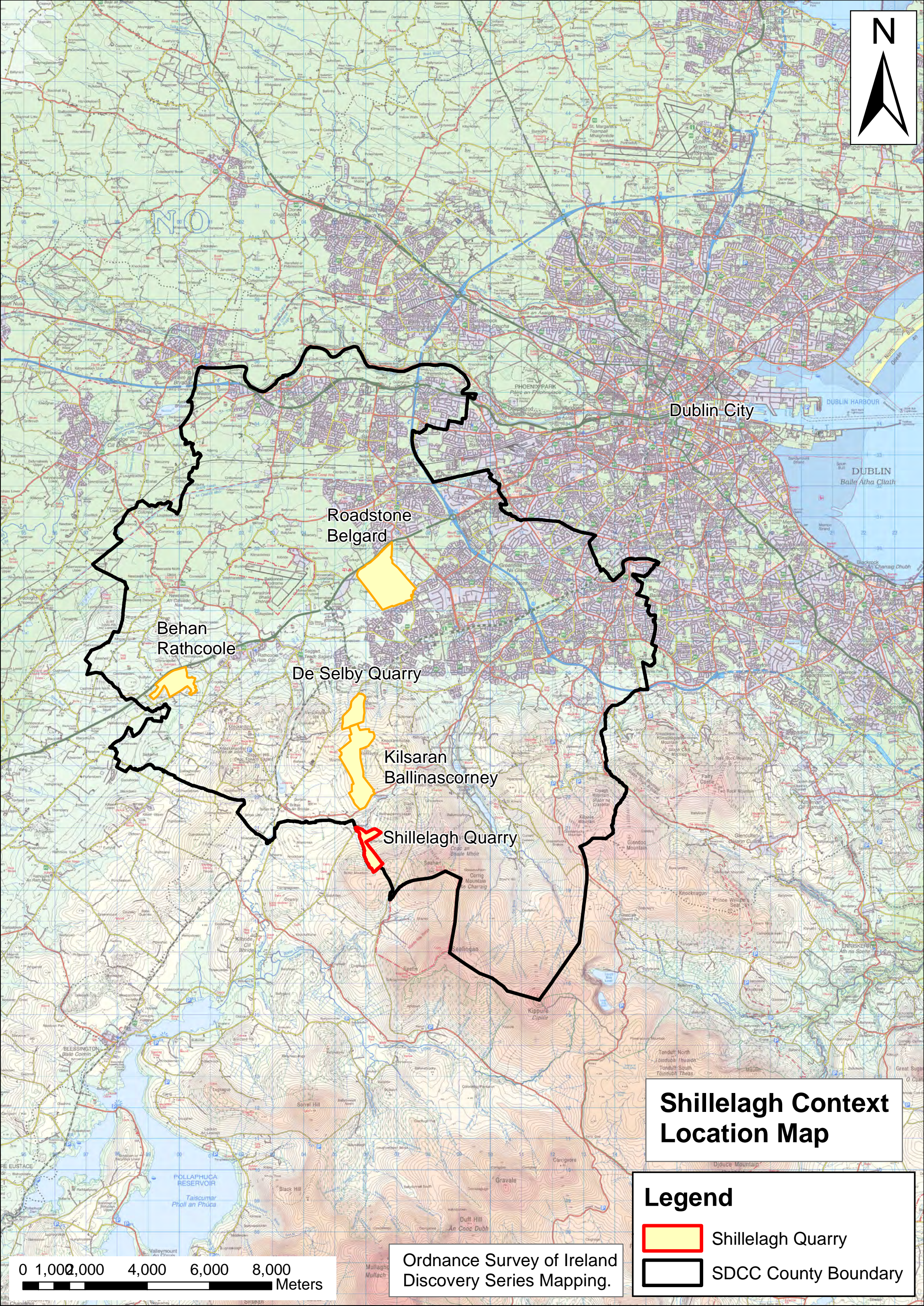
SHILLELAGH QUARRIES LTD.

## **Appendices**

- Appendix 1* Site location map, and S. 261 site layout plan
- Appendix 2* Relevant extracts from County Development Plan 2010-2016
- Appendix 3* Map illustrating sites of nature conservation interest
- Appendix 4* Oblique aerial photography 2005
- Appendix 5* Planning history documents
- Appendix 6* Planning enforcement history documents
- Appendix 7* An Bord Pleanála S.5 determination PL.06S.RL2473
- Appendix 8* S261A public notice and submissions received
- Appendix 9* Patterson v Murphy, High Court 1977 No. 6215P
- Appendix 10* Drawing RFI 01 dated September 2005
- Appendix 11* OS Map Ref. No. 24-15, scale 1:2,500, revised 1969
- Appendix 12* Aerial photography 1971-2009
- Appendix 13* S. 261 Manager's order and registration application

APPENDIX 1

SITE LOCATION MAP, S261 SITE LAYOUT PLAN AND 350M CONTOUR MAP



Dublin City

DUBLIN HARBOUR

DUBLIN  
Baile Átha Cliath

Roadstone  
Belgard

Behan  
Rathcoole



De Selby Quarry

Kilsaran  
Ballinascorney

Shillelagh Quarry

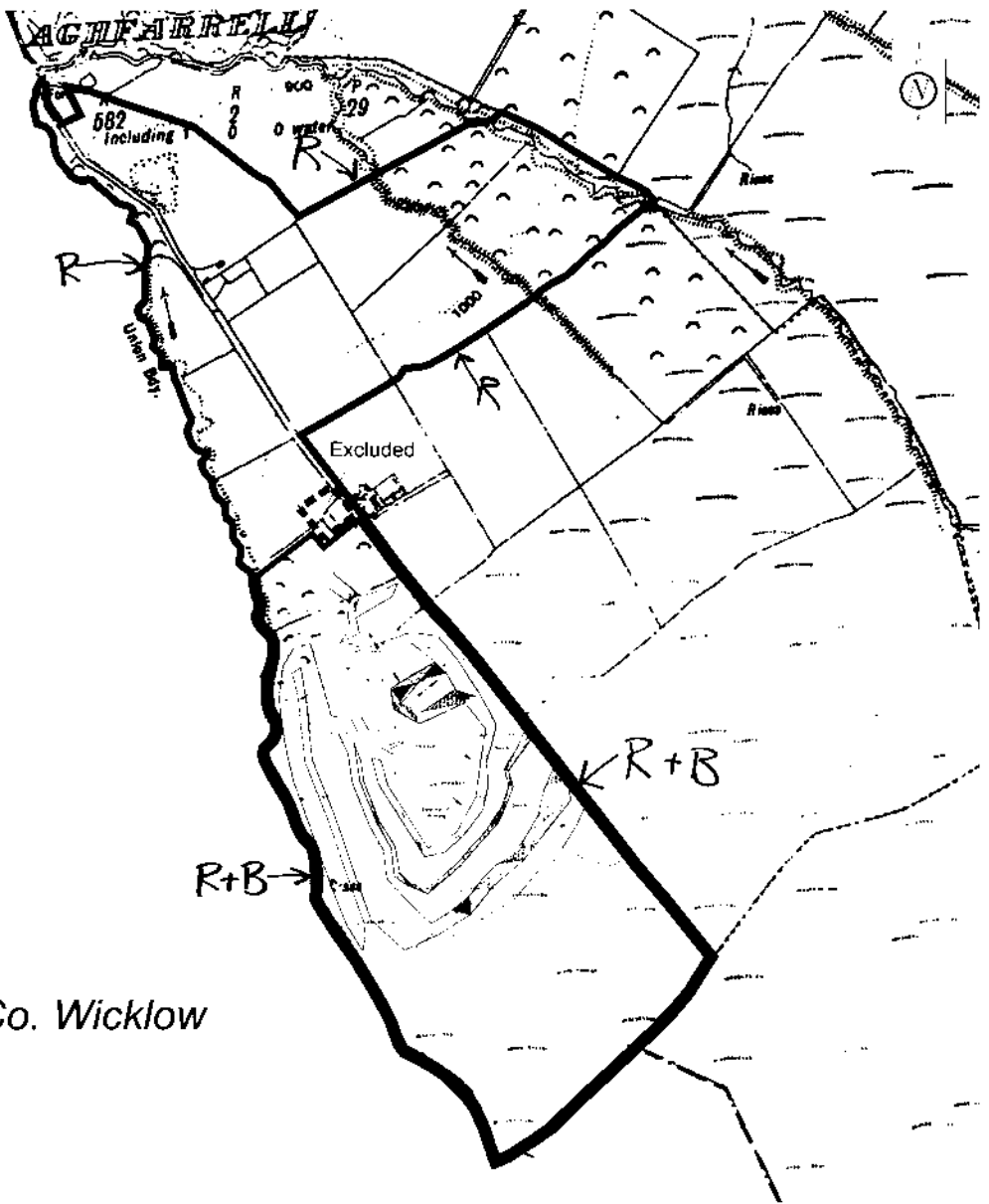
## Shillelagh Context Location Map

**Legend**

-  Shillelagh Quarry
-  SDCC County Boundary

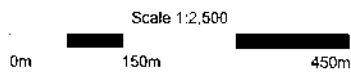
0 1,000 2,000 4,000 6,000 8,000  
Meters



Ordnance Survey of Ireland  
Discovery Series Mapping.



Co. Wicklow

Based on 1:10,560 scale digital map provided  
by Ordnance Survey Ireland  
DUBLIN 24 & 24A



- Legend
-  Land Ownership c. 48.5ha (c. 119.8 acres)
  -  Workable Area c. 27.0ha (c. 66.7 acres)

**NOTE: Site Survey Carried out February 2005**

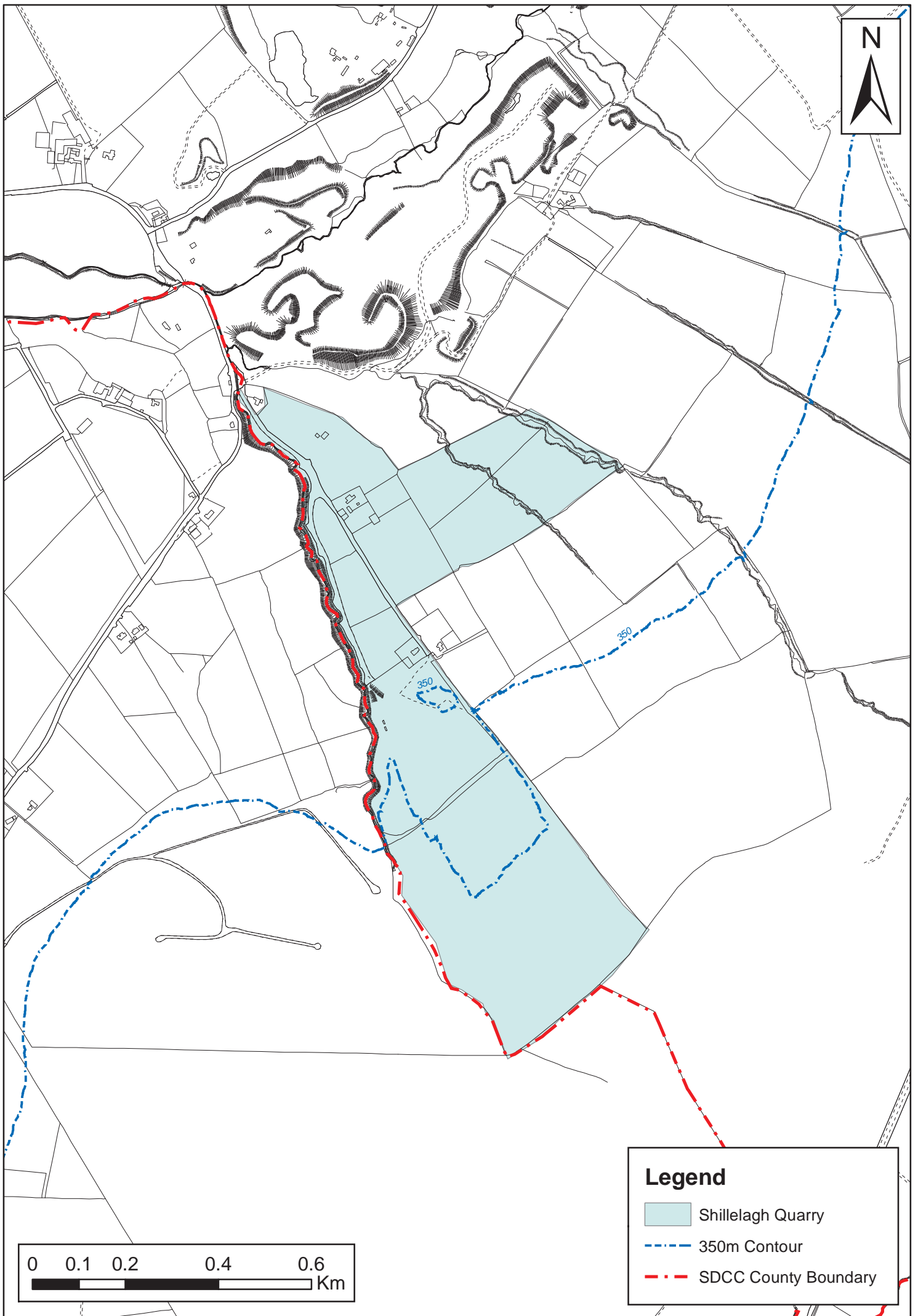
Ordnance Survey Ireland Licence No. SU 0006/05 (C) Government of Ireland






**SHILLELAGH QUARRIES**  
Aghfarrell Townland,  
Brittas, Co. Dublin  
**SITE LAYOUT**

Author: tp/smcd  
Date: April 2005

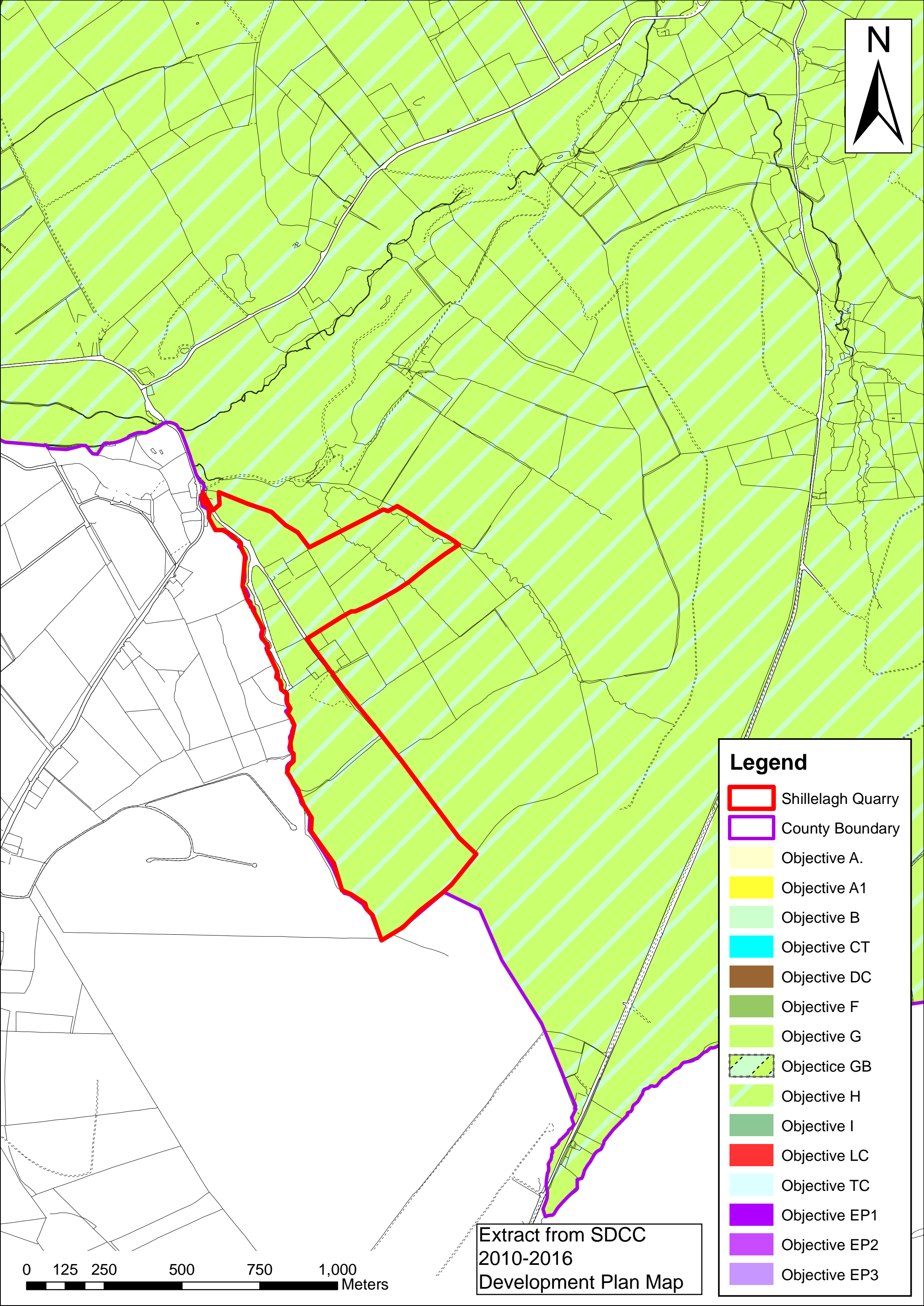
Drawing D01







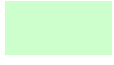








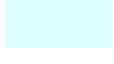



**Legend**

-  Shillelagh Quarry
-  350m Contour
-  SDCC County Boundary

APPENDIX 2  
RELEVANT EXTRACTS FROM COUNTY DEVELOPMENT PLAN 2010-2016

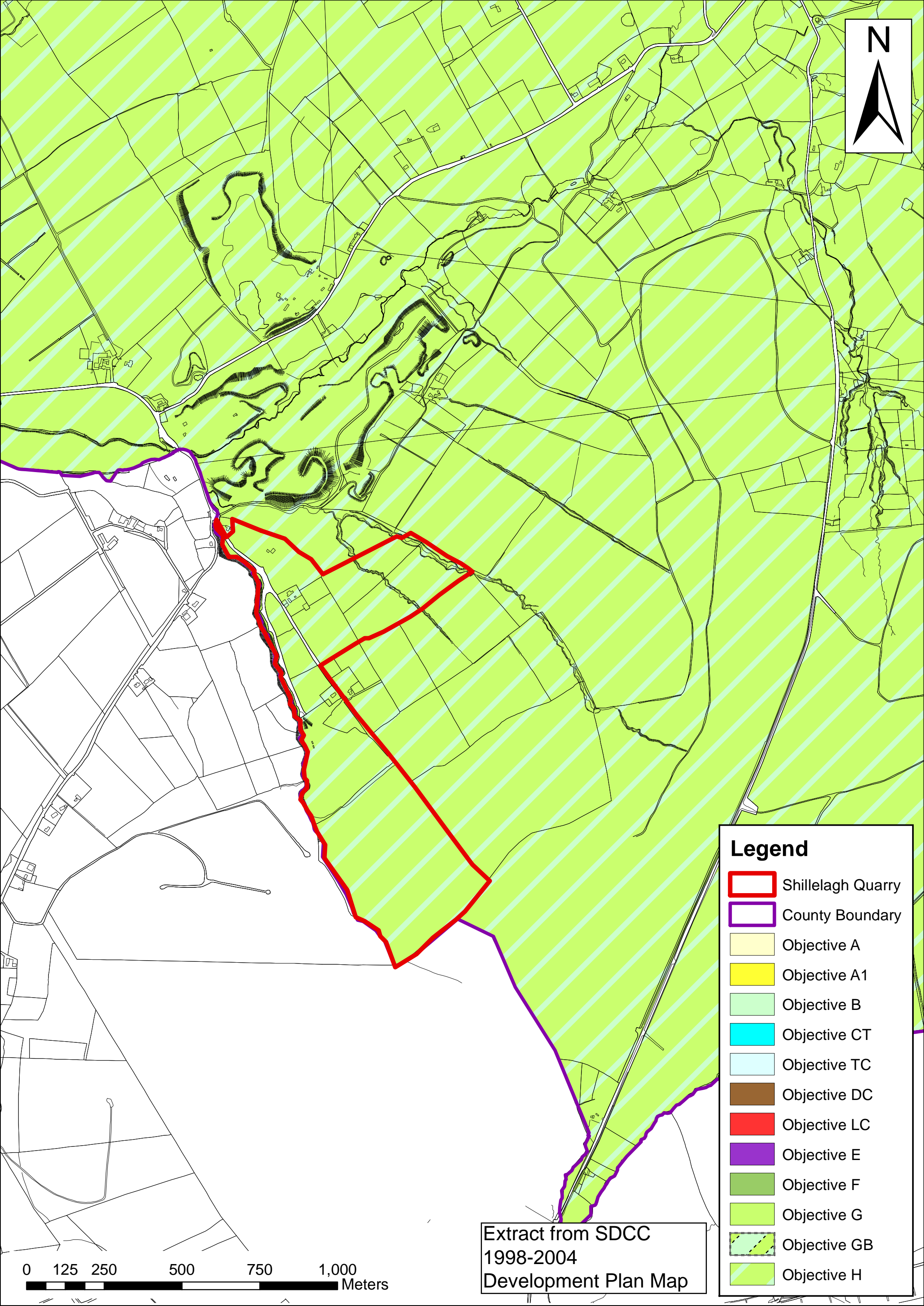
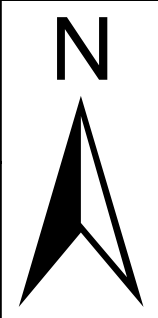













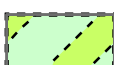


**Legend**

-  Shillelagh Quarry
-  County Boundary
-  Objective A.
-  Objective A1
-  Objective B
-  Objective CT
-  Objective DC
-  Objective F
-  Objective G
-  Objectice GB
-  Objective H
-  Objective I
-  Objective LC
-  Objective TC
-  Objective EP1
-  Objective EP2
-  Objective EP3

Extract from SDCC  
2010-2016  
Development Plan Map

0 125 250 500 750 1,000 Meters



Legend	
	Shillelagh Quarry
	County Boundary
	Objective A
	Objective A1
	Objective B
	Objective CT
	Objective TC
	Objective DC
	Objective LC
	Objective E
	Objective F
	Objective G
	Objective GB
	Objective H

Extract from SDCC  
1998-2004  
Development Plan Map

0 125 250 500 750 1,000 Meters

**Section 261A Review of Quarries**  
**Shillealagh Quarry**

**Relevant Policies and objectives of South Dublin County Development Plans 1998-2004 and 2004-2010**

**County Development Plan 1998-2004**

Extractive Industry

Policy E15: Extractive Industry

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

Paragraph 3.5.9.i Extractive Industry states:

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

Paragraph 3.5.9.ii states:

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

Paragraph 3.3.13 Upland Mountain Areas

3.3.13.i

Within that part of the Dublin Mountains Area which is generally above the 350 metre contour, the Council shall in the control of development seek to retain the open natural character of mountain heaths and mountain blanket bogs. The control of development shall also be exercised with the objective of enhancing the outdoor recreational potential of the area while protecting and sustaining the environmental capacity of the upland landscape.

Paragraph 3.3.1.4.i Special Areas of Conservation/Natural Heritage Areas

3.3.14.i

An Environmental Impact Assessment will be required in respect of any development likely to have an impact on a proposed Special Area of Conservation-irrespective of the location of the development. Planning permission would not normally be granted where such assessment shows that the development would have an adverse effect on the integrity of the Special Area of Conservation.

3.3.14.ii

Within areas proposed as Natural Heritage Areas (NHA) development control will be exercised with the primary objective being the conservation of the natural heritage; that is the ecological systems, the plant and animal species associated with them and the landscape formed by them.

Preservation and Conservation of Buildings, Structures and Sites

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

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

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

## Section 261A Review of Quarries

### Shillealagh Quarry

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

#### Archaeological Potential

##### Policy H4: Areas of Archaeological Potential

It is the policy of the Council to protect, where practical, areas designated as being of archaeological potential.

#### **County Development Plan 2004-2010**

##### 2.3.17 Policy EE17: Extractive Industry

###### 2.3.17.i

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

###### 2.3.17.ii

The Council recognises the importance of the extractive industry in providing the aggregates and building materials required for all forms of construction, and will facilitate its operation in suitable locations, having taken into account the continued reduction in demand with the increased re-cycling of construction and demolition waste. However such industry can have severely damaging environmental effects and permission will only be granted where the Council is satisfied that residential and natural amenities will be protected, pollution will be prevented, and aquifers and ground water will be safeguarded. In addition all development proposals must make appropriate provision for the reinstatement of the landscape. Details of proposed reinstatement should accompany planning applications for extractive developments.

###### 2.3.17.iii

The Council will seek to ensure that significant aggregate resources in the County are appropriately protected and in this regard will restrict the siting of incompatible developments that would interfere with the efficient development of such resources.

###### 2.3.17.iv

It is an objective to carry out a comprehensive study of aggregate resources in the County with a view to the preparation of a strategy for their sustainable exploitation, having regard to

relevant legislation and guidelines, and to the views of all interested parties.

##### 8.3.1 Policy AA 1: Protection of Archaeological Heritage

###### 8.3.1.i

It is the policy of the Council to protect and conserve the archaeological heritage of the county.

###### 8.3.1.ii

Implementation of this policy will involve, inter alia:

a) Designation of Areas of Archaeological Potential, and b) Safeguarding the integrity and the setting of archaeological monuments and sites, protecting existing rights of way to such sites and seeking to establish public access where it does not exist at present.

##### 8.3.2 Policy AA 2: Historical and Archaeological Sites and Features

###### 8.3.2.i

It is the policy of the Council to secure the preservation (ie. preservation in-situ or, as a minimum, preservation by record) of all sites and features of historical and archaeological interest.

###### 8.3.2.ii

In securing such preservation the Council will have regard to the advice and recommendations of the Heritage and Planning Division of the Department of the Environment, Heritage and Local Government.

##### 8.3.4 Policy AA 4: Conservation of Buildings, Structures and Sites

###### 8.3.4.i

It is the policy of the Council to conserve and protect buildings, structures and sites contained in the Record of Protected Structures that are of special architectural, historic,

## Section 261A Review of Quarries

### Shillealagh Quarry

archaeological, artistic, cultural, scientific, social or technical interest.

#### 8.3.4.ii

The County has a wealth of features of architectural, historic, archaeological, artistic, cultural, scientific, social or technical interest. Such features are contained in the Record of Protected Structures and the Record of Monuments and Places.

### 9.3 Policy - Landscape

#### 9.3.i

Landscape is an important part of people's lives, giving individuals and communities a sense of identity and belonging and bestowing a sense of place on their surroundings.

Landscape is also the context in which all change takes place and the key to successful landscape policy is the ability to manage change in a way that is respectful of the natural environment and rural areas.

#### 9.3.ii

Section 10 of the Planning and Development Act, 2000 (as may be amended) requires that a Development Plan shall include objectives relating to the preservation of the character of the landscape, including the preservation of views and prospects and the amenities of places and features of natural beauty or interest.

#### 9.3.iii

The Development Plan divides the non-urban areas of the county into the following zones; Rural Amenity ('B'), Open Space ('F'), High Amenity ('G'), Green Belt ('GB') and Dublin Mountain Area ('H'). Policies and objectives are identified for each of the zones, where the main objective is either to protect or preserve them.

#### 9.3.iv

The extensive rural areas of the County include the foothills of the Dublin Mountains, as well as the flat arable lands to the west of Clondalkin. The mountains are a major amenity with great potential for both active and passive recreational use. In terms of Development Plan policy, the issues faced by rural areas relate primarily to balancing the need for local social and economic development with protecting the area against pressures for development, generated by the proximity of the City. These include pressures for:

- Expansion of the suburbs
- Construction of one-off housing
- Leisure activities
- Extractive industry and landfill.

#### 9.3.v

In order to address landscape issues in Ireland, The Department of the Environment and Local Government published "Draft Guidelines for Landscape and Landscape Assessment, 2000", which provide a framework for Local Authorities to carry out a Landscape Character Assessment for their functional areas. The objective of an assessment is to characterise landscapes and to assess the sensitivity of various landscapes to development. South Dublin County Council has prepared a Landscape Character Areas assessment, including landscape descriptions, a strategy and a map. (See also Schedule 7).

### 9.3.1 Policy LHA 1: Preservation of Landscape Character

#### 9.3.1.i

It is the policy of the Council to protect the character of the landscape in the County in accordance with the policies and objectives of the Development Plan and with the "Draft Guidelines for Landscape and Landscape Assessment, 2000" as issued by the Department of the Environment and Local Government or any finalised Guidelines issued by the Department.

### 9.4.4 Policy LHA 6: Special Areas of Conservation and Proposed Natural Heritage Areas

#### 9.4.4.i

It is the policy of the Council to protect and preserve areas designated or proposed as Special Areas of Conservation (E.U. Habitats Directive) and Proposed Natural Heritage Areas.

#### 9.4.4.ii

The County has a rich ecological, botanical and geological heritage and many such areas are considered worthy of conservation. This heritage can be easily damaged through pollution, land drainage, dumping, or recreational overuse.

#### 9.4.4.iii

Special Areas of Conservation (E.U. Habitats Directive) and Proposed Natural Heritage Areas are shown on the Development Plan Maps and listed in Chapter 13 - Specific Objectives. It is the intention of the Council to protect and preserve these areas.

### 12.3.4 Extractive Industry

#### 12.3.4.i

In dealing with applications for new development, intensification of use or diversification of activity, the Council will have regard to the nature of the proposal, the

## Section 261A Review of Quarries

### Shillealagh Quarry

scale of activity proposed, the impact on the adjoining road network and its effect on the environment.

#### 12.3.4.ii

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

#### 12.3.4.iii

The Council will have regard to the Quarries and Ancillary Activities Guidelines for Planning Authorities, April 2004 published by the Department of the Environment, Heritage and Local Government, or as may be amended from time to time. Any restriction arising as a consequence of the application by the Council of the Guidelines shall not be prejudicial to the provision of rural housing to qualifying applicants nor to any activity permitted under the zoning objective.

### 12.8.2 Water Supply and Drainage

#### 12.8.2.i

Developers will be required to provide efficient and economical water main networks and separate surface water and foul drainage systems.

#### 12.8.2.ii

In the case of industrial effluents, developers and property owners shall be required to seek a licence for discharges under the terms of the Water Pollution Acts 1977 and 1990 and relevant Regulations (or as may be amended from time to time).

#### 12.8.2.iii

All significant developments impacting on flood risk areas will be required to provide a Flood Impact Assessment, to identify potential loss of flood plain storage and how it would be offset in order to minimise impact on the river flood regime. In all new developments details of attenuation requirements and Sustainable Urban Drainage Systems (SUDS) shall be discussed with the Council prior to an application being submitted, in order to mitigate flooding risks.

#### 12.8.2.iv

Where appropriate, details of a Sediment and Water Pollution Control Plan will be required to be submitted for the agreement of the Council, prior to commencement of development.

### 12.11 Archaeological and Architectural Heritage

#### 12.11.1 Development in Areas of Archaeological Potential

##### 12.11.1.i

When considering development proposals within Areas of Archaeological Potential and on, or in close proximity to, sites of known archaeological significance, the Council will have regard to the provisions of Section 12 of the National Monuments (Amendment) Act, 1994, or as may be amended from time to time. The Council will also have regard to the observations and recommendations of the Office of Public Works and the Heritage and Planning Division of the Department of the Environment, Heritage and Local Government.

##### 12.11.1.ii

When considering such proposals regard will be had to the nature of sub-surface works which could impact on archaeological remains (e.g. foundation type and design, layout and location of services, road works, landscaping schemes etc.).

##### 12.11.1.iii

The Council may require the developer to submit a report prepared by a suitably qualified archaeologist on the archaeological implications of the proposed development. In appropriate circumstances, the Council when granting permission for development may impose conditions requiring;

- professional archaeological supervision of site excavations.
- the funding by the applicant of archaeological assessment, monitoring, testing or excavation of the site and the submission of a report thereon, prior to the commencement of development.
- the preservation of all or part of any archaeological remains on the site.

### 12.12.8 Special Areas of Conservation / Natural Heritage Areas

#### 12.12.8.i

An Environmental Assessment will be required in respect of any development likely to have an impact on a proposed Special Area of Conservation - irrespective of the location of the development. Planning permission would not normally be granted where such assessment shows that the development would have an adverse effect on the integrity of the Special Area of Conservation

#### 12.12.8.ii

Within areas proposed as Natural Heritage Areas (NHA) development control will be exercised with the primary objective being the conservation of the natural heritage; that is the ecological systems, the plant and animal

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

### **Shillealagh Quarry**

species associated with them and the landscape formed by them.

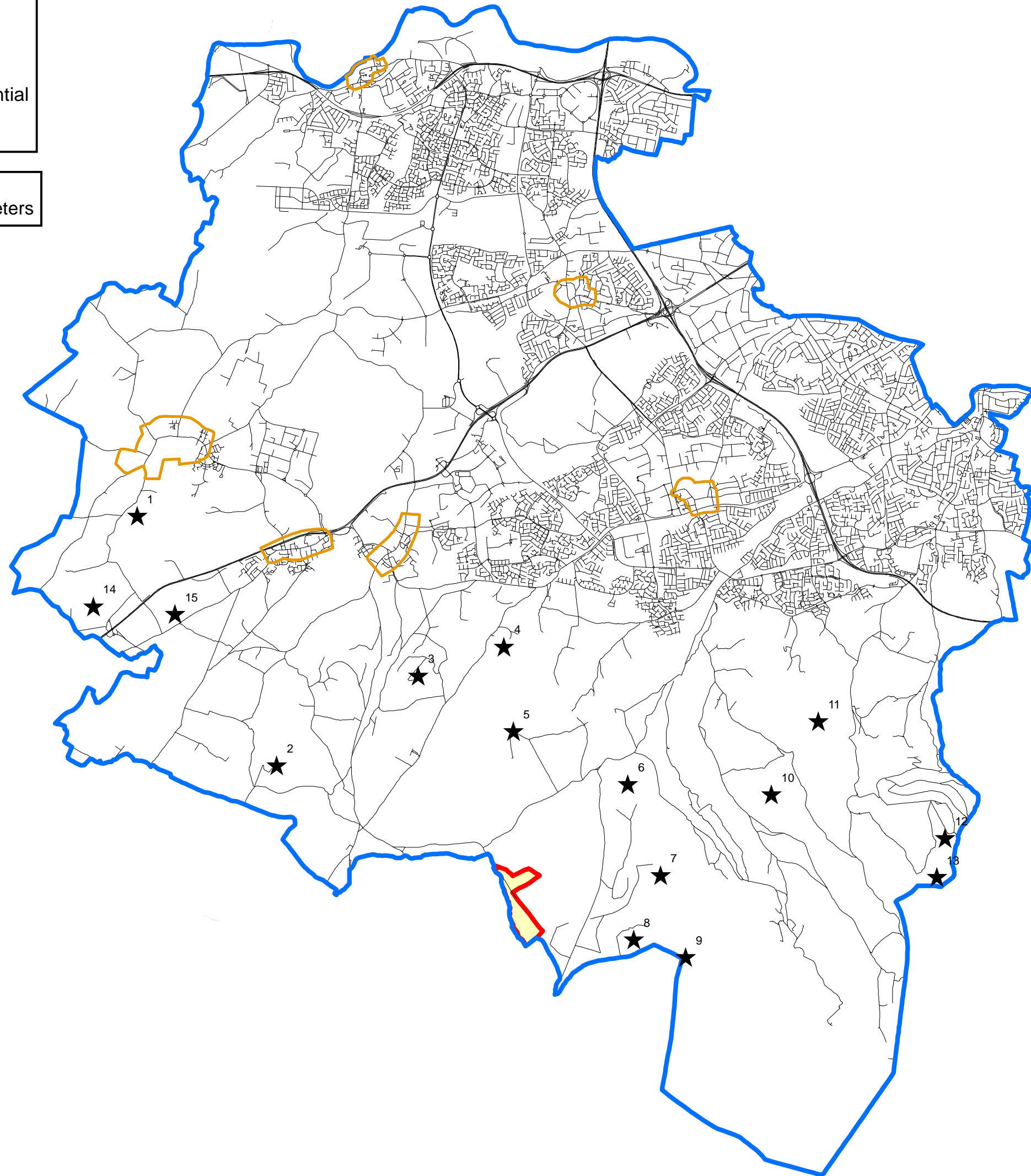


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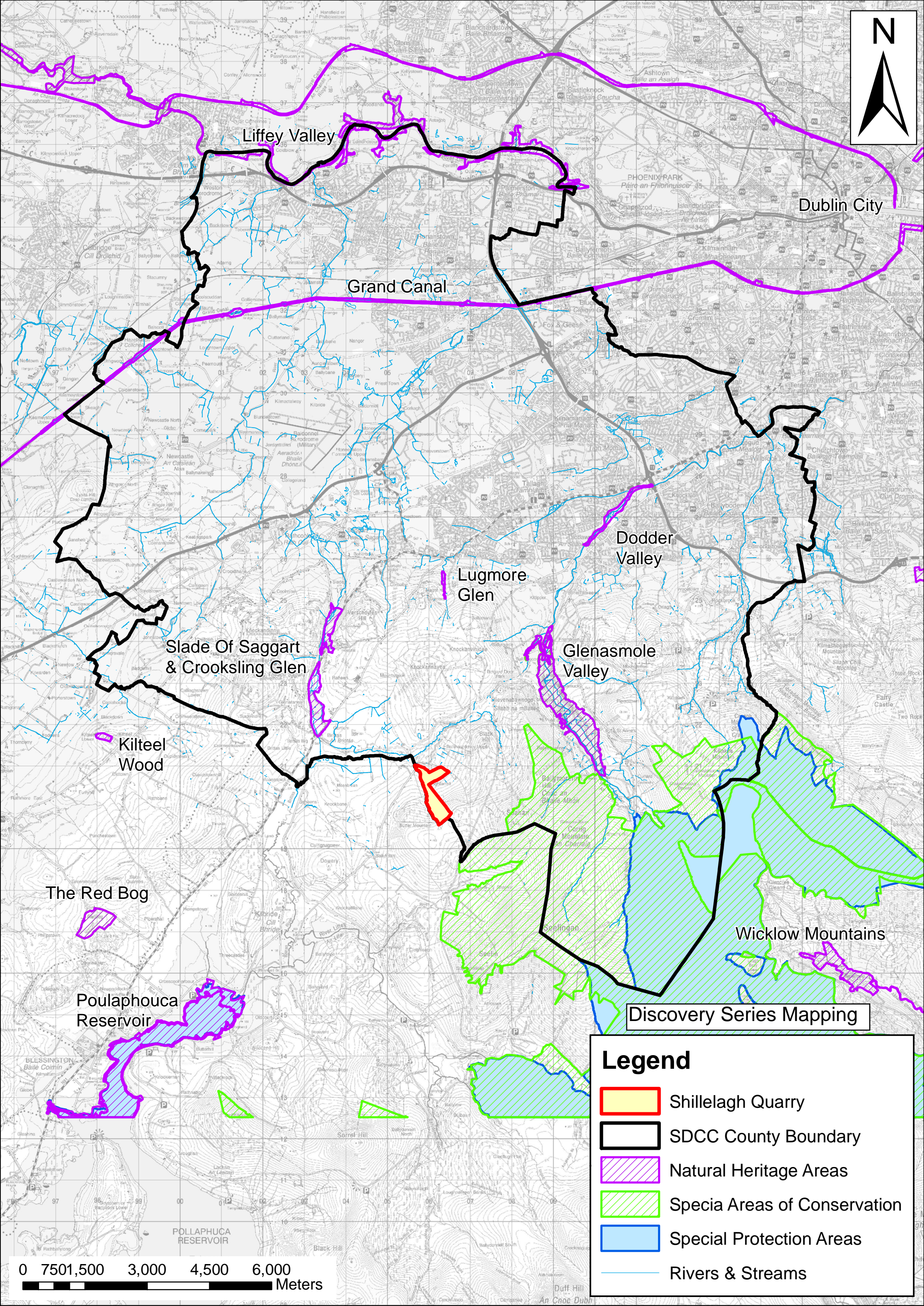
- ★ Prospects
- Areas of Archaeological Potential
- Shillelagh Quarry



Prospects	ID
Athgoe Hill	1
Saggart Hill	2
Verschoyle's Hill	3
Lugmore	4
Knockannavea	5
Sliabh na mBanog	6
Ballymorefinn Hill	7
Seahan	8
Corrig Mountain	9
Piperstown Hill	10
Mountpelier	11
Cruagh Mountain	12
Kilakee Mountain	13
Busty Hill	14
Windmill Hill	15



APPENDIX 3  
MAP ILLUSTRATING SITES OF NATURE CONSERVATION INTEREST



Liffey Valley

Dublin City

Grand Canal

Dodder Valley

Lugmore Glen

Slade Of Saggart & Crooksling Glen

Glenasmole Valley

Kilteel Wood

The Red Bog

Wicklow Mountains

Poulaphouca Reservoir

Discovery Series Mapping

### Legend

-  Shillelagh Quarry
-  SDCC County Boundary
-  Natural Heritage Areas
-  Special Areas of Conservation
-  Special Protection Areas
-  Rivers & Streams

0 750 1,500 3,000 4,500 6,000 Meters

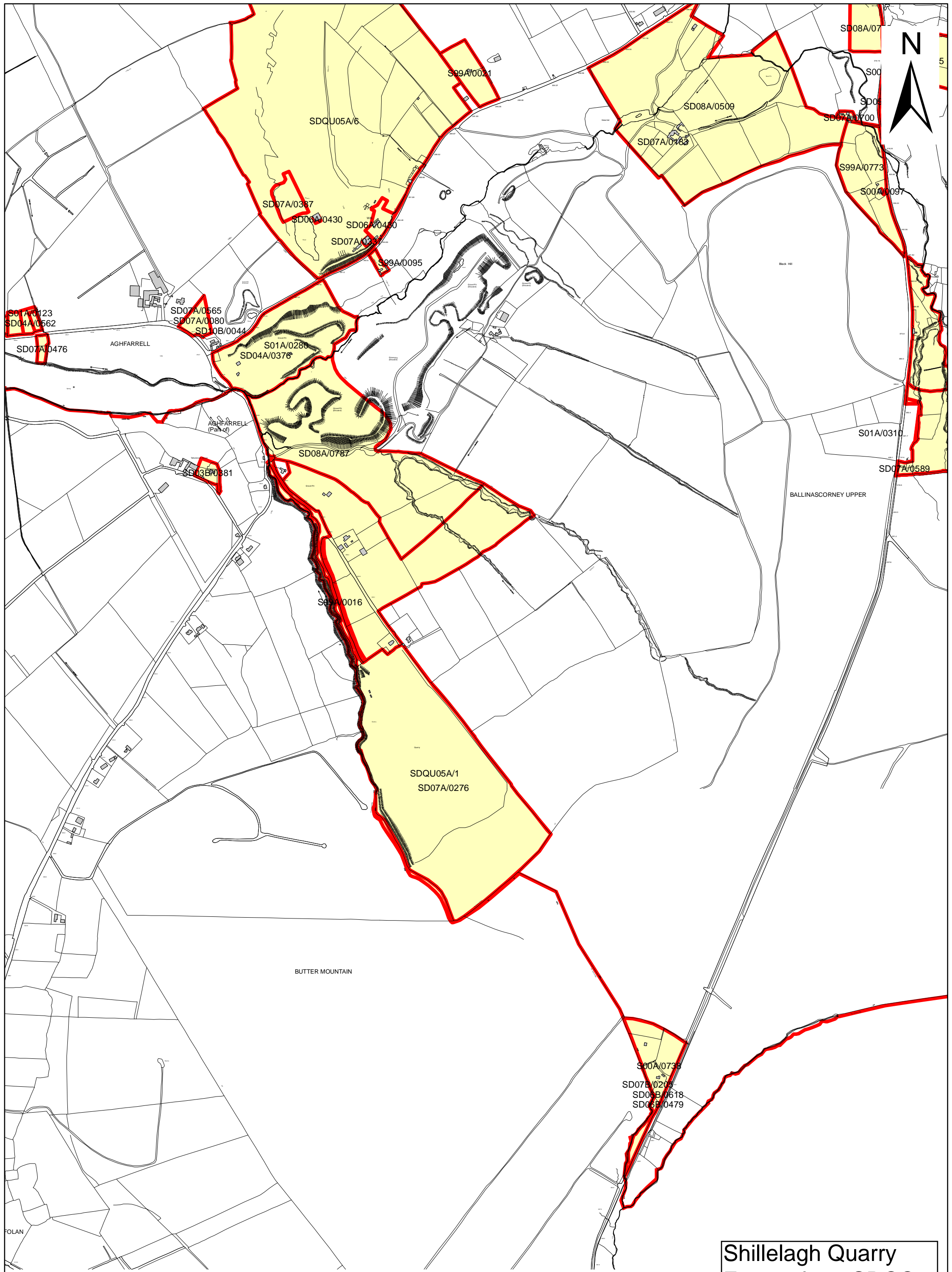
POLLAPHUCA RESERVOIR

APPENDIX 4  
OBLIQUE PHOTOGRAPHY 2005



Photography by Gerry O'Leary - Printing by Repro 35 - image taken 08/08/05 Shillelagh

APPENDIX 5  
PLANNING HISTORY DOCUMENTS



0 125 250 500 750 1,000 Meters

Shillelagh Quarry  
Extract from SDCC  
Planning Register

**REGISTER REFERENCE SD07A/0276**

PROPOSED DEVELOPMENT: CONTINUANCE OF USE OF THE EXISTING QUARRY

REFUSED ON APPEAL (AN BROD PLEANALA REFERENCE NUMBER PL06S.231371)

**REGISTER REFERENCE S99A/0016**

PROPOSED DEVELOPMENT: 1999 FOR RETENTION OF AN EARTH EMBANKMENT

PROPOSED DEVELOPMENT: RETENTION OF AN EARTH EMBANKMENT  
RETENTION PERMISSION REFUSED

Connecting You to

Planning Department, County Hall, Tallaght, Dublin 24

Telephone: 01 4149000 Fax: 01 4149104

Email: [planning.dept@southdublincoco.ie](mailto:planning.dept@southdublincoco.ie)

**John Barnett & Associates Ltd.,  
CSA House  
7, Dundrum Business Park  
Windy Arbour  
Dublin 14**

**NOTIFICATION OF DECISION TO GRANT PERMISSION  
PLANNING AND DEVELOPMENT ACT 2000, &  
PLANNING REGULATIONS THEREUNDER**

<b>Decision Order Number:</b>	<b>1812</b>	<b>Date of Decision:</b>	<b>23-Sep-2008</b>
<b>Register Reference:</b>	<b>SD07A/0276</b>	<b>Date:</b>	<b>30-Jul-2008</b>

**Applicant:**

Shillelagh Quarries Ltd.,

**Development:**

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

Connecting You to  
Planning Department, County Hall, Tallaght, Dublin 24

Telephone: 01 4149000 Fax: 01 4149104  
Email: [planning.dept@sdublincoco.ie](mailto:planning.dept@sdublincoco.ie)

<b>Location:</b>	Aghfarrell Townland, Brittas, Co Dublin
<b>Floor Area:</b>	
<b>Time extension(s) up to and including:</b>	
<b>Additional Information Requested/Received:</b>	01-May-2007, 11-Jun-2007, , 31-Jan-2008 /18-May-2007, 10-Dec-2007, 14-Dec-2007, 30-Jul-2008
<b>Clarification of Additional Information Requested/Received:</b>	01-May-2007, 11-Jun-2007, , 31-Jan-2008 / 18-May-2007, 10-Dec-2007, 14-Dec-2007, 30-Jul-2008

**DECISION TO:** Pursuant to the Planning & Development Act 2000, it is hereby decided, for the reasons set out in the First Schedule hereto, to **GRANT PERMISSION** for the said development in accordance with the said plans and particulars, subject to the conditions specified in the Second Schedule hereto, the reasons for the imposition of the said conditions being as set out in the said Second Schedule and the said decision is subject to the said conditions.

#### FIRST SCHEDULE

It is considered that the proposed development accords with the policies and objectives of South Dublin County Council, as set out in the South Dublin County Council Development Plan 2004-2010 and subject to the (40) condition(s) set out hereunder is thereby in accordance with the proper planning and sustainable development of the area.

#### SECOND SCHEDULE

##### Conditions and Reasons:

1. The development shall be carried out in its entirety in accordance with the plans, particulars and specifications lodged with the application, and as amended by Further

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Information received on 10th December 2008, Unsolicited Further Information received on 14th December 2008, Clarification of Further Information received on 30th July 2008, save as may be required by the other conditions attached hereto.

REASON: To ensure that the development is carried out in accordance with appropriate environmental standards and practices, and to enable effective control to be maintained, in the interests of amenity and the proper planning and sustainable development of the area.

2. Prior to the end of the fifteenth year after the final grant of permission the quarry operator shall seek and have the prior written consent of the Planning Authority for the continued extraction of rock and quarrying, such consent to be subject to the conditions applicable pursuant to Section 261 (8)(b) of the Planning and Development Act 2000 which can be applied without liability for compensation.

REASON: To enable the likely significant environmental effects of future quarrying operations to be assessed in the light of circumstances then pertaining, including any relevant changes in environmental standards and technology and in the interest of amenity and the proper planning and sustainable development of the area.

3. Within six months of the date of this permission the operator / developer shall submit a separate planning application to the Planning Authority for the retention and completion of land reclamation works on agricultural fields to the north-east of the subject site (within the applicant's overall landholding).

REASON: The use of the subject lands for the deposition of overburden from adjacent quarrying activities constitutes works as defined under Section 2 of the Planning and Development Act 2000 and development (by way of a material change of use) as defined under Section 3 of the Act, in particular Section (3)(2)(b)(iii).

4. Within three months of the date of this decision the operator/developer shall submit a scheme for the improvement of the R114 for the written agreement of the Planning Authority, such scheme to be carried out to the satisfaction of the Road Authority at the expense of the operator/developer, or alternatively a financial contribution of €67,500 per year to be paid for a period of 10 years from the date of this decision to enable the Planning Authority to improve the road, the contribution to be index linked annually to the Construction Tender Price Index.

REASON: The Planning Authority requires the carrying out of works which are required for the purposes of the development under Section 261(8)(b) incorporating Section

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34(4)(b) of the Planning and Development Act 2000. Having regard to the increased volume of HGV traffic now emanating from the quarry on to this substandard road, it is considered reasonable that the owner / operator of the quarry should improve the road to a satisfactory standard or pay a contribution thereto so as to prevent endangering public safety by reason of traffic hazard.

5. Within three months of the date of the final grant of permission the operator/developer shall submit the following for the written agreement of the Planning Authority:
  - a) Design details of the strengthening works of the L4382 including extent, depths of construction and surfacing materials. A timescale, including date of completion, for the implementation of the works shall also be submitted;
  - b) Location and design details of all public lighting proposed at the existing quarry entrance. A timescale, including date of completion, for the implementation of this public lighting works shall also be submitted;
  - c) Design details of the lining and signage of the the proposed Priority Junction at the existing bridge on the L4382. A timescale, including date of completion, for the implementation of the works shall also be submitted;
  - d) A timescale, including date of completion, for the remedial works to be carried out on the existing bridge on the L4382 as detailed in the documentation submitted on 30th July 2008.

The road markings and signage shall be in accordance with the publication Traffic Signs Manual (as amended), Department of Transport (1996).

REASON: In the interests of maintaining and improving the public road which is required for the safe purposes of providing safe access to the permitted development and in the interests of the proper planning and sustainable development of the area.

6. a) With regard to achieving adequate visibility splays at the existing vehicular entrance to the quarry, there is a portion of land between the blue line of the applicant's landholding (which follows the stream) and the boundary of the R4382 that is not in the applicant's ownership. Within three months of the date of this permission, the operator/developer shall submit for the written agreement of the Planning Authority, a letter of written consent from the owner of said lands, for the removal of trees / shrubs at this location to achieve adequate vision splays. No further development shall take place on the subject lands until this letter of consent has been submitted to the Planning Authority.

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b) With regard to vision splays indicated on Drawing RK2799P001 submitted on 30th July 2008, the existing boundary ditch shall not exceed 0.9 metres in height and all trees / shrubs within the 4.5m x 90m vision splay shall be removed.

REASON: In the interests of traffic safety and the proper planning and sustainable development of the area.

7. Within three months of the date of the final grant of permission, the operator/developer of these lands shall submit for the written agreement of the Planning Authority, a management plan for the appropriate recovery or disposal of all production residues, including rock and subsoil of no commercial value, arising from quarrying operations on site.

REASON: To safeguard the amenities of the area and in the interests of the proper planning and sustainable development of the area.

8.
  - a) The water supply and drainage infrastructure, including the disposal of surface water, shall comply with the technical requirements of the Planning Authority.
  - b) There shall be complete separation of the foul and surface water drainage systems.
  - c) As the development includes provision for discharge of trade effluent to surface/ground water, within three months of the date of this permission, the operator/developer shall apply for, and obtain, a discharge licence from the Local Authority.
  - d) Any refuelling area shall drain to a tank which is bunded or double skinned with an interceptor fitted to the outlet.
  - e) Within three months of the date of this permission, the operator/developer of these lands shall submit for the written agreement of the Planning Authority, equipment and procedures to be followed in the event of a fuel spillage.
  - f) Within three months of the date of this permission, the monitoring locations, sampling procedure, and suite of water quality parameters to be tested for, shall be submitted for the written agreement of the Water Pollution Control Section, South Dublin County Council. Monitoring shall be carried out on a quarterly basis and the results of the monitoring shall be submitted to the Planning Authority four weeks after the end of every quarter being reported on.
  - g) The operator/developer shall ensure there is no reduction in the baseflow in streams, downstream of the development.
  - h) In the event of quarrying activities having an adverse impact on the existing private

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wells in the vicinity, the operator/developer of these lands shall undertake appropriate remedial measures agreed with the Planning Authority at his own expense. In the event of disruption of water supplies, the developer shall cease any operations causing such disruption until the affected water supply has been restored or replaced.

i) All drainage works for this development shall comply with the Greater Dublin Regional Code of Practice for Drainage Works which can be viewed/downloaded from <http://environment.southdublin.ie> (click-publications then specifications).

REASON: In the interests of public health and in order to ensure adequate drainage provision.

9. The extraction of rock on the subject lands shall be limited to a continuous and total area of not more than 15.5 hectares as indicated on plans submitted on 18th April 2007. No extraction of rock shall be undertaken on any part of the lands outside the said area unless a separate planning permission has been granted for such development. Within three months of the date of final grant of permission a map to a suitable scale showing the precise extent of the permitted area of extraction shall be submitted for the written agreement of the Planning Authority.

REASON: To enable the quarrying operations to be assessed in the light of relevant changes in environmental standards and technology, in the interest of amenity and the proper planning and sustainable development of the area.

10. Quarrying operations, other than blasting, shall be carried out only between 07.00 and 20.00 hours on Monday to Friday inclusive and between 07.00 and 14.00 hours on Saturday. No such activity shall take place outside these hours or on Sundays or public holidays. No rock-breaking activity shall be undertaken within any part of the entire quarry complex before 08.00 hours each day.

REASON: In the interest of amenity and the proper planning and sustainable development of the area.

11. a) Free-field noise levels attributable to the operation of the entire quarry complex, when measured at the nearest noise sensitive receptor, shall not exceed  
55 dB(A) (1 hour LAeq) between 08.00 - 20.00 hours  
45 dB(A)(1 hour LAeq) between 20.00 – 08.00 hours

b) There shall be no tonal or impulsive noise at sensitive receptors between 20.00 – 08.00 hours due to activities carried out on the site.

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c) A quarterly survey and assessment programme shall be undertaken to assess the impact of noise emissions arising from the operation of the entire quarry complex. The scope and methodology of this survey and assessment programme shall be submitted to the Planning Authority for its written agreement within three months of the date of this decision. The results obtained from the assessment programme shall be submitted quarterly for the written agreement of the Planning Authority. The operator shall carry out any amendments to the programme required by the Planning Authority following this quarterly review.

REASON: In the interests of residential amenity, public health and the proper planning and sustainable development of the area.

12. a) Ground-borne Vibration levels from blasting shall not exceed a peak particle velocity of 12 mm/second, as measured in any of the three mutually orthogonal directions about a fixed point at any sensitive receptor location.
- b) Blasting shall not give rise to air overpressure values in excess of 125 d(B)(Lin)max peak with a 95% confidence limit at any sensitive receptor location. No individual air overpressure value shall exceed the limit value by more than five dB (Lin).
- c) Blasting shall only be carried out between 08.00 and 18.00 hours on Monday to Friday inclusive. Blasting shall not take place outside these hours or on Saturdays, Sundays or public holidays.
- d) Advance notification of each blasting operation shall be provided to all landowners and occupiers within 500 metres of the quarry. Within 3 months of the date of this permission, the developer of these lands shall submit for the written agreement of the Planning Authority, a map (to an appropriate scale) indicating all dwellings within a clearly defined 500 metre boundary around the quarry. Prior to the firing of any blast, advance warning signals indicating that blasting operations are about to commence and 'all clear' signals indicating that the blasting operations have been completed shall be given (by means of sirens or other audible devices operated by the developer) to members of the public within stated 500 metres of the quarry. An audible alarm for a minimum of one minute shall be sounded. This alarm shall be of sufficient power to be heard at all dwellings adjacent to the quarry.

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e) A suitable monitoring programme shall be developed to assess the impact of quarry blasts. Details of this programme shall be submitted for the written agreement of the Planning Authority within three months of the date of this decision. This programme shall provide for monitoring to be carried out whenever a blast occurs, and shall include an annual review of all blast monitoring data, to be undertaken by a competent person, the results of which shall be submitted to the Planning Authority within two weeks of completion for its written agreement. The operator shall carry out any amendments to the programme required by the Planning Authority following this annual review.

REASON: To ensure the protection of amenity and public health, in the interest of the proper planning and the sustainable development of the area.

13. a) Total dust deposition (soluble and insoluble) measured at the site boundary shall not exceed 350mg/m<sup>2</sup>/day (when averaged over a 30 day period). The Bergerhoff Method (German Standard VDI 2119, 1972) shall be used to measure dust deposition. Continuous monitoring of dust deposition shall be carried out. Any emission which does not comply with the above standards shall be notified to the Planning Authority immediately.

b) Within six months of the date of final grant of permission details of satisfactory arrangements for the suppression and control of dust arising from the open working, processing and the handling and transportation of mineral and / or product, and stripping of overburden, shall be submitted for the written agreement of the Planning Authority. The location of sensitive receptors and prevailing wind directions shall be taken into account when locating haul roads, tips, stockpiles and processing plant. The area of excavated land not covered by vegetation shall be kept to a minimum. The stripping of overburden shall be carried out only during favourable weather conditions. The deposition of dust on surrounding lands in excess of allowed limits, or spillage on to public roads shall be prevented at all times.

c) A monthly survey and monitoring programme of dust shall be undertaken to provide for compliance with the above limits. Details of this programme, including the location of dust monitoring stations, shall be submitted for the written agreement of the Planning Authority within three months of the date of final grant of permission. This programme shall include an annual review of all dust monitoring data, to be undertaken by a

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competent person, the results of which shall be submitted to the Planning Authority within two weeks of completion for its written agreement. The operator/developer shall carry out any amendments to the programme required by the planning authority following this annual review.

**REASON:** To ensure the protection of amenity and public health, in the interest of the proper planning and sustainable development of the area.

14. All recorded data from monitoring of noise emissions, blasting, and dust deposition, shall be submitted to the Planning Authority in a suitably formatted and readable form on a quarterly basis, within ten working days of the end of each quarter. The monitoring quarters to be January – March, April – June, July – September and October – December. Where any data is missing this fact must be recorded and a reason given for its omission.

**REASON:** To ensure the protection of residential amenity and public health, in the interest of the proper planning and sustainable development of the area.

15. a) The names, job functions and phone numbers (both fixed line and mobile numbers) of all key personnel for the operation of this quarry shall be provided to South Dublin County Council. All changes in personnel or particulars must also be notified to the Council as soon as they occur.

b) The operator/developer shall provide all landowners and occupiers within 500 metres of the quarry, with appropriate contact details which may be used in the event that any such person wishes to inform the operator of any incident, such as the discovery of flyrock on lands outside the quarry, or otherwise to make a complaint in respect of an aspect of the quarry operation.

c) A public notice shall be erected and maintained at the entrance to the quarry. This notice shall contain the name of the operating company and contact details, including out of hours contact, which may be used in the event that any person wishes to contact the operator in respect of any aspect of the quarry operation.

**REASON:** In the interests of amenity, public health, and the proper planning and sustainable development of the area.

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16. Within three months of the date of final grant of permission a Digital Terrain Model of the entire lands within the site boundary, as shown on Drawings 02 and 03 received 18th April 2007, shall be submitted to the Planning Authority. The Digital Terrain Model shall be prepared by a civil engineer / surveyor agreed by the Planning Authority, and shall include details of all areas, a) that have been excavated to date, b) that have been prepared for excavation, and c) that have been rehabilitated. A comprehensive photographic record of the quarry workings, and views of the quarry from public roads in the vicinity of the site, the viewing positions of which shall be shown on a map to a suitable scale, shall also be submitted.

REASON: To ensure effective development management of the quarrying operations in the interest of amenity and the proper planning and sustainable development of the area.

17. Five years from the date of final grant of permission and at five-yearly intervals thereafter the quarry operator shall submit to the Planning Authority an up to date Digital Terrain Model of the entire lands within the site boundary as shown on Drawings 02 and 03 received 18th April 2007. The Digital Terrain Model shall be prepared by a civil engineer / surveyor approved by the Planning Authority, and shall include details of all areas a) that have been excavated to date, b) that have been prepared for excavation, and c) that may have been rehabilitated.

REASON: To ensure effective development management in the interest of amenity and the proper planning and sustainable development of the area.

18. On an annual basis (by the end of February each year) for the lifetime of the quarry, three copies of an environmental audit shall be submitted to the Planning Authority. This audit shall be carried out at the expense of the operator/developer by suitably qualified and experienced independent environmental auditors, whose names shall be submitted to the Planning Authority for prior approval, and shall contain the following:

- a) A record of all movements of heavy vehicles outside the permitted operating hours.
- b) A record of surface water quality, and groundwater quality and levels, measured at monthly intervals.
- c) A full record of any breaches over the previous year of dust, noise, vibration / air overpressure, and water quality standards.
- d) A written record of all complaints received, including actions taken on each complaint.

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REASON: To ensure that the quarry shall be operated in compliance with the stated standards in the interests of amenity, pollution control, public health and the proper planning and sustainable development of the area.

19. The quarry operations shall comply with the environmental standards for noise, vibration, and dust, contained in the Environmental Protection Agency document “Environmental Management in the Extractive Industry (Non-Scheduled Minerals)”, and relevant standards as revised in the future introduced either by legislation, or guidance from the Environmental Protection Agency or its successor.

REASON: In the interests of amenity, pollution control, public health, and the proper planning and sustainable development of the area.

20. Within three months of the date of final grant of permission a scheme of external lighting for the entire site shall be submitted for the written agreement of the Planning Authority. The scheme shall be designed, installed and operated, so as to prevent nuisance to neighbouring occupiers and road users, and to avoid over-lighting, and lighting units shall be of a type that deflects light downwards from the horizontal.

REASON: In the interests of amenity, traffic and public safety, and the proper planning and sustainable development of the area.

21. Metal advance warning signs shall be erected and maintained in good and clean condition at the site entrance / exit. Details of the material, content, design and location of these signs shall be submitted for the written agreement of the Planning Authority within three months of the date final grant of permission.

REASON: In the interests of traffic safety.

22. No waste, debris, excavated materials or dust caused by the haulage of material either to or from the site shall be deposited on the public roads, footpaths, margins etc. in the vicinity of the site. The quarry operator shall be responsible for maintaining the public roadways in the vicinity of the site entrances / exits in a clean state, free from mud and other debris caused by the haulage of such material.

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REASON: In the interests of traffic safety and amenity.

23. (a) The proposed wheel washing facility shall be provided with a continuous water supply facility together with a suitable sump arrangement for the drawing off of waste waters arising. It shall be kept properly maintained and cleaned at regular intervals, such that trucks, on exiting the wheel wash, shall not have mud or dust adhering to their tyres.  
(c) All heavy goods vehicles exiting the site shall use the wheel washing facility.

REASON: In order to prevent dust emissions in the interests of amenity, traffic safety, and the proper planning and sustainable development of the area.

24. All surface water run-off from roofs, entrances, driveways, parking areas etc. shall be collected and disposed of within the site to soak pits, drains or adjacent watercourses. In particular, no such surface water run-off shall be allowed to flow on to the public roadway or adjoining properties, nor to discharge to any effluent disposal system or public foul sewer.

REASON: To prevent water pollution in the interests of public health and the protection of natural heritage and the proper planning and sustainable development of the area.

25. a) No effluent from the site shall discharge to surface or ground waters other than in accordance with the terms of a current licence granted under the relevant provisions of the Local Government (Water Pollution) Acts, 1977–1990 or as may be amended from time to time.  
b) Only clean uncontaminated storm water shall be discharged to surface waters. Interceptor traps shall be fitted to the storm water drainage system where appropriate, to prevent accidental spillages of oils, greases, solvents or other contaminated matter entering the watercourses or soak ways or groundwater.  
c) Where it is proposed to discharge surface water from impermeable surfaces (roads, roofs etc) to existing drains or watercourses then the discharge shall be limited to 6 litres per second per hectare of impermeable surface to reduce the risk of downstream flooding. This shall be achieved by constructing attenuation storage, preferably a pond,

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and restricting the outflow discharge by means of a 'Hydrobrake' or equivalent device. Details of the design shall be submitted for the written agreement of the Planning Authority.

REASON: To prevent water pollution and flooding in the interests of public health and the protection of natural heritage and the proper planning and sustainable development of the area.

26. Adequate precautions shall be taken to prevent surface water run-off from open cut areas flowing directly to any stream or watercourse. All such water shall be trapped and held in settling lagoons until such time as the suspended solids are deposited and the colour of the discharge water indicates that it will not cause any discolouration of the receiving waters. Where possible appropriate measures shall be taken to prevent water from entering excavations. Adequate clearance from watercourses and wells shall be maintained

REASON: To prevent water pollution in the interests of public health and the protection of natural heritage and the proper planning and sustainable development of the area.

27. a) All surface water from the plant area, quarry floor and internal haul roads shall be directed to sumps and discharged from there to settling lagoons.
- b) The settling lagoons shall be of an adequate size and properly maintained to ensure the efficient removal of suspended solids.
- c) Site roads and approaches to river crossings shall be regularly brushed or scraped and kept free from dust and mud deposits.

REASON: To prevent water pollution in the interests of public health and the protection of natural heritage and the proper planning and sustainable development of the area.

28. a) A groundwater level monitoring programme shall be implemented at the quarry. Groundwater levels shall be recorded at monthly intervals, and reported to the Planning Authority on a quarterly basis.

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b) Within three months of the date of final grant of permission a hydrological / hydrogeological report in respect of the quarry, prepared by a suitably qualified person having appropriate experience, shall be submitted to the Planning Authority. The report shall detail all measures proposed to be taken to protect groundwater resources. The report shall have regard to all relevant requirements as set out in the Water Framework Directive, or its future equivalent.

REASON: In the interest of public health, the protection of ground water resources, and the proper planning and sustainable development of the area.

29. a) All over-ground oil or other chemical storage tanks shall be adequately bunded to protect against spillage. Bunding shall be impermeable and capable of retaining a volume in excess of 110% of the capacity of the largest tank.
- b) Bunds shall be tested at intervals of not more than three years and documentation of tests shall be available for inspection by the Planning Authority.
- c) All refueling shall take place on impermeable areas that drain through an interceptor from tanks that are bunded or double skinned.
- d) All waste oil and chemicals shall be removed from the site and disposed of to the satisfaction of the Water Pollution Control Section of the Local Authority.
- e) A spill kit shall be maintained on site with adequate supply of containment booms and absorbent materials to deal with any spillage.
- f) The operator/developer shall ensure that blasting practice minimises the risk of occurrence of nitrate/ammonia residues by proper blast design and implementation, appropriate disposal of any excess explosives, and selection of the appropriate type of explosives.

REASON: To prevent water pollution in the interests of public health and the protection of natural heritage and the proper planning and sustainable development of the area.

30. Settlement ponds shall be regularly cleaned out by the operator as necessary for the

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efficient operation of the ponds in an environmentally acceptable manner. Appropriate measures shall be put in place to prevent silt leaving the site in any drain or watercourse during the cleaning process. Silt removed from the settlement ponds shall be periodically covered with topsoil and seeded with grass to prevent subsequent dispersal.

REASON: To minimise dust and prevent water pollution in the interest of the proper planning and sustainable development of the area.

31. Detailed records of the types and quantities of all wastes generated by the development shall be maintained and made available for inspection by the Planning Authority upon request. Any treatment / disposal of waste shall be carried out in compliance with the Waste Management Acts 1996–2006, or as may be amended.

REASON: In the interests of public health, safety and the proper planning and sustainable development of the area.

32. Within three months of the date of final grant of permission or such other period as may be agreed with the Planning Authority, a detailed programme outlining the proposed phasing of the quarry workings shall be submitted for the written agreement of the Planning Authority. The proposed phasing shall be detailed on a suitable site plan which shall indicate the areas that have been worked and the depth of the workings, the proposed phasing of extraction for the remaining areas, and the proposed timing of the rehabilitation of all the areas. This phasing programme shall be updated and submitted for the written agreement of the Planning Authority at five-yearly intervals.

REASON: To ensure the satisfactory rehabilitation of the site in the interests of amenity and the proper planning and sustainable development of the area.

33. a) Within six months following approval by the Planning Authority of a programme for the phasing of the quarry workings, or such further period as the Planning Authority may permit, the operator shall submit for the written agreement of the Planning Authority, a comprehensive plan for the rehabilitation of the entire quarry following the cessation of quarrying works. This plan shall include detailed proposals for the rehabilitation and landscaping of existing worked out portions of the quarry, and indicative proposals for the rehabilitation and landscaping of future worked out portions of the quarry. The plan

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shall be updated and submitted for the written agreement of the Planning Authority at five-yearly intervals.

b) The proposals shall, inter alia, provide for the phased carrying out of rehabilitation and landscaping operations within a definite period or periods related to the anticipated pace of extraction operations, and shall provide for the grading of surface levels, surface and sub-surface drainage and attenuation as per the Greater Dublin Strategic Drainage Study guidelines, planting and seeding works, and details of future maintenance.

c) The proposals shall be prepared by a competent professional person with experience in the remediation / rehabilitation of quarries, and shall be supported by detailed maps, section drawings, and graphic material.

d) The source of all material proposed to be used in respect of all rehabilitation works, together with full details of the type of material and the quantities involved, shall be submitted as part of the rehabilitation and landscaping proposals.

REASON: To ensure the satisfactory rehabilitation of the site in the interests of amenity and the proper planning and sustainable development of the area, having regard to the location of the quarry on lands within an area zoned Objective 'H', "To Protect and Enhance the Outstanding Natural Character of the Dublin Mountain Area", in the South Dublin County Development Plan 2004-2010.

34. a) Within six months of the date of final grant of permission a comprehensive landscaping scheme to screen views of the quarry workings or otherwise ameliorate the visual impact of the workings, shall be submitted for the written agreement of the Planning Authority. The scheme shall include detailed drawings and specifications of proposals for appropriate landscaping and boundary treatment, including tree planting and mounding, and a satisfactory time frame for the implementation of the scheme. A survey of all trees and hedgerows on the lands carried out by a competent professional to B.S. 5837 shall be submitted as part of the scheme. The agreed scheme shall be implemented to the satisfaction of the Planning Authority.

b) The proposals shall be prepared by a competent professional person with experience in the design of such landscaping schemes, and shall be supported by detailed maps, section drawings, and graphic material.

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Reason: In the interests of amenity and the proper planning and sustainable development of the area, having regard to the location of the quarry on lands within an area zoned Objective 'H', "To Protect and Enhance the Outstanding Natural Character of the Dublin Mountain Area", in the South Dublin County Development Plan 2004-2010.

35. a) Within 12 months of the date of such cessation all buildings, plant and surface equipment shall be removed from the site , and all rehabilitation works shall be completed within 36 months of the date of such cessation. The whole of the surface area (including the slopes and sections containing deposition accruing from the operation of the quarry) shall be rehabilitated by the appropriate land shaping of the ground in relation to the contours of adjoining land.
- b) Specifications and drawings indicating the proposed works to rehabilitate the site, detailing existing contours and the grading and levels of the final contours to which the rehabilitation shall be carried out, shall be submitted to the Planning Authority for agreement in writing.
- c) The proposals shall be prepared by a competent professional person with experience in the remediation / rehabilitation of quarries, and shall be supported by detailed maps, section drawings, and appropriate graphic material.
- d) The works shall not commence until such agreement has issued in writing and the agreed works shall be completed to the satisfaction of the Planning Authority.

REASON: To ensure the satisfactory rehabilitation of the site in the interests of amenity and the proper planning and sustainable development of the area, having regard to the location of the quarry on lands within an area zoned Objective 'H', "To Protect and Enhance the Outstanding Natural Character of the Dublin Mountain Area", in the South Dublin County Development Plan 2004-2010.

36. Any change of use of the lands shall be subject to a separate grant of planning permission for such use.

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REASON: For the purposes of clarification of this permission.

37. All topsoil removed in the course of quarrying operations shall be separately retained from waste materials (including sub-soil and overburden) so that it can readily be re-used by spreading evenly over the worked surface or backfilled. Topsoil to be used for on-going landscaping shall be stockpiled in a manner so as to ensure that the soil flora and fauna are not destroyed.

REASON: To ensure the satisfactory rehabilitation of the site in the interests of amenity and the proper planning and sustainable development of the area.

38. Within six months of the date of final grant of permission, the operator/developer shall lodge with South Dublin County Council a bond of an insurance company or other form of equivalent security acceptable to the Planning Authority in the amount of €310,000 (three hundred and ten thousand euro), together with an agreement empowering the Planning Authority to apply such security (or part thereof) to the satisfactory completion of the rehabilitation and aftercare works in the event that the operator fails to secure and rehabilitate the site in the future to the satisfaction of the Planning Authority. The value of the bond or alternative security shall be adjusted annually by reference to the Tender Price Index.

REASON: To ensure the satisfactory rehabilitation of the site in the interests of amenity and the proper planning and sustainable development of the area.

39. In the event of any remains of archaeological or historic interest being discovered on the site, the Planning Authority shall be informed immediately. All works affecting these remains shall cease immediately and shall not re-commence until approval in writing has been received from the Planning Authority, following consultation with the Heritage and Planning Division of the Department of the Environment, Heritage and Local Government.

REASON: To facilitate the investigation of any remains of archaeological or historic interest discovered on the site in the interests of the proper planning and sustainable development of the area.

40. Scrap material shall be removed at least annually from the site in accordance with the requirements of the Planning Authority. Scrap materials shall be deemed to include

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scrapped trucks, other scrapped vehicles, empty oil barrels, broken or otherwise unusable truck bodies, worn out conveyor belts/chains, worn out batteries, unusable tyres and worn out conveyor/roller shafts.

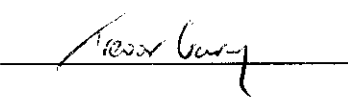
REASON: To safeguard the amenities of the area and in the interests of the proper planning and sustainable development of the area.

Note 1: The applicant/developer is advised that under the provisions of Section 34 (13) of the Planning and Development Act 2000 a person shall not be entitled solely by reason of a permission to carry out any development.

Please note that upon receipt of this document you are obliged to remove the planning site notice in compliance with Article 20 of the Planning and Development Regulations 2001 to 2006.

Please note that any valid submissions or observations received in accordance with the provisions of the Planning and Development Regulations 2001-2006, have been considered in the determination of this application.

Signed on behalf of the South Dublin County Council.

  
for **Senior Executive Officer**

23-Sep-2008

PR/1812/08

## Comhairle Chontae Atha Cliath Theas

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

**Reg. Reference:** SD07A/0276      **Application Date:** 18-Apr-2007  
**Submission Type:** Clarification of Additional Information      **Registration Date:** 30-Jul-2008

**Correspondence Name and Address:** John Barnett & Associates Ltd., CSA House, 7, Dundrum Business Park, Windy Arbour, Dublin 14

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

**Location:** Aghfarrell Townland, Brittas, Co Dublin

**Applicant Name:** Shillelagh Quarries Ltd.

**Application Type:** Permission

Financial Contribution	€ 675,000
SECURITY	} 310,000
Bond/LiF	
Cash	
TREE BOND	

*ml*  
22/9/8

**Description of Site and Surroundings:**

Site Area: The total site area is stated as 28.1 Hectares.

Site Description: The existing quarry is located within the townland of Aghfarrell, approximately three kilometres east of Brittas. Access to the site is gained by turning off the main N81 at Brittas and travelling along the R114 Regional road and local county network for a distance of approximately three kilometres. The existing extraction area covers an area of approximately 11

# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

hectares. There are high mounds of stone and gravel to the east and west of the existing quarry floor. Mature forest trees bound the site to the west and south.

Site Visit: Carried out on Tuesday 5<sup>th</sup> June 2007.

### Proposal:

The applicant proposes the following:

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

### Zoning:

This area is zoned 'H' – to protect and enhance the outstanding natural character of the Dublin Mountain Area.

### Consultations

Environmental Services Department – Foul Drainage – No objections subject to conditions; Surface Water – Further Information requested; Water – No objection.

Roads Department – Recommend referral to Wicklow County Council as the access road is in the control of this Authority. Improvement in access sight lines are recommended.

Parks Department – Further Information requested.

Forward Planning – the lands outlined within the blue line do not clearly identify lands used for depositing quarry material.

EHO – No objections.

Heritage Council – No report received to date.

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

Department for the Marine and Natural Resources – No report received to date.

Environmental Protection Agency – No report received to date.

### **Submissions/Observations /Representations**

A letter of objection has been submitted on behalf of a local environmental group.

The main issues / concerns raised are outlined as follows:

- The levels of works has intensified significantly since 2000, involving the construction of a new entrance. This has led to an increase in the vehicular traffic movements in this area.
- Quarrying works are being carried out above the 350 metre contour line which would be contrary to the Development Plan and the proper planning of the Dublin Mountains;
- The proposed development may result in pollution;
- The subject site would be unsuitable for landfill;
- The development has resulted in dust and pollution in the area;

### **Relevant Planning History**

S99A/0016 refers to refusal of planning permission to retain an earth embankment, constructed adjacent to the access road to Shillelagh Quarries.

The reasons for refusals are outlined as follows:

- The present quarrying operations on site are unauthorised development in that a planning permission has not been granted nor were the present operations operating prior to October, 1964. As such, it is considered that the retention of an earth embankment which serves the unauthorised development cannot be permitted;
- It is considered that the proposed development of an earth embankment in an area zoned to protect and enhance the outstanding natural character of the Dublin Mountain Area would be contrary to the policies and objectives of the South Dublin County Development Plan 1998 as the development would not protect nor enhance the natural character of the area and would be seriously injurious to the amenities of the area and property in the area;
- A satisfactory stability report for the earth embankment has not been submitted. The earth embankment therefore must be considered to pose a possible threat to public safety as its stability cannot be guaranteed;

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## Record of Executive Business and Manager's Order

- The treatment of watercourses in the area has not been addressed following a request for Additional Information in that regard. As such the proposed development may cause serious water pollution; and
- The full extent of the quarrying operation on site has not been submitted, nor has an embankment stability report, or proposals to treat watercourses in the area. As such it is considered that the application for permission is not sufficiently detailed.

### Relevant Enforcement History

S4778 refers to enforcement proceedings with regard to dumping of waste materials on former agricultural fields. A Warning Letter was issued on 11<sup>th</sup> October 2006.

### Pre-Planning Consultation

None

### Relevant Policy in South Dublin County Council Development Plan (2004-2010)

*Policy EE17:- 'It is the policy of the Council to facilitate the operation of the extractive industry in suitable locations subject to the protection of amenity and maintenance of environmental quality'*

Section 9.3 refers to the impacts of Quarries on the landscape.

Section 12.3.4.i refers to Extractive Industries.

*Ministerial Guidelines: Quarries and Ancillary Activities, Guidelines for Planning Authorities 2004.*

### Assessment

The main issues to consider are compliance with Council policy, visual impact, impact on the residential / visual amenity, traffic impact, environmental impact, dust, noise, vibration, impact on local heritage, rehabilitation, monitoring, storage, staff facilities and quantum of development within the 'H' zoning objective.

### *Development Context*

The applicant states that the subject quarry commenced operation before 1<sup>st</sup> October 1964, and has been in operation since approximately 1936. The quarry was registered in accordance with the requirements of Section 261 (Quarry Ref. No. SDQU05A/1). It is also stated that the quarry

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is a family owned business and is an independent supplier of construction materials to the local and regional construction.

From site visit and the photos submitted with the EIS it would appear that lands to the north-east of the subject site (within the applicants' ownership) are used for storage of materials associated with the existing quarry works on the site (subject to enforcement proceedings as outlined above). The applicant has not included said lands / operations within the assessment of the proposed development and the environmental impacts of same. The current planning application can therefore not be fully assessed until the applicant submits details with regard to same. The applicant should be advised that the retention of this area would need to be re-advertised accordingly.

### *Council Policy*

Section 9.3.iv of the Development Plan states, inter alia, 'the extensive rural areas of the County include the foothills of the Dublin Mountains. The mountains are a major amenity with great potential for both active and passive recreational use. In terms of Development Plan policy, the issues faced by rural areas relate primarily to balancing the need for local social and economic development with protecting the area against pressures for development, including extractive industry and landfill'. Part of the subject site (southern section) lies above the 350 metre contour line. Section 12.12.7 of the Development Plan states, 'Within that part of the Dublin Mountains area, which is generally above the 350 metre contour, the Council shall, in the control of development, seek to retain the open natural character of the mountain heaths and mountain blanket bogs'. The acceptability of the proposed development in consideration of council policy is dependent upon the nature and operational requirements of the proposed development, in particular the proposed extension of the quarry into and above 350m contour. The environmental impacts on the landscape may be sufficiently adverse to justify refusing this proposed extension of the operations of the quarry.

### *Noise and Vibration*

Extractives industries are associated with many noise-generating activities -- removal of topsoil and overburden, excavation with machinery, drilling and blasting of rock, crushing and screening of aggregates, transport of raw materials and finished products within the site and transportation on public roads.

The applicant undertook a Noise Monitoring at a point identified as N1 located towards the northern boundary of the site, close to the main vehicular entrance. The applicant concludes that the noise monitoring results that the quarry operations comply with the noise threshold limit of 55 dB(A) Laeq during the daytime as outlined in 'Quarries and Ancillary Activities – Guidelines for Planning Authorities'.

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

The assessment of the noise impact of the proposed development should be considered in two respects: acute noise (ie blasting) and chronic noise which refers to the daily operations of the proposed development.

Having regard to acute noise, the applicant states that 'blasting is carried out two to four times per month. The duration of a blast in times of noise is of short duration, similar to a clap of thunder'. Regarding chronic noise, Figure 3.7.2 of the EIS lists the following as the continuous activities of the site; stripping of overburden, drilling and blasting, materials handling, crushing (mobile plant), screening (mobile plant), stockpiling, loading / transport'.

The applicant has carried out a Noise Impact Assessment for both acute and chronic noise factors, and states, it is assumed that all of the noise sources (including temporary intermittent soil stripping and blasthole drilling operations) are active for a 100% of the time at the receptor. On this basis it is considered that the noise assessment is conservative and represents a worst case scenario' at this location.

The Noise Impact Assessment concludes that noise levels arising from the quarry receptors would be 53 db (A) Leq and 52 dB (A) Leq respectively. Both receptors are located along the public road to the west of the site.

It is the view of the Planning Authority that the Noise Impact Assessment carried out is not comprehensive enough, and cognisance has not been taken of other noise sensitive locations within the vicinity, and also of nearby habitats, particularly in the forested areas to the south of the site. The applicant should be requested to carry out a Noise Impact Assessment at all noise sensitive locations in proximity to the proposed development, in particular nearby houses, (not just two points along the public road to the west). With regard to noise impact on local habitats, the applicant should be requested to seek the expertise of a qualified ecologist, clearly outlining the noise impact of the proposed development on any sensitive habitats in the vicinity of the proposed development. All such locations should be clearly plotted on revised drawings and the results of same tabulated. It is considered that this matter should be addressed by way of a request for further information.

The applicant has carried out blast monitoring results for the quarry in 2006. It is concluded, 'a review of the 2006 blast monitoring results indicated that the recorded groundborne vibration levels are well below the recommended threshold limit values. The recorded air overpressure exceeded 125 dB (A) on 6 occasions'. Said test was carried out at a residence adjacent to point N1 outlined above. It is the view of the Planning Authority that a test involving one location is limited and a more comprehensive vibration monitoring analysis should be carried out. The applicant should be requested to under take a revised vibration analysis for other locations / dwellings within proximity to the subject site. As outlined above with regard to noise impact, the applicant should be requested to seek the expertise of a qualified ecologist, clearly outlining any vibration impact of the proposed development on any sensitive habitats in the vicinity of the

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proposed development. All such locations shall be clearly plotted on revised drawings and the results of same tabulated. It is considered that this matter should be addressed by way of a request for further information.

### *Dust Deposition and Air Quality*

As in the case of noise, there are numerous sources of dust generation within quarries, including the stripping of topsoil, the excavation of sand and gravel, the crushing and screening of aggregates, ancillary activities such as concrete mixing, and the transport of sand, gravel and finished products. Residents living in proximity to quarries can potentially be affected by dust up to 500 metres from the source.

The applicant undertook a dust emission monitoring program as part of the EIS. The test site was located approximately 150 metres north of the quarry adjacent to one of the owners dwellings. The results of the baseline survey indicate that the dust deposition levels are below the DOEHLG (2004)/EPA (2006) recommended dust deposition emission limit value.

The applicant states that 'the development comprises the continued use and extension of the existing quarry. It will entail the same operational activities, and use of similar processing plant and machinery as the existing quarry'. The applicant outlines a number of mitigation measures in order that the proposed development would continue to comply with the above recommended emission values. Such mitigation measures would be associated with soil stripping, stone processing and transport / access.

The applicant has not undertaken a vibration emission analysis for all dwellings / sensitive locations / ecological habitats within 500 metres of the subject site, the applicant should be required to submit same.

### *Flora and Fauna*

As part of the EIS an inventory of flora and fauna on the site was prepared, but no protected, rare or other species of particular scientific interest were found. This is acceptable. However, nesting/breeding cycles etc of common fauna were not identified and impacts at these times were not reported, in terms of impacts and mitigation measures. This issue should be clarified.

### *Water Supplies and Ground Water*

The quantity and physical and chemical quality, of surface waters and ground waters may be affected by quarrying activities.

Section 434.4 of the EIS states, 'the proposed final quarry floor level is at 298 mOD metres, below the existing groundwater table. Surface water collecting in the quarry floor percolates

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naturally into the underlying ground. A temporary surface water sump will be constructed on the quarry floor to provide for the controlled collection of any surface water within the working area prior to discharge'. Section 3.4.5 also states, 'pumped dewatering of groundwater will become necessary as the level of the quarry floor is lowered below the level of the discharge point. However, the impact will be the same as the current dewatering via gravity flow. Groundwater quantities will not be significantly impacted by the extension of the quarry'.

Section 3.4.6 concludes the development does not pose a significant threat to groundwater or surface water of the surrounding area.

It is considered that insufficient information has been submitted with regard to water storage tables / groundwater flows in the surrounding area, including wells on adjoining lands. The applicant should be requested to submit details of baseline studies of the groundwater and the rate of the groundwater recharge. Lowest flows recorded for the area should be submitted identifying the duration and rainfall which gives rise to the lowest flows, and should be used to quantify the impacts of dewatering and mitigation measures proposed to address adverse scenarios.

### *Traffic Impact / Access*

A Traffic Impact Assessment was undertaken as part of the EIS for the proposed development. The results of same outline that there would be no additional traffic impact on the surrounding road network during the overall peak hour. The applicant states, this is due 'to the fact that neither extraction rates nor employee numbers will increase'. The TIA also recommends that all HGV's associated with the proposed development use Haul Road 1 (travel westbound along the R114 to the N81).

The Roads Department note that the public road associated with the proposed development lies in the administrative area of Wicklow County Council and the technical requirements of same should be ascertained. This matter should be addressed by way of a request for further information.

\*The Roads Department also recommend that a special levy of €675,000 be required from the applicant.

### *Visual Impact*

Quarry operations can remove parts of the existing landscape and can introduce intrusive features such as quarry faces or overburden mounds, which can be viewed from significant distances.

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The applicant has submitted a photo analysis of both the existing and proposed developments from six points as outlined in drawings submitted with the EIS. The result of the landscape assessment carried out reveal that 'effects on the character of the landscape and policies would be limited due to existing degradation caused by mineral extraction and forestry. This would allow the landscape to absorb the proposed changes with no significant impact'. It is also concluded, 'the proposed extraction would be seen within the context of the existing quarry, and appear as an extension to existing rock faces and overburden soil storage / screening area'.

Notwithstanding future restoration / rehabilitation works, the Planning Authority would have concerns with regard to the proposed extension and the visual impact of same, given the location of the extension above the 350 metre contour line, particularly when viewed from the public road and lands to the north and north-east. The proposed development would be as open cast feature on this visually prominent landscape. This would significantly change the existing landscape and could not be rehabilitated to approximate the existing character of the rural landscape, which contributes to the identity of the Dublin region. This proposal is considered unacceptable.

### *Rehabilitation / Restoration*

The applicant outlines that an Environmental Monitoring Programme will be implemented on the basis of dust, noise and blasting. It is also stated that the results of the monitoring programme will be submitted to the Council on a regular basis for review and record purposes. The Planning Authority welcomes the collection and storage of data on significant environmental indicators. However, details of the records should be in form so as to provide a basis for the environmental management of the site and the operations of the quarry. In addition, it is considered appropriate that this data be retained by the applicant/operator and made available on request from the Planning Authority. Therefore, the applicant is requested to submit the following:

1. The methodology for the collection, storage and analysis of data for the environmental management and monitoring of the site.
2. Identify indicators for:
  - (A) (i) high, medium and low/critical downstream factors for
    - (ii) water quality
    - (iii) instream biota
    - (iv) water levels
  - (B) Baseline indicators for groundwater recharge rates in relation to high, medium and low/critical rainfall prior to dewatering of the quarry.
  - (C) Ambient noise levels at sensitive locations, measurements of acute and chronic noise.
  - (D) Prevailing wind direction, indicators for meteorological conditions where dust nuisance is low, medium and high/critical

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- (E) Risks to surface and groundwaters from accidental spill or flooding (e.g. bunding of storage areas).

3. Mitigation measures for each of the above when the critical threshold is reached.

With regards to restoration and aftercare, Section 2.6.1 of the EIS states, 'the worked out areas of the quarry will be restored to natural habitat. The restoration works will be carried out on a phased basis as the quarry develops to its final extent'. The applicant puts forward a general restoration scheme giving consideration to soil stripping, landform and drainage, soil replacement, site management and supervision, long term safety and security, long term stability of the quarry, long term surface and ground water management, decommissioning of plant and machinery, and aftercare and monitoring. It is the view of the Planning authority that insufficient information has been submitted with regards to same, no information has been submitted with regard to the phasing of such measures, the landscaping species and methodology for planting and maintenance. The applicant should be requested to submit a comprehensive restoration program which includes:

- (i) a program, methodology and planting specification for seeding and maintenance of the quarry
- (ii) this program shall include the rehabilitation of worked areas over the two years from a final grant
- (iii) a progressive regime for the operational life of the quarry
- (iv) a strategy for post closure rehabilitation of all areas of the site

### *Life of Quarry Operations*

The applicant outlines that the life of the proposed development would be approximately 42 years.

### *Chemical / Fuel Storage*

Section 3.4.4 of the EIS states that no fuels are stored at the site. The applicant should be requested to clarify how on site machinery is fuelled without storage of fuels. In addition, other chemicals used on the site should be identified and provisions made for safe storage which prevents accidental spills

### *Staff Facilities / Office*

Section 2.5 of the Non-Technical summary of the EIS states the following, 'there are no canteen / toilet facilities provided within the quarry. Employees (mainly family members) use the facilities in the adjacent dwellings owned by the operator'. From the drawings submitted it

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would appear there are no office facilities on the site. The applicant should be requested to confirm same, and if the aforementioned staffing arrangements are to continue as part of the proposed development/or identify other potential location of staff/office facilities in the event that the ownership changes.

### *Landscaping Matters*

The information submitted with regard to site restoration works is not to the satisfaction of the Parks and Landscape Services Department who request additional information with regard to a detailed landscape plan (pre/post rehabilitation, and cross sections of the pond indicating amount of overburden material proposed as backfill in the quarry void.

### *Other Matters*

#### Transportation of material from the site

The applicant states that the current average extraction rate is approximately 450,000 tonnes per annum. The applicant should be requested to outline how much each truck accommodates and the number of truck movements off the site in a seasonal tabulation and to include a schedule for considerations of dust, noise, vibration considerations on the surrounding area.

#### Stability Issues

The applicant has submitted sections outlining the proposed overburden areas. The Planning Authority would have concerns with regard to the stability of existing / proposed overburden banks on the site. The applicant should be requested to submit detailed information with regard to the stability of said banks and mitigation measures regarding slippage of material in adverse weather conditions or vibration and as the quarry floor is lowered.

### *Environmental Impact Statement*

The requirements relating to Environmental Impact Assessment are set out under Part X (sections 172 – 177 inclusive) of the Planning and Development Act 2000 and Part 10 (articles 92 – 132 inclusive) of the Planning and Development Regulations 2001.

### Adequacy of EIS

Under Article 108 a Planning authority shall consider whether an EIS submitted in respect of a planning application complies with article 94 or, where the authority has given a written opinion under article 95(4), it shall consider whether the EIS complies with the said opinion.

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Where a planning authority decides that an EIS does not comply with article 94, or any relevant written opinion given by the authority under article 95(4), as appropriate, the authority shall, in accordance with article 33, require the applicant to submit such further information as may be necessary to comply with article 94 or 95(4), as appropriate.

### Content of EIS

The mandatory requirements are set out in article 94 of the Planning and Development Regulations 2001. There are three items, which the EIS must contain and these are set out under the Assessment heading below.

*1. The EIS shall contain the following:*

- (a) Descriptions of the proposed development comprising information on the site, design and size of the proposed development
- (b) A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
- (c) The data required identifying and assessing the main effects, which the proposed development is likely to have on the environment.
- (d) An outline of the main alternatives studied by the developer and an indication of the main reasons for his or her choice, taking in to account the effects on the environment.

Does the EIS contain the above?

- (a) The EIS contains an adequate description of the site and size of the proposal in Sections 1, 2 & 3 of the Statement.
- (b) The EIS contains a wide variety of measures to avoid, reduce and if possible remedy significant adverse effects on
  - Human Beings Section 3.1
  - Flora and Fauna Section 3.2
  - Soils and Geology Section 3.3
  - Surface and Groundwater Section 3.4
  - Climate Section 3.5
  - Air Quality Section 3.6
  - Noise and Vibration Section 3.7
  - Landscape Section 3.8
  - Cultural Heritage Section 3.9

# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

- Material Assets Sections 3.10
- Roads and Traffic Section 3.11
- The Interaction of the Foregoing Section 3.12

(c) The applicants have used a number of sources and data collections in investigating the impacts on differing environments and mitigation measures proposed. These are considered by the Planning Authority to be comprehensive and satisfactory, with the exception of noise and vibration, air quality and roads and traffic, surface and ground water and restoration.

(d) Applicants have given a do-nothing approach and also investigated differing mitigation measures in taking into account the effects on the environment of the proposal. This is considered by the Planning Authority to be satisfactory.

2. *The EIS shall contain the following information to the extent that*

- Such information is relevant to a given stage of the consent procedure and to the specific characteristics of the development or type of development concerned and of the environmental features likely to be affected, and
- the person or persons preparing the EIS may reasonably be required to compile such information having regard, among other things, to current knowledge and methods of assessment,

(\*Note: this information is a summary of that contained in Schedule 6(2) of the Planning and Development Regulations 2001)

- a description of the physical characteristics of the proposed development and the land-use requirements during the construction and operational phases;
  - A description of the main characteristics of the production processes;
  - An estimate of expected residues and emissions;
- a description of the aspects of the environment likely to be significantly affected by the proposed development, including in particular:
  - Human beings, fauna and flora,
  - Soil, water, air, climatic factors and the landscape,
  - Material assets, including the architectural/archaeological/cultural heritage,

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- The inter-relationship between the above factors;
- (c) A description of the likely significant effects on the environment resulting from:
  - The existence of the proposed development,
  - The use of natural resources,
    - the emission of pollutants, the creation of nuisances and elimination of waste,
    - and a description of the forecasting methods used to assess the effects on the environment;
- (d) An indication of any difficulties in compiling the required information.

Does the EIS contain the above?

It is considered by the Planning Authority that the following environmental impacts have not been adequately addressed in a sufficient level of details; noise and vibration, air quality and roads and traffic, surface and ground water and restoration landscaping.

*3. The EIS shall contain a summary in non-technical language of the information required under 1 and 2 above.*

Does the EIS contain the above?

Yes the applicants have submitted a non-technical summary report in addition to the EIS itself. This is considered satisfactory.

### Conclusion

The Planning Authority is not satisfied with the level of information submitted with this application with regard to ancillary works on adjoining lands, the impact of the proposed development on surrounding sensitive locations / environment with regard to noise, vibration and dust, water supplies and ground water, traffic impact, visual impact, rehabilitation, landscaping, possible chemical / fuel storage and staff facilities. The applicant should be requested to address these matters by way of a request for further information.

### REPORT IN RESPONSE TO FURTHER INFORMATION REQUEST

**REG. REFERENCE:** SD07A/0276

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## Record of Executive Business and Manager's Order

**CASE OFFICER:** Anthony McNamara

**REPORT DATE:** Thursday 24<sup>th</sup> January 2007.

### **Introduction**

A response to the further information request was received on 10<sup>th</sup> December 2007.

### *Item 1 – Lands to the north east of the site*

#### **Response**

It is stated that the lands in question have been the subject of a separate submission to the Enforcement Section dated 30<sup>th</sup> January 2007. It is also stated that said lands do not form part of this planning application.

#### **Appraisal**

It is stated in the documentation referred to above (submitted on 30<sup>th</sup> January 2007) that the works carried out on said lands are for the purposes of land reclamation.

Having regard to land reclamation works, said works are only exempt for the purposes of agriculture or forestry, (as outlined in Class 11 of Schedule 2, Part 1 – Exempted Development, Planning and Development Regulations 2001, as amended).

The applicant should be requested to detail in writing how said land reclamation works being carried out on site are exempt from planning permission, in accordance with the exempted development regulations as outlined in the Planning and Development Regulations 2001, as amended. This matter should be addressed by way of a request for Clarification of Further Information.

### *Item 2 – Noise Impact assessment*

#### **Response**

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A further noise survey was undertaken on July 24<sup>th</sup> and July 31<sup>st</sup> 2007. The following locations were surveyed and are outlined on Figure 3.7.1 submitted:

- N1 – at the northern boundary of the site, 55 metres from the rear of the existing residence;
- N2 – to the north of the quarry at the existing site entrance;
- N3 – to the north west of the quarry at the existing residence;
- N4 – to the west of the quarry at the existing residence; and
- N5 – in the undisturbed area to the south of the existing quarry.

Noise levels recorded at N1 (37.8 dB(A)), and N5 (36.1 dB(a)), are below the recommended Department of the Environment, Heritage and Local Government (2004) and Environmental Protection Agency (2006) noise emission limit value of 55 dB (A). Said recorded levels are representative of quarry activity and are not influenced by external traffic on the county road or other external noise sources.

The recorded levels at N2 (58.2 dB (A)), N3 (56.3 dB(A)), and N4 (58.6 dB (A)) were influenced by external traffic on the county road. In addition, noise recorded at location N3 were affected by machinery in use at the dwelling close to the monitoring site.

Having regard to impact on local habitats, the application area and surrounding areas were surveyed by a qualified ecologist on 23<sup>rd</sup> January 2007, 3<sup>rd</sup> March 2007 and 24<sup>th</sup> July 2007. The principal aims of the survey was to determine whether or not protected habitats exist on the site, or if any specially protected, rare or endangered plant or animal species occur on the site. It is stated that no protected habitats exist on the site and no specially protected, rare or endangered plant or animal species were found.

The revised EIS section on Flora and Fauna submitted states, 'dust and noise resulting from the quarrying activity associated with the proposed development will not have a significant impact on flora or fauna of the application area or adjoining lands. Birds and mammals around the quarry have become habituated to noise associated with quarrying activities over several years.

### **Appraisal**

The results of the revised noise surveys are considered acceptable.

### ***Item 2 – Blast monitoring***

### **Response**

It is stated that further blast monitoring has been carried out, the results of which are currently not available and will be forwarded to the Planning Authority once received.

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## Record of Executive Business and Manager's Order

The applicant reiterates the conclusions from the ecological survey as detailed above.

### Appraisal

The results of the blast monitoring would be necessary in order to fully assess the impacts of this application. Said results should be requested by way of a request for clarification of further information.

### *Item 4 – Methodology, Indicators, and Mitigation Measures*

#### Appraisal

- 4.1 The response to 4.1 as set out in Appendix B of the response to a request for additional information outlines the methodology and provides sufficient information for the imposition of conditions.
- 4.2 (a) The response refers to EPA guidelines.
- 4.2 (b) The bedrock of the quarry (shale) has low storage and transmissive properties. Thus ground water recharge is not a significant issue.
- 4.2 (c) The noise limit value 55 dB(A) relates to the EPA guidelines.
- 4.2 (d) The response refers to the EPA Guidelines.
- 4.2 (e) This item refers to risk management of accidental spills. The applicant responds that fuels and chemical related to operations are not stored on the site. However it is noted that the site layout has included a bunded hard stand area for refuelling and storage.

#### Appraisal

The responses to this item clarifies issues and provides sufficient for the imposition of conditions in the event of a grant.

### *Item 5 – Roads Matters regarding Wicklow County Council*

#### Appraisal

The applicant has submitted a letter from Wicklow County Council by way of unsolicited further information on 14<sup>th</sup> December 2007. This letter comprises that consultation took place, however no detailed technical documentation to address these issues raised by County Wicklow have been submitted, as requested.

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## Record of Executive Business and Manager's Order

Wicklow County Council submission states, 'the road and bridge in County Wicklow that are to be used to access the proposed quarry extension are deficient in terms of pavement, structure, and width and I consider them to be inadequate for the level and type of traffic to which they will be subjected over the expected 40 years life of the quarry'.

### Appraisal

The letter from same outlines a number of improvements works that would need to be carried out to ameliorate existing conditions on said road, including works to the existing bridge. It should be clarified how it is proposed to address the technical requirements outlined in said letter. It is considered that the applicant should be afforded the opportunity to address these matters prior to a full assessment of this application being made.

As such, the applicant should be requested, by way of a request for clarification of further information, to submit revised drawings / details addressing the following (in consultation with the Roads Department of Wicklow County Council):

- Details of proposals for truck wheel and body wash facilities and for regular road cleaning in the vicinity of the quarry;
- Details of proposals to alert members of the general public and other motorists and road users of the existence and location of the entrance to the quarry;
- The L4382 that connects the R114 to the quarry entrance has no line markings. The applicant is requested to address this deficiency and submit revised drawings detailing same;
- The L4382 road surface has failed in places, as stress cracking is visible between the bridge and quarry entrance. This results from the road structure being inadequate for the type and level of traffic using same. The applicant is requested to address this matter;
- The applicant is requested to submit revised details of the proposed haulage routes to and from the quarry, as haulage routes 1 and 2 referred to in the Traffic Impact Assessment (TIA) appear identical;
- The applicant is requested to submit a Road Safety Audit for the proposed development, with regard to the volumes of traffic gaining access to the quarry from the N81 via the local road network;
- The applicant is requested to submit details with regard to public lighting, in particular lighting proposed at the quarry entrance;
- The L4382 road width north of the quarry entrance creates conflict when trucks meet while travelling in opposite directions. This is particularly evident at the masonry bridge, which can only accommodate one-way traffic. The L4382 road width south of the quarry entrance is wholly unsuitable for quarry traffic. The applicant is requested to address this matter;

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- The existing masonry arch bridge is in a distressed state and the following structural deficiencies should be addressed:
  - Scouring evident at the road edge at the southeast wing wall;
  - Scouring of the mortar joints in the masonry arch from the road above;
  - The southwest wing wall has been demolished, presumably by a vehicular impact;
  - The northwest wing wall has also been struck and is overhanging;
  - The southwest wing wall shows evidence of scouring to its face.

Furthermore, the report of the Roads Department regarding the original application noted that adequate vision splays be provided at the access to the proposed development and stated that proposals for mirrors was not accepted. For the purposes of clarification, the applicant should be requested to submit details of how it is proposed to achieve adequate visibility splays at the existing access point, accompanied by documentation detailing sufficient legal interest in the land to achieve said visibility splays. The applicant should be requested to consult with the Roads Department of South Dublin County Council prior to any re-submission. This matter should also be addressed by way of a request for clarification of further information.

### *Item 6 – Proposed extension above the 350 metre contour line*

#### **Response**

It is stated that the quarry has been in operation since circa 1930's and that extraction has taken place above the 350 metre contour line for a significant period of years, as indicated by comparing the current quarry extraction area with the position of the 350 metre contour line. Extraction above the 350 metre contour line pre-dated the introduction of the 350 metre contour restriction in the South Dublin County Council Development Plan 1998.

The applicant refers to the photomontages originally submitted and reiterates that 'the continued development of the quarry, inter alia, will not result in any significant alteration to the landscape'.

The applicant also states that restrictions imposed by the Planning Authority with regard to same would fall within the scope of compensation provision, under Section 261 (8)(b) of the Planning and Development Act 2000, in that conditions imposed regarding the above would not relate to the 'prevention, limitation or control of emissions from the quarry or the restoration of land on which the quarry is situated'.

#### **Appraisal**

It is considered that this issue should be addressed through rehabilitation measures.

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### *Item 7 – Rehabilitation / Restoration and Aftercare*

#### **Response**

The response includes plans showing restoration works and the applicant proposes a condition for five yearly reviews of the landscaping works and progressive restoration works.

#### **Appraisal**

The response to this item clarifies issues and provides sufficient information for the imposition of conditions in the event of a grant.

### *Item 8 – On site facilities*

#### **Response**

There are no office facilities on site, the applicant operates the administrative element of the business from their residence, located adjacent to the site boundary. There is an existing area at the top of the quarry access road that would be suitable for a future office facility. This is detailed on Figure RFI 2 submitted

It is also stated that Shillelagh Quarries do not envisage any future change in ownership of the quarry at this time.

This response is acceptable.

#### **Appraisal**

The information submitted is acceptable.

### *Item 9 – Surface water*

#### **Response**

The applicant has submitted revised information with regard to same.

#### **Appraisal**

The information submitted is acceptable to the Environmental Services Department who outline no objections subject to conditions.

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### *Item 10 – Truck capacity*

#### **Response**

It is stated that each truck accommodates 20 tonnes of material.

#### **Appraisal**

This is acceptable.

### *Item 11 – Overburden areas*

#### **Response**

It is stated that the existing / proposed overburden storage areas will be reviewed on a regular basis as part of the health and safety risk assessment for the quarry.

Section 2.4.6 of the EIS states that 'overburden slopes are designed with a slope angle of 34 degrees from the horizontal' to ensure long term stability. Provision has also been made in the working scheme for a 10 metre set-back from the proposed overburden storage area to the edge of the extraction area.

#### **Appraisal**

The response to this item clarifies issues and provides sufficient information for the imposition of conditions in the event of a grant.

#### **Further Observations / Representations**

None on record

#### **Further Consultations**

Environmental Services Department – No objections subject to conditions.

Roads Department – It is noted that the applicant has not addressed any of the items raised in the letter from Wicklow County Council – Roads Department.

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## Record of Executive Business and Manager's Order

Parks and Landscape Services Department – No objections subject to conditions

Environmental Waste Management – No objections subject to conditions.

Environmental Pollution Control – No report received to date.

Environmental Health Officer – No objections subject to conditions.

Wicklow County Council – The applicant should be requested to submit proposals that address all the issues raised by Wicklow County Council – Roads Department, as detailed in a letter to the applicant dated 15<sup>th</sup> November 2007.

### **Conclusion**

The applicant has not adequately responded to the further information requests pertaining to the use of lands to the north-east of the subject site, blast monitoring and roads / access matters. Clarification of further information of these matters should be requested prior to a full assessment of this application.

### **REPORT IN RESPONSE TO CLARIFICATION OF FURTHER INFORMATION REQUEST**

**REG. REFERENCE:** SD07A/0276

**CASE OFFICER:** Anthony McNamara

**REPORT DATE:** Monday 15<sup>th</sup> September 2008.

### **Further Observations/Representations**

None on record for subject site

### **Further Consultations**

Environmental Services Department –

Foul Drainage – No objections subject to conditions;

Surface Water Drainage – No objections subject to conditions;

Water – No objections.

Roads Department – No objections subject to conditions.

Parks and Landscape Services Department – No report received to date.

Environmental Health Officer – No objections.

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## Record of Executive Business and Manager's Order

### Introduction

A response to the clarification of further information request was received on 30<sup>th</sup> July 2008.

### *Item 1 – Lands to the north east of the site*

### Response

The applicant states that the subject lands are in use for agricultural purposes. It is also stated that the works undertaken to date and proposed are related to land reclamation under Class 11, Part 3 of the Planning and Development Regulations 2001 (as amended), so that the land can be used more effectively for agricultural use. It is stated that the lands were originally in an unsuitable state arising from topography and poor drainage. The purposes of the imported shale and topsoil is to improve the topography and drainage of the land.

The applicant states that a Teagasc Agricultural Advisor carried out an inspection of the lands and that it is intended to follow the recommendations of the advisor with regard to the establishment of grass on the reclaimed lands.

### Appraisal

S4778 refers to the current enforcement file with regard to the above works being carried out on the lands to the north-east of the subject site. The response of the applicant is assessed having regard to the following:

#### Planning and Development Act 2000

Section 3 of the Act defines development as 'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.'

Section (3)(2)(b)(iii) states that where land becomes used for the deposit of vehicles, whether or not usable for the purpose of which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris, the use of the land shall be taken as having materially changed.

Section 32 imposes an obligation on a person to obtain permission for any development of land, excluding exempted development, and development that is unauthorised by way of retention.

Exempted development is governed by Section 4, which sets out a number of exemptions including:

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“development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used. (Section 4(1)(a))”

Sections 4 also makes provision for the Minister for the Environment to make regulations that prescribe further classes of development that are exempt for the purposes of the Act.

### Planning and Development Regulations 2001 (as amended)

Part 2 of the regulations relates to exempted development. Article 6 states that development specified in column 1 of Part 1 of Schedule 2 shall be exempt for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of Part 1.

Schedule 2 Part 3 sets out exempted development for land reclamation. Class 11 relates to: Development consisting of the carrying out, on land, which is used for the purpose of agriculture or forestry, of any of the following works –

- (a) field drainage’
- (b) land reclamation,
- (c) The removal fences,
- (d) The improvement of existing, or
- (e) The improvement of hill grazing.

The above exemption has no conditions or limitations.

### Relevant Section 5 Referrals to An Bord Pleanála

25.RL.2051: The Board ruled that development comprising the filling of land at Balnavine, Collinstown, County Westmeath with clay and rubble was not exempt development for the following reasons:

- (a) the activity/operation proposed in this referral constitutes a material change of use of the land by reference to Section 3(2)(b)(iii) of the Planning and Development Act, 2000,
- (b) the activity/operation proposed in this referral comprises development as defined in Section 3 of the Planning and Development Act, 2000, and
- (c) it has not been established to the satisfaction of the Board that the activity/operation proposed in this referral comes within the scope of Class 11 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, having regard particularly to the fact that it is considered that the activity/operation proposed in this referral does not constitute land reclamation solely for the purpose of agriculture or forestry.

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## Record of Executive Business and Manager's Order

09.RL.2169: The Board ruled that development comprising the filling of lands with builder's rubble at Griffinrath, Celbridge, County Kildare was not exempt development for the following reasons:

(a) the said deposition of material on the land constitutes a material change of use of the land by reference to section 3(2)(b)(iii) of the Planning and Development Act, 2000, by reason of the type of materials deposited, and

(b) the said deposition of materials on the land does not come within the scope of Class 11 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, having regard to the type of materials deposited.

### Works on site

The applicant states above that the materials deposited on the lands comprise imported shale and topsoil, and no reference is made to where this material originates. Subsequent to S4778 (referred above), the Planning Authority considers the works carried out on the subject lands involve the deposition of waste material, in particular overburden from the adjacent quarry onto former agricultural fields under grass cover.

### Exempted Development

It is noted that the application site is zoned 'H' – to protect and enhance the outstanding natural character of the Dublin Mountain Area. Within this context, Section 4(1)(a) of the Planning and Development Act 2000 includes an exemption for development consisting of the use of any land for the purpose of agriculture. Schedule 2 Part 3 of the Planning and Development Regulations 2001 (as amended) also sets out exempted development for land reclamation (Class 11) for the purpose of agriculture or forestry.

It is considered that these provisions do not apply to the subject development given the deposited material includes quarry overburden and rock, which would not be conducive to agriculture (pasture or tillage) or forestry in terms of soil condition. Furthermore the site is not currently used for agriculture or forestry; is in the ownership of the quarry owner and forms part of a larger site used as a quarry. In the applicant's submission whilst reference is made to proposed compliance with the recommendations of a Teagasc Agricultural Advisor, no information has been submitted with regard to the precise nature of agriculture to be carried out on the lands.

Due to the nature and extent of the development which has been relatively evenly spread and levelled, with the exception of five furrows of mounds of topsoil and overburden reaching approximately 1.8 in height, covering an area of circa 2.5 hectares, it is considered that the Class 11 exemption does not apply to the subject development, in that the subject lands are being used in association with the quarrying activities on adjacent lands, and there is insufficient evidence on site and submitted with this application that the works are for the purposes of land reclamation for agriculture or forestry use.

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## Record of Executive Business and Manager's Order

Furthermore, it is considered that the use of the subject site for the deposition of overburden from adjacent quarrying activities constitutes works as defined under Section 2 of the Planning and Development Act 2000 and development (by way of a material change of use) as defined under Section 3 in particular Section (3)(2)(b)(iii).

In the event of a grant of permission it is considered that a condition be attached requiring the applicant to submit a separate application for the retention and completion of land reclamation works on the subject lands in question.

### *Item 2 – Blast Monitoring results*

#### **Response**

The applicant has submitted blast monitoring results for blasting tests carried out at a single location, that being the applicants residence (Location B1 on Figure CRFI 1 submitted), for the period January to July 2008. The recorded air pressure exceeded 125 dB(L) on three occasions.

#### **Appraisal**

The Planning Authority is not satisfied that comprehensive blasting tests were carried out at multiple locations surrounding the subject site, as referred to in the request for further information dated 11<sup>th</sup> June 2007. It is considered that in the event of a grant of planning permission this matter can be addressed by way of condition. In particular this condition should state that advance notification of each blasting operation shall be provided to all landowners and occupiers within 500 metres of the quarry.

### *Item 3 – Roads Matters raised by Wicklow County Council*

#### **Response**

The applicant has submitted an itemised response from Atkins with regard to this item.

#### **Appraisal**

- (a) The location of the proposed truck wheel and body wash facility is acceptable to the Roads Department. It is stated that the proposed wheelwash is a closed system and would use recycled water. This is acceptable.

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## Record of Executive Business and Manager's Order

- (a) It is proposed to locate advance warning signs on the Aghfarrell Local Road. This is acceptable. With regard to improving visibility at the vehicular entrance to the quarry, the report of the Roads Department states that whilst the area outlined in Drawing RK2799P001 is satisfactory, no definition is given of what is meant by 'kept clear'. The Roads Department recommend that the boundary ditch should not be higher than 0.9 metres and that all trees / shrubs within the 4.5m x 90m vision splay be removed. Public lighting is proposed at the quarry entrance to enhance visibility during hours of darkness and poor visibility. This is acceptable to the Roads Department.
- (b) The report of the Roads Department states that new road markings and signage shall be provided in accordance with the Traffic Signs Manual.
- (c) The Roads Department require design details of the strengthening works including extent, depths of construction and surfacing materials to be submitted for written agreement within three months of a date of permission. It is considered this matter can be addressed by way of condition.
- (d) The report of the Roads Department states that the only haulage route to be used is via the L4382 and the R114 to the N81 at Brittas Village.
- (e) A Road Safety Audit has been submitted, however, no designer's response to the recommendations given has been included. The Road Safety Audit recommends without exception that South Dublin County Council / National Roads Authority (NRA) carry out remedial works on the problems identified. This is in conflict with the Report submitted by Atkins, which proposes that the applicant carry out remedial works, i.e repairs to bridge, priority controls for the existing bridge, strengthening/resurfacing of L4382. As such the Roads Safety Audit submitted is not acceptable on this basis.

The Roads Department state that major remedial works to the R114 and the junction of the R114/L4382 are necessary and that these works are required because of the movements of HGV's generated by this development and by other quarry's in the vicinity (in particular Kilsaran Quarry on the Ballinascorney Road). The Roads Department recommend that a condition be attached requiring the applicant to submit a scheme for the improvement of the R114 for the written agreement of the Planning Authority, or alternatively the applicant should be required to pay a financial contribution of €67,500\* per annum for a period of ten years to enable the Council to carry out remedial works. It is considered that this condition could be attached under Section 34 4 (b) of the Planning and Development 2000, and would not attract compensation under 261 8(b) of the Act.

- (f) The Roads Department request that details of proposed public lighting should be submitted for the written agreement of the Planning Authority. This matter can be addressed by way of condition.
- (g) The Roads Department request that with regard to the proposed priority junction at the bridge, details of the lining and signage should be submitted for the written agreement of the Planning Authority. This matter can be addressed by way of condition.

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## Record of Executive Business and Manager's Order

- (h) The remedial works proposed to the existing bridge are considered acceptable to the Roads Department.

### *Item 4 – Achieving vision splays*

#### **Response**

Drawing RK2799P001 submitted shows proposed vision splays, to be achieved by an area of land to be kept clear.

#### **Appraisal**

The Roads Department consider that the existing boundary ditch should not be higher than 0.9m and that all trees / shrubs within the 4.5m x 90m vision splays be removed. The report of the Roads Department also states that there appears to be an area between the blue line (which follows the stream) and the boundary of the R4382 not in the applicant's ownership. The applicant was requested to submit documentation detailing sufficient legal interest in the lands to achieve visibility splays, this information has not been submitted. It is considered this matter can be addressed by way of condition, stating that no further development can take place on the site until written consent from the owners of said lands has been submitted for the written agreement of the Planning Authority.

#### **Other Matters**

##### *Life of permission*

It is the view of the Planning Authority that in light of the remedial works required to the road network including the existing bridge on the L4382, the proposed quarry extension located above the 350m contour line, changes in environmental standards and quarrying technology over time, and to facilitate a review of on-site restoration works, a condition limiting the timescale of this permission would be appropriate. It is important to note that in accordance with Section 4.9 of 'Quarries and Ancillary Activities – Guidelines for Planning Authorities', the purpose of setting a finite period of this permission is not to anticipate that extraction should not continue after this period, but rather to enable the Planning Authority in conjunction with the developer to review the aforementioned matters relating to quarrying activities on the site. In consideration of the recent An Bord decision (PL 04.224250) whereby the life of the permission for continuance of the existing Midleton Quarry, County Cork was limited to fifteen years, it is considered ✱ appropriate that the same period of permission should apply in this case. Midleton Quarry is also in existence since pre-1963.

#### **Conclusion**

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

Following an assessment of the clarification of further information submitted and the revised details submitted, it is considered that, subject to compliance with the Environmental Impact Statement (EIS) submitted, the mitigation measures proposed and the conditions imposed with this permission, the proposed development is in accordance with the specific policies of the Planning Authority in relation to extractive industries, as set out in the South Dublin County Council Development Plan 2004-2010, and the Department of the Environment, Heritage and Local Government publication "Quarries and Ancillary Activities: Guidelines for Planning Authorities", April 2004.

The proposed development is summarised as follows:

Extent of existing quarrying area = 11.3 hectares  
Extent of proposed quarry extension = 4.2 hectares  
Total extraction area = 15.5 hectares  
Total site area = 28.1 hectares

I recommend that a decision be made pursuant to the Planning & Development Acts 2000-2004, for the reasons set out in the First Schedule hereto, to Grant Permission for the said development in accordance with the said plans and particulars, subject to the (40) condition(s) specified in the Second Schedule hereto, the reasons for the imposition of the said condition(s) being as set out in the said Second Schedule.

### **FIRST SCHEDULE**

It is considered that the proposed development accords with the policies and objectives of South Dublin County Council, as set out in the South Dublin County Council Development Plan 2004-2010 and subject to the conditions set out hereunder in the Second Schedule is hereby in accordance with the proper planning and sustainable development of the area.

### **SECOND SCHEDULE**

#### **Conditions and Reasons**

1. The development shall be carried out in its entirety in accordance with the plans, particulars and specifications lodged with the application, and as amended by Further Information received on 10th December 2008, Unsolicited Further Information received

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## Record of Executive Business and Manager's Order

on 14th December 2008, Clarification of Further Information received on 30th July 2008, save as may be required by the other conditions attached hereto.

REASON: To ensure that the development is carried out in accordance with appropriate environmental standards and practices, and to enable effective control to be maintained, in the interests of amenity and the proper planning and sustainable development of the area.

2. Prior to the end of the fifteenth year after the final grant of permission the quarry operator shall seek and have the prior written consent of the Planning Authority for the continued extraction of rock and quarrying, such consent to be subject to the conditions applicable pursuant to Section 261 (8)(b) of the Planning and Development Act 2000 which can be applied without liability for compensation.

REASON: To enable the likely significant environmental effects of future quarrying operations to be assessed in the light of circumstances then pertaining, including any relevant changes in environmental standards and technology and in the interest of amenity and the proper planning and sustainable development of the area.

3. Within six months of the date of this permission the operator / developer shall submit a separate planning application to the Planning Authority for the retention and completion of land reclamation works on agricultural fields to the north-east of the subject site (within the applicant's overall landholding).

REASON: The use of the subject lands for the deposition of overburden from adjacent quarrying activities constitutes works as defined under Section 2 of the Planning and Development Act 2000 and development (by way of a material change of use) as defined under Section 3 of the Act, in particular Section (3)(2)(b)(iii).

4. Within three months of the date of this decision the operator/developer shall submit a scheme for the improvement of the R114 for the written agreement of the Planning Authority, such scheme to be carried out to the satisfaction of the Road Authority at the expense of the operator/developer, or alternatively a financial contribution of €67,500 per year to be paid for a period of 10 years from the date of this decision to enable the Planning Authority to improve the road, the contribution to be index linked annually to the Construction Tender Price Index.

REASON: The Planning Authority requires the carrying out of works which are required for the purposes of the development under Section 261(8)(b) incorporating Section 34(4)(b) of the Planning and Development Act 2000. Having regard to the increased volume of HGV traffic now emanating from the quarry on to this substandard road, it is considered reasonable that the owner / operator of the quarry should improve the road to a satisfactory standard or pay a contribution thereto so as to prevent endangering public safety by reason of traffic hazard.

5. Within three months of the date of the final grant of permission the operator/developer

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shall submit the following for the written agreement of the Planning Authority:

- a) Design details of the strengthening works of the L4382 including extent, depths of construction and surfacing materials. A timescale, including date of completion, for the implementation of the works shall also be submitted;
- b) Location and design details of all public lighting proposed at the existing quarry entrance. A timescale, including date of completion, for the implementation of this public lighting works shall also be submitted;
- c) Design details of the lining and signage of the the proposed Priority Junction at the existing bridge on the L4382. A timescale, including date of completion, for the implementation of the works shall also be submitted;
- d) A timescale, including date of completion, for the remedial works to be carried out on the existing bridge on the L4382 as detailed in the documentation submitted on 30th July 2008.

The road markings and signage shall be in accordance with the publication Traffic Signs Manual (as amended), Department of Transport (1996).

REASON: In the interests of maintaining and improving the public road which is required for the safe purposes of providing safe access to the permitted development and in the interests of the proper planning and sustainable development of the area.

6. a) With regard to achieving adequate visibility splays at the existing vehicular entrance to the quarry, there is a portion of land between the blue line of the applicant's landholding (which follows the stream) and the boundary of the R4382 that is not in the applicant's ownership. Within three months of the date of this permission, the operator/developer shall submit for the written agreement of the Planning Authority, a letter of written consent from the owner of said lands, for the removal of trees / shrubs at this location to achieve adequate vision splays. No further development shall take place on the subject lands until this letter of consent has been submitted to the Planning Authority.  
b) With regard to vision splays indicated on Drawing RK2799P001 submitted on 30th July 2008, the existing boundary ditch shall not exceed 0.9 metres in height and all trees / shrubs within the 4.5m x 90m vision splay shall be removed.

REASON: In the interests of traffic safety and the proper planning and sustainable development of the area.

7. Within three months of the date of the final grant of permission, the operator/developer of these lands shall submit for the written agreement of the Planning Authority, a management plan for the appropriate recovery or disposal of all production residues, including rock and subsoil of no commercial value, arising from quarrying operations on site.

REASON: To safeguard the amenities of the area and in the interests of the proper

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planning and sustainable development of the area.

8. a) The water supply and drainage infrastructure, including the disposal of surface water, shall comply with the technical requirements of the Planning Authority.
- b) There shall be complete separation of the foul and surface water drainage systems.
- c) As the development includes provision for discharge of trade effluent to surface/ground water, within three months of the date of this permission, the operator/developer shall apply for, and obtain, a discharge licence from the Local Authority.
- d) Any refuelling area shall drain to a tank which is bunded or double skinned with an interceptor fitted to the outlet.
- e) Within three months of the date of this permission, the operator/developer of these lands shall submit for the written agreement of the Planning Authority, equipment and procedures to be followed in the event of a fuel spillage.
- f) Within three months of the date of this permission, the monitoring locations, sampling procedure, and suite of water quality parameters to be tested for, shall be submitted for the written agreement of the Water Pollution Control Section, South Dublin County Council. Monitoring shall be carried out on a quarterly basis and the results of the monitoring shall be submitted to the Planning Authority four weeks after the end of every quarter being reported on.
- g) The operator/developer shall ensure there is no reduction in the baseflow in streams, downstream of the development.
- h) In the event of quarrying activities having an adverse impact on the existing private wells in the vicinity, the operator/developer of these lands shall undertake appropriate remedial measures agreed with the Planning Authority at his own expense. In the event of disruption of water supplies, the developer shall cease any operations causing such disruption until the affected water supply has been restored or replaced.
- i) All drainage works for this development shall comply with the Greater Dublin Regional Code of Practice for Drainage Works which can be viewed/downloaded from <http://environment.southdublin.ie> (click-publications then specifications).

REASON: In the interests of public health and in order to ensure adequate drainage provision.

9. The extraction of rock on the subject lands shall be limited to a continuous and total area of not more than 15.5 hectares as indicated on plans submitted on 18th April 2007. No extraction of rock shall be undertaken on any part of the lands outside the said area unless a separate planning permission has been granted for such development. Within three months of the date of final grant of permission a map to a suitable scale showing the precise extent of the permitted area of extraction shall be submitted for the written agreement of the Planning Authority.

REASON: To enable the quarrying operations to be assessed in the light of relevant changes in environmental standards and technology, in the interest of amenity and the proper planning and sustainable development of the area.

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

10. Quarrying operations, other than blasting, shall be carried out only between 07.00 and 20.00 hours on Monday to Friday inclusive and between 07.00 and 14.00 hours on Saturday. No such activity shall take place outside these hours or on Sundays or public holidays. No rock-breaking activity shall be undertaken within any part of the entire quarry complex before 08.00 hours each day.

REASON: In the interest of amenity and the proper planning and sustainable development of the area.

11. a) Free-field noise levels attributable to the operation of the entire quarry complex, when measured at the nearest noise sensitive receptor, shall not exceed  
55 dB(A) (1 hour LAeq) between 08.00 - 20.00 hours  
45 dB(A)(1 hour LAeq) between 20.00 – 08.00 hours

b) There shall be no tonal or impulsive noise at sensitive receptors between 20.00 – 08.00 hours due to activities carried out on the site.

c) A quarterly survey and assessment programme shall be undertaken to assess the impact of noise emissions arising from the operation of the entire quarry complex. The scope and methodology of this survey and assessment programme shall be submitted to the Planning Authority for its written agreement within three months of the date of this decision. The results obtained from the assessment programme shall be submitted quarterly for the written agreement of the Planning Authority. The operator shall carry out any amendments to the programme required by the Planning Authority following this quarterly review.

REASON: In the interests of residential amenity, public health and the proper planning and sustainable development of the area.

12. a) Ground-borne Vibration levels from blasting shall not exceed a peak particle velocity of 12 mm/second, as measured in any of the three mutually orthogonal directions about a fixed point at any sensitive receptor location.

b) Blasting shall not give rise to air overpressure values in excess of 125 d(B)(Lin)max peak with a 95% confidence limit at any sensitive receptor location. No individual air overpressure value shall exceed the limit value by more than five dB (Lin).

c) Blasting shall only be carried out between 08.00 and 18.00 hours on Monday to Friday inclusive. Blasting shall not take place outside these hours or on Saturdays, Sundays or public holidays.

d) Advance notification of each blasting operation shall be provided to all landowners

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and occupiers within 500 metres of the quarry. Within 3 months of the date of this permission, the developer of these lands shall submit for the written agreement of the Planning Authority, a map (to an appropriate scale) indicating all dwellings within a clearly defined 500 metre boundary around the quarry. Prior to the firing of any blast, advance warning signals indicating that blasting operations are about to commence and 'all clear' signals indicating that the blasting operations have been completed shall be given (by means of sirens or other audible devices operated by the developer) to members of the public within stated 500 metres of the quarry. An audible alarm for a minimum of one minute shall be sounded. This alarm shall be of sufficient power to be heard at all dwellings adjacent to the quarry.

e) A suitable monitoring programme shall be developed to assess the impact of quarry blasts. Details of this programme shall be submitted for the written agreement of the Planning Authority within three months of the date of this decision. This programme shall provide for monitoring to be carried out whenever a blast occurs, and shall include an annual review of all blast monitoring data, to be undertaken by a competent person, the results of which shall be submitted to the Planning Authority within two weeks of completion for its written agreement. The operator shall carry out any amendments to the programme required by the Planning Authority following this annual review.

REASON: To ensure the protection of amenity and public health, in the interest of the proper planning and the sustainable development of the area.

13. a) Total dust deposition (soluble and insoluble) measured at the site boundary shall not exceed 350mg/m<sup>2</sup>/day (when averaged over a 30 day period). The Bergerhoff Method (German Standard VDI 2119, 1972) shall be used to measure dust deposition. Continuous monitoring of dust deposition shall be carried out. Any emission which does not comply with the above standards shall be notified to the Planning Authority immediately.
- b) Within six months of the date of final grant of permission details of satisfactory arrangements for the suppression and control of dust arising from the open working, processing and the handling and transportation of mineral and / or product, and stripping of overburden, shall be submitted for the written agreement of the Planning Authority. The location of sensitive receptors and prevailing wind directions shall be taken into account when locating haul roads, tips, stockpiles and processing plant. The area of excavated land not covered by vegetation shall be kept to a minimum. The stripping of overburden shall be carried out only during favourable weather conditions. The deposition of dust on surrounding lands in excess of allowed limits, or spillage on to public roads shall be prevented at all times.
- c) A monthly survey and monitoring programme of dust shall be undertaken to provide for

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compliance with the above limits. Details of this programme, including the location of dust monitoring stations, shall be submitted for the written agreement of the Planning Authority within three months of the date of final grant of permission. This programme shall include an annual review of all dust monitoring data, to be undertaken by a competent person, the results of which shall be submitted to the Planning Authority within two weeks of completion for its written agreement. The operator/developer shall carry out any amendments to the programme required by the planning authority following this annual review.

REASON: To ensure the protection of amenity and public health, in the interest of the proper planning and sustainable development of the area.

14. All recorded data from monitoring of noise emissions, blasting, and dust deposition, shall be submitted to the Planning Authority in a suitably formatted and readable form on a quarterly basis, within ten working days of the end of each quarter. The monitoring quarters to be January – March, April – June, July – September and October – December. Where any data is missing this fact must be recorded and a reason given for its omission.

REASON: To ensure the protection of residential amenity and public health, in the interest of the proper planning and sustainable development of the area.

15. a) The names, job functions and phone numbers (both fixed line and mobile numbers) of all key personnel for the operation of this quarry shall be provided to South Dublin County Council. All changes in personnel or particulars must also be notified to the Council as soon as they occur.
- b) The operator/developer shall provide all landowners and occupiers within 500 metres of the quarry, with appropriate contact details which may be used in the event that any such person wishes to inform the operator of any incident, such as the discovery of flyrock on lands outside the quarry, or otherwise to make a complaint in respect of an aspect of the quarry operation.
- c) A public notice shall be erected and maintained at the entrance to the quarry. This notice shall contain the name of the operating company and contact details, including out of hours contact, which may be used in the event that any person wishes to contact the operator in respect of any aspect of the quarry operation.

REASON: In the interests of amenity, public health, and the proper planning and sustainable development of the area.

16. Within three months of the date of final grant of permission a Digital Terrain Model of the entire lands within the site boundary, as shown on Drawings 02 and 03 received 18th

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April 2007, shall be submitted to the Planning Authority. The Digital Terrain Model shall be prepared by a civil engineer / surveyor agreed by the Planning Authority, and shall include details of all areas, a) that have been excavated to date, b) that have been prepared for excavation, and c) that have been rehabilitated. A comprehensive photographic record of the quarry workings, and views of the quarry from public roads in the vicinity of the site, the viewing positions of which shall be shown on a map to a suitable scale, shall also be submitted.

REASON: To ensure effective development management of the quarrying operations in the interest of amenity and the proper planning and sustainable development of the area.

17. Five years from the date of final grant of permission and at five-yearly intervals thereafter the quarry operator shall submit to the Planning Authority an up to date Digital Terrain Model of the entire lands within the site boundary as shown on Drawings 02 and 03 received 18th April 2007. The Digital Terrain Model shall be prepared by a civil engineer / surveyor approved by the Planning Authority, and shall include details of all areas a) that have been excavated to date, b) that have been prepared for excavation, and c) that may have been rehabilitated.

REASON: To ensure effective development management in the interest of amenity and the proper planning and sustainable development of the area.

18. On an annual basis (by the end of February each year) for the lifetime of the quarry, three copies of an environmental audit shall be submitted to the Planning Authority. This audit shall be carried out at the expense of the operator/developer by suitably qualified and experienced independent environmental auditors, whose names shall be submitted to the Planning Authority for prior approval, and shall contain the following:
  - a) A record of all movements of heavy vehicles outside the permitted operating hours.
  - b) A record of surface water quality, and groundwater quality and levels, measured at monthly intervals.
  - c) A full record of any breaches over the previous year of dust, noise, vibration / air overpressure, and water quality standards.
  - d) A written record of all complaints received, including actions taken on each complaint.

REASON: To ensure that the quarry shall be operated in compliance with the stated standards in the interests of amenity, pollution control, public health and the proper planning and sustainable development of the area.

19. The quarry operations shall comply with the environmental standards for noise, vibration, and dust, contained in the Environmental Protection Agency document "Environmental Management in the Extractive Industry (Non-Scheduled Minerals)", and relevant

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standards as revised in the future introduced either by legislation, or guidance from the Environmental Protection Agency or it's successor.

REASON: In the interests of amenity, pollution control, public health, and the proper planning and sustainable development of the area.

20. Within three months of the date of final grant of permission a scheme of external lighting for the entire site shall be submitted for the written agreement of the Planning Authority. The scheme shall be designed, installed and operated, so as to prevent nuisance to neighbouring occupiers and road users, and to avoid over-lighting, and lighting units shall be of a type that deflects light downwards from the horizontal.

REASON: In the interests of amenity, traffic and public safety, and the proper planning and sustainable development of the area.

21. Metal advance warning signs shall be erected and maintained in good and clean condition at the site entrance / exit. Details of the material, content, design and location of these signs shall be submitted for the written agreement of the Planning Authority within three months of the date final grant of permission.

REASON: In the interests of traffic safety.

22. No waste, debris, excavated materials or dust caused by the haulage of material either to or from the site shall be deposited on the public roads, footpaths, margins etc. in the vicinity of the site. The quarry operator shall be responsible for maintaining the public roadways in the vicinity of the site entrances / exits in a clean state, free from mud and other debris caused by the haulage of such material.

REASON: In the interests of traffic safety and amenity.

23. (a) The proposed wheel washing facility shall be provided with a continuous water supply facility together with a suitable sump arrangement for the drawing off of waste waters arising. It shall be kept properly maintained and cleaned at regular intervals, such that trucks, on exiting the wheel wash, shall not have mud or dust adhering to their tyres.  
(c) All heavy goods vehicles exiting the site shall use the wheel washing facility.

REASON: In order to prevent dust emissions in the interests of amenity, traffic safety, and the proper planning and sustainable development of the area.

24. All surface water run-off from roofs, entrances, driveways, parking areas etc. shall be

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collected and disposed of within the site to soak pits, drains or adjacent watercourses. In particular, no such surface water run-off shall be allowed to flow on to the public roadway or adjoining properties, nor to discharge to any effluent disposal system or public foul sewer.

REASON: To prevent water pollution in the interests of public health and the protection of natural heritage and the proper planning and sustainable development of the area.

25. a) No effluent from the site shall discharge to surface or ground waters other than in accordance with the terms of a current licence granted under the relevant provisions of the Local Government (Water Pollution) Acts, 1977–1990 or as may be amended from time to time.
- b) Only clean uncontaminated storm water shall be discharged to surface waters. Interceptor traps shall be fitted to the storm water drainage system where appropriate, to prevent accidental spillages of oils, greases, solvents or other contaminated matter entering the watercourses or soak ways or groundwater.
- c) Where it is proposed to discharge surface water from impermeable surfaces (roads, roofs etc) to existing drains or watercourses then the discharge shall be limited to 6 litres per second per hectare of impermeable surface to reduce the risk of downstream flooding. This shall be achieved by constructing attenuation storage, preferably a pond, and restricting the outflow discharge by means of a 'Hydrobrake' or equivalent device. Details of the design shall be submitted for the written agreement of the Planning Authority.

REASON: To prevent water pollution and flooding in the interests of public health and the protection of natural heritage and the proper planning and sustainable development of the area.

26. Adequate precautions shall be taken to prevent surface water run-off from open cut areas flowing directly to any stream or watercourse. All such water shall be trapped and held in settling lagoons until such time as the suspended solids are deposited and the colour of the discharge water indicates that it will not cause any discolouration of the receiving waters. Where possible appropriate measures shall be taken to prevent water from entering excavations. Adequate clearance from watercourses and wells shall be maintained

REASON: To prevent water pollution in the interests of public health and the protection of natural heritage and the proper planning and sustainable development of the area.

27. a) All surface water from the plant area, quarry floor and internal haul roads shall be directed to sumps and discharged from there to settling lagoons.

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b) The settling lagoons shall be of an adequate size and properly maintained to ensure the efficient removal of suspended solids.

c) Site roads and approaches to river crossings shall be regularly brushed or scraped and kept free from dust and mud deposits.

REASON: To prevent water pollution in the interests of public health and the protection of natural heritage and the proper planning and sustainable development of the area.

28. a) A groundwater level monitoring programme shall be implemented at the quarry. Groundwater levels shall be recorded at monthly intervals, and reported to the Planning Authority on a quarterly basis.
- b) Within three months of the date of final grant of permission a hydrological / hydrogeological report in respect of the quarry, prepared by a suitably qualified person having appropriate experience, shall be submitted to the Planning Authority. The report shall detail all measures proposed to be taken to protect groundwater resources. The report shall have regard to all relevant requirements as set out in the Water Framework Directive, or its future equivalent.

REASON: In the interest of public health, the protection of ground water resources, and the proper planning and sustainable development of the area.

29. a) All over-ground oil or other chemical storage tanks shall be adequately bunded to protect against spillage. Bunding shall be impermeable and capable of retaining a volume in excess of 110% of the capacity of the largest tank.
- b) Bunds shall be tested at intervals of not more than three years and documentation of tests shall be available for inspection by the Planning Authority.
- c) All refueling shall take place on impermeable areas that drain through an interceptor from tanks that are bunded or double skinned.
- d) All waste oil and chemicals shall be removed from the site and disposed of to the satisfaction of the Water Pollution Control Section of the Local Authority.
- e) A spill kit shall be maintained on site with adequate supply of containment booms and absorbent materials to deal with any spillage.
- f) The operator/developer shall ensure that blasting practice minimises the risk of

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

occurrence of nitrate/ammonia residues by proper blast design and implementation, appropriate disposal of any excess explosives, and selection of the appropriate type of explosives.

REASON: To prevent water pollution in the interests of public health and the protection of natural heritage and the proper planning and sustainable development of the area.

30. Settlement ponds shall be regularly cleaned out by the operator as necessary for the efficient operation of the ponds in an environmentally acceptable manner. Appropriate measures shall be put in place to prevent silt leaving the site in any drain or watercourse during the cleaning process. Silt removed from the settlement ponds shall be periodically covered with topsoil and seeded with grass to prevent subsequent dispersal.

REASON: To minimise dust and prevent water pollution in the interest of the proper planning and sustainable development of the area.

31. Detailed records of the types and quantities of all wastes generated by the development shall be maintained and made available for inspection by the Planning Authority upon request. Any treatment / disposal of waste shall be carried out in compliance with the Waste Management Acts 1996–2006, or as may be amended.

REASON: In the interests of public health, safety and the proper planning and sustainable development of the area.

32. Within three months of the date of final grant of permission or such other period as may be agreed with the Planning Authority, a detailed programme outlining the proposed phasing of the quarry workings shall be submitted for the written agreement of the Planning Authority. The proposed phasing shall be detailed on a suitable site plan which shall indicate the areas that have been worked and the depth of the workings, the proposed phasing of extraction for the remaining areas, and the proposed timing of the rehabilitation of all the areas. This phasing programme shall be updated and submitted for the written agreement of the Planning Authority at five-yearly intervals.

REASON: To ensure the satisfactory rehabilitation of the site in the interests of amenity and the proper planning and sustainable development of the area.

33. a) Within six months following approval by the Planning Authority of a programme for the phasing of the quarry workings, or such further period as the Planning Authority may permit, the operator shall submit for the written agreement of the Planning Authority, a comprehensive plan for the rehabilitation of the entire quarry following the cessation of

## **Comhairle Chontae Atha Cliath Theas**

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

quarrying works. This plan shall include detailed proposals for the rehabilitation and landscaping of existing worked out portions of the quarry, and indicative proposals for the rehabilitation and landscaping of future worked out portions of the quarry. The plan shall be updated and submitted for the written agreement of the Planning Authority at five-yearly intervals.

b) The proposals shall, inter alia, provide for the phased carrying out of rehabilitation and landscaping operations within a definite period or periods related to the anticipated pace of extraction operations, and shall provide for the grading of surface levels, surface and sub-surface drainage and attenuation as per the Greater Dublin Strategic Drainage Study guidelines, planting and seeding works, and details of future maintenance.

c) The proposals shall be prepared by a competent professional person with experience in the remediation / rehabilitation of quarries, and shall be supported by detailed maps, section drawings, and graphic material.

d) The source of all material proposed to be used in respect of all rehabilitation works, together with full details of the type of material and the quantities involved, shall be submitted as part of the rehabilitation and landscaping proposals.

**REASON:** To ensure the satisfactory rehabilitation of the site in the interests of amenity and the proper planning and sustainable development of the area, having regard to the location of the quarry on lands within an area zoned Objective 'H', "To Protect and Enhance the Outstanding Natural Character of the Dublin Mountain Area", in the South Dublin County Development Plan 2004-2010.

34. a) Within six months of the date of final grant of permission a comprehensive landscaping scheme to screen views of the quarry workings or otherwise ameliorate the visual impact of the workings, shall be submitted for the written agreement of the Planning Authority. The scheme shall include detailed drawings and specifications of proposals for appropriate landscaping and boundary treatment, including tree planting and mounding, and a satisfactory time frame for the implementation of the scheme. A survey of all trees and hedgerows on the lands carried out by a competent professional to B.S. 5837 shall be submitted as part of the scheme. The agreed scheme shall be implemented to the satisfaction of the Planning Authority.

b) The proposals shall be prepared by a competent professional person with experience in the design of such landscaping schemes, and shall be supported by detailed maps, section drawings, and graphic material.

**Reason:** In the interests of amenity and the proper planning and sustainable development

## **Comhairle Chontae Atha Cliath Theas**

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

of the area, having regard to the location of the quarry on lands within an area zoned Objective 'H', "To Protect and Enhance the Outstanding Natural Character of the Dublin Mountain Area", in the South Dublin County Development Plan 2004-2010.

35. a) Within 12 months of the date of such cessation all buildings, plant and surface equipment shall be removed from the site, and all rehabilitation works shall be completed within 36 months of the date of such cessation. The whole of the surface area (including the slopes and sections containing deposition accruing from the operation of the quarry) shall be rehabilitated by the appropriate land shaping of the ground in relation to the contours of adjoining land.
- b) Specifications and drawings indicating the proposed works to rehabilitate the site, detailing existing contours and the grading and levels of the final contours to which the rehabilitation shall be carried out, shall be submitted to the Planning Authority for agreement in writing.
- c) The proposals shall be prepared by a competent professional person with experience in the remediation / rehabilitation of quarries, and shall be supported by detailed maps, section drawings, and appropriate graphic material.
- d) The works shall not commence until such agreement has issued in writing and the agreed works shall be completed to the satisfaction of the Planning Authority.

REASON: To ensure the satisfactory rehabilitation of the site in the interests of amenity and the proper planning and sustainable development of the area, having regard to the location of the quarry on lands within an area zoned Objective 'H', "To Protect and Enhance the Outstanding Natural Character of the Dublin Mountain Area", in the South Dublin County Development Plan 2004-2010.

36. Any change of use of the lands shall be subject to a separate grant of planning permission for such use.

REASON: For the purposes of clarification of this permission.

37. All topsoil removed in the course of quarrying operations shall be separately retained from waste materials (including sub-soil and overburden) so that it can readily be re-used by spreading evenly over the worked surface or backfilled. Topsoil to be used for on-going landscaping shall be stockpiled in a manner so as to ensure that the soil flora and fauna are not destroyed.

REASON: To ensure the satisfactory rehabilitation of the site in the interests of amenity

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

and the proper planning and sustainable development of the area.

38. Within six months of the date of final grant of permission, the operator/developer shall lodge with South Dublin County Council a bond of an insurance company or other form of equivalent security acceptable to the Planning Authority in the amount of €310,000 (three hundred and ten thousand euro), together with an agreement empowering the Planning Authority to apply such security (or part thereof) to the satisfactory completion of the rehabilitation and aftercare works in the event that the operator fails to secure and rehabilitate the site in the future to the satisfaction of the Planning Authority. The value of the bond or alternative security shall be adjusted annually by reference to the Tender Price Index.

REASON: To ensure the satisfactory rehabilitation of the site in the interests of amenity and the proper planning and sustainable development of the area.

39. In the event of any remains of archaeological or historic interest being discovered on the site, the Planning Authority shall be informed immediately. All works affecting these remains shall cease immediately and shall not re-commence until approval in writing has been received from the Planning Authority, following consultation with the Heritage and Planning Division of the Department of the Environment, Heritage and Local Government.

REASON: To facilitate the investigation of any remains of archaeological or historic interest discovered on the site in the interests of the proper planning and sustainable development of the area.

40. Scrap material shall be removed at least annually from the site in accordance with the requirements of the Planning Authority. Scrap materials shall be deemed to include scrapped trucks, other scrapped vehicles, empty oil barrels, broken or otherwise unusable truck bodies, worn out conveyor belts/chains, worn out batteries, unusable tyres and worn out conveyor/roller shafts.

REASON: To safeguard the amenities of the area and in the interests of the proper planning and sustainable development of the area.

Note 1: The applicant/developer is advised that under the provisions of Section 34 (13) of the Planning and Development Act 2000 a person shall not be entitled solely by reason of a permission to carry out any development.

# Comhairle Chontae Atha Cliath Theas

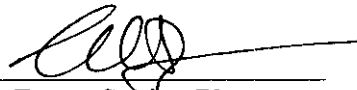
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## Record of Executive Business and Manager's Order

REG. REF. SD07A/0276


LOCATION: Aghfarrell Townland, Brittas, Co Dublin


  
\_\_\_\_\_  
Patricia Devlin  
Senior Executive Planner

  
\_\_\_\_\_  
Colin Ryan, Senior Planner

**ORDER:** A decision pursuant to Section 34(1) of the Planning & Development Act 2000 to Grant Permission for the reasons set out in the First Schedule above, in accordance with the said plans and particulars, subject to the condition(s) specified in the Second Schedule above, the reasons for the imposition of the said condition(s) being as set out in the said Second Schedule is hereby made.

**Dated:**

21/09/08  
\_\_\_\_\_  


  
\_\_\_\_\_

Tom Doherty, Director of Planning

Mr. Michael Murphy,  
Aghfarrell,  
Brittas,  
Co. Dublin.

**NOTIFICATION OF DECISION TO REFUSE PERMISSION  
LOCAL GOVERNMENT (PLANNING & DEVELOPMENT) ACTS, 1963 TO 1999  
AND PLANNING & DEVELOPMENT ACT 2000**

<b>Decision Order No.</b>	<b>2542</b>	<b>Date of Decision</b>	22-Nov-1999
<b>Register Reference</b>	S99A/0016	<b>Date</b>	24-Sep-1999

**Applicant:** Mr. Michael Murphy,  
**Development:** Retain an earth embankment.  
**Location:** Aghfarrell, Brittas, Co. Dublin.  
**Time extension(s) up to and including:**  
**Additional Information Requested/Received:** 14-Apr-1999, /24-Sep-1999, 02-Jan-1999  
**Clarification of Additional Information Requested/Received:** 14-Apr-1999, /24-Sep-1999, 02-Jan-1999

In pursuance of its functions under the above mentioned Acts, the South Dublin County Council, being the Planning Authority for the County of South Dublin, did by Order dated as above make a decision to **REFUSE PERMISSION** in respect of the above proposal, for the reason(s) on the attached numbered pages.

**Reasons**

1. The present quarrying operations on site are unauthorised development in that a planning permission has not been granted nor were the present operations operating prior to October, 1964. As such, it is considered that the retention of an earth embankment which serves the unauthorised development cannot be permitted.
2. It is considered that the proposed development of an earth embankment in an area zoned to protect and enhance the outstanding natural character of the Dublin Mountain Area would be contrary to the policies and objectives of the South Dublin County Development Plan 1998 as the



# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Manager's Order

REG. REF. S99A/0016

LOCATION: Aghfarrell, Brittas, Co. Dublin.

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Senior Executive Planner

**ORDER:** A decision pursuant to Section 34(1) of the Planning & Development Act 2000 (as amended) to Refuse Permission for the above proposal for the reasons set out above is hereby made.

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

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Senior Executive Officer

**South Dublin County Council  
Planning Department**

25-Jul-2012

Level of Decision: *Senior Executive Officer*

Case Officer: SONJA REIDY

<b>Reg. Ref.:</b>	S99A/0016
<b>Registration Date:</b>	24-Sep-1999
<b>Location:</b>	Aghfarrell, Brittas, Co. Dublin.
<b>Proposal:</b>	Retain an earth embankment.
<b>Application Type:</b>	Permission

(EK/JS)

#### ZONING

The site is subject to the zoning objective 'H' - "To protect and enhance the outstanding natural character of the Dublin Mountain Area" in the South Dublin County Development Plan 1998. The site is also listed in the

Specific Objectives section of the plan as an area sensitive to forestry.

#### PLANNING HISTORY

There are no recent relevant planning applications relating to the subject site. However, there is extensive enforcement history relating to the site with regard to three specific issues as follows:-

(1) Shillelagh Quarries - This is the quarry in the applicant's ownership which is located south of the site of the current application but which is not indicated on the submitted drawings.

While it appears that there has been some quarrying activity at this site since prior to 1st October 1964 a High Court judgement delivered in May 1978 stated that development being carried on at that time differed materially from the development being carried on prior to 1<sup>st</sup> October 1964 and that, therefore, planning permission was required for the intensified quarrying operation (Ref. Patterson v. Murphy and Trading Services Ltd. 1978, ILRM 85).

(2) Access Road - Sometime in the early 1990's a new access road was constructed at the subject site to serve the above quarry.

(3) Dumping of shale, spoil and quarry waste - Enforcement proceedings have been taken against the applicant in relation to dumping of materials at the subject site. A Warning Notice and Enforcement Notice were served on the applicant 18/05/98. The case is due to come before the Court shortly. The current application is an attempt to regularise the situation.

Enforcement file 9636 refers.

## REPORTS

Environmental Services Department: Additional Information required in relation to a number of issues.

Roads Department: No objections subject to the stability of the embankment being certified by a competent engineer.

## OBSERVATIONS AND OBJECTIONS

Letter of objection and attachments on file are noted. Points of objection include pollution arising from the existing Quarry, earth embankment and roadway; illegality of roadway; traffic hazard; disamenity and conflict with zoning objective for the area.

## SITE

The site of the proposed development is located on lands at Aghfarrell, which lies south east of Brittas Village. The site is accessed from a private laneway which serves several dwelling houses located to the east of the subject site. This laneway is a cul-de-sac. The laneway is separated from the site and subject embankment by a field. An access road has been constructed from the west side of the laneway to run southwards to serve the existing quarry. The embankment the subject of this current application lies on the east side of the access road. It stretches for a distance of approx. 400m and is approx. 7m at its highest and approx. 15m at its widest. The embankment is very exposed as there is little or no grass cover. It is visible from the surrounding areas.

## APPRAISAL

This is an application for permission to retain an earth embankment which has been constructed adjacent to the access road to Shillelagh Quarries at Aghfarrell. This current application directly arises from enforcement proceedings which were taken against the applicant with regard to illegal dumping of shale, spoil and quarry waste at this location. The applicant indicates that the embankment is required as a barrier to noise and dust arising from the adjacent quarry.

While the applicant indicates that it is proposed to seed the embankment and

to plant trees adjacent to it, no evidence has been submitted which would demonstrate that the embankment is actually suitable for planting. The applicant has not submitted specific details of the composition of the embankment, nor has any engineer's report certifying its stability been submitted.

The development is located in a highly sensitive area, where it is an objective of the Planning Authority to protect and enhance the outstanding natural character of the Dublin Mountain Area. The proposed development, in its present condition is unsightly and would be seriously injurious to the amenities of the area.

Having regard to the history of the site and adjacent lands and to the nature and scale of the development as an integral part of the quarrying operation, and to its location in a sensitive landscape with an adjacent residential population, I consider that Additional Information is required to enable the Planning Authority to properly assess the proposal.

Additional Information was requested from the applicant on 14/04/99 with regard to the following:-

1. The applicant is requested to indicate, on relevant drawings, the full extent of the quarrying operation of which the proposed development forms an integral part.
2. The applicant is requested to detail the full nature and extent of the present quarrying operation and to indicate how it can be considered to be authorised development following the High Court judgement of May 1978 in the Patterson -v- Murphy and Trading Services Ltd. case. In this regard it should be noted that the Planning Authority has no record of planning permission being sought or granted for the development.
3. The applicant is requested to submit a report from suitably qualified engineer certifying the precise composition of materials in the embankment. Details to include a breakdown of the exact type, amount and distribution of materials.
4. The applicant is requested to submit a report from a suitably qualified Engineer certifying the stability of the embankment. In this regard there is concern that the existing side slopes may be too steep and a lower gradient may be required.
5. The applicant is requested to submit full details of proposals to deal with surface water run off from the embankment that could give rise to pollution in the nearby Brittas River or other watercourses. Proposals should include a settling pond prior to discharge to other courses, streams or rivers. The embankment should also be properly landscaped to prevent excessive wash down of loose material (see item 7 below).
6. The applicant is requested to submit full details of proposals to treat any existing streams or watercourses that discharge through the area. These should be culverted with pipes of adequate size and strength to preserve the existing surface water regime.

7. The applicant is requested to submit detailed proposals, prepared by a suitably qualified professional, for landscaping the embankment, including top soiling, seeding and planting. The report should include a bill of quantities and a time frame for the implementation of the landscaping proposals.

Additional Information was received 24 September 1999.

#### REPORTS

Roads Report - The stability of the bank cannot be proved without design calculations/cross sections and the engineer/consultant should specialise in soil mechanics and state his qualifications/experience.

The Environmental Health Officer finds the proposal acceptable.

Environmental Services Department - no reply to date.

It is considered that the applicant has not submitted adequate information as requested. Additional Information was sought on 7 no. points. It is considered that No's. 1, 2, 4 and 6 have either not been adequately addressed or answered.

No. 1 asked for details of the full extent of the quarrying operation. This was not submitted.

No. 2 asked for details of the present quarrying operation and its status in terms of authorised development. Some information was submitted in response to this. A copy of Patterson v Murphy decision was included. The last couple of paragraphs on this case clearly state that the quarrying operations on this site are not authorised development. As such the applicant has not supplied proof of the development being authorised.

No. 4 asked for a report regarding stability of the embankment. It is considered that this information has not been submitted.

No. 6 asked for details regarding the treatment of existing streams/watercourses in the area. It is considered that this information has not been submitted.

It is considered that the proposed development is unacceptable and inconsistent with the proper planning and development of the area.

I therefore recommend that a decision to Refuse Permission be made.

#### **Conditions / Reasons:**

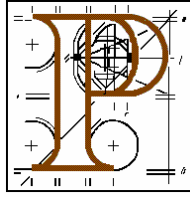
1. The present quarrying operations on site are unauthorised development in that a planning permission has not been granted nor were the present operations operating prior to October, 1964. As such, it is considered that the retention of an

earth embankment which serves the unauthorised development cannot be permitted.

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



## Inspector's Report

**Ref.:** PL06S. 231371

**Development:** Continuance of use of existing quarry, all existing ancillary facilities, extension of the quarry extraction area by 4.2 hectares to give a total extraction area of 15.5 hectares within site of 28.1 hectares.

Aghfarrell Townland, Brittas, Co. Dublin.

### PLANNING APPLICATION

**Planning Authority:** South Dublin County Council

**Planning Authority Ref.:** SD07A/0276

**Applicant:** Shillelagh Quarries

**Type of Application:** Permission

**Planning Authority Decision:** Grant subject to conditions

### APPEAL

**Type of Appeal:** First Party Vs. Conditions  
Third Party Vs. Decision

**Appellant (Third Party):** Dublin Mountain & Environmental Group

**Observers:** An Taisce  
Catherine Donohue & Others  
Michael John Hales  
William Michael Collins

**INSPECTOR:** Robert Speer

**Date of Site Inspection:** 22 July, 2010

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## **SITE LOCATION AND DESCRIPTION**

The proposed development site is located in the rural townland of Aghfarrell, Co. Dublin, approximately 3km southeast of the village of Brittas and 10km northeast of Blessington, and extends into the northern slope of Butter Mountain which is in turn situated on the fringe of the Dublin Mountains. It is accessed via Local Road No. L4382, part of which is situated within the administrative area of Wicklow County Council, which extends southwards from the R114 Regional Road between Brittas and Oldbawn. The junction of the local road with the R114 is located on the outer apex of a sharp bend in the regional road and is situated immediately west of the commencement of a 3-tonne weight restriction to the east along the R114. The local roadway is winding with a carriageway width of c. 4-5m and includes a narrow masonry bridge. Access to the quarry itself, and several residences owned / occupied by members of quarry operator's family, is obtained via a well-maintained tarmac private roadway which is secured by electronic gates. This roadway subsequently forks in two with separate access provided to the quarry and adjacent residences and farmlands.

The subject site is irregularly shaped with a stated site area of 28.1 hectares and presently comprises a working rock quarry which has been excavated in a south-easterly direction into the hillside with associated crushing, screening and stockpiling of aggregates. Overburden storage areas are located along the western extent of the site and also to the north of the quarry floor with working benches progressing south-eastwards. A site office, a further cabin and a weighbridge are located at the existing entrance to the pit floor.

## **DESCRIPTION OF PROPOSED DEVELOPMENT**

The proposed development consists of the continuance of use of an existing quarry for the purpose of the extraction of stone / rock, for use as general stone fill products for the construction market, including Clause 804 aggregates, on lands which have been registered in accordance with Section 261 of the Planning and Development Act, 2000, as amended. Although the existing quarry has a stated extraction area of 11.3 hectares it is proposed to extend this by 4.2 hectares thereby resulting in a total extraction area of 15.5 hectares within a wider site area of 28.1 hectares.

The proposed extraction area will extend in a south-easterly direction with the existing quarry floor to be lowered by c. 30m by means of 2 No. 15m benches to a final quarry floor level of 298mOD. At present surface water runoff within the quarry infiltrates to ground with limited discharge to an adjacent stream along the south-western site boundary. As the quarry workings are deepened and expanded in plan area a sump will be provided in the quarry floor to collect surface water run-off / infiltrating groundwater. This will include for primary settlement treatment with the collected water to be used for dust suppression in addition to a water supply for a proposed wheelwash. Any excess water will be discharged via a hydrocarbon interceptor to the adjoining stream. It is proposed to install a new closed wheelwash system for vehicles exiting the site and to lay a hardcore area between the site access road and the proposed wheelwash.

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Conventional blasting methods are / will be used to fragment the stone which is then fed into mobile crushing and screening plant located on the quarry floor to produce crushed stone products (*N.B.* There is no washing of aggregates on site). The current frequency of blasting ranges from 2-4 times per month depending on market conditions (between the hours of 09:00-18:00, Monday-Friday) and it is anticipated that blasting operations will continue to be carried out at a similar rate in view of the fact that there will be no increase in the current extraction rate of the quarry.

It is anticipated that the life expectancy of the proposed extraction is approximately 40 years on the basis of the aggregate reserves within the site amounting to approximately 18.2 million tonnes and an average extraction rate of 450,000 tonnes per annum. Upon completion of extraction works all equipment and machinery will be removed from the site and the lands restored to a natural habitat over a period of an additional 1-2 years. Progressive restoration will be carried out as the final quarry profile develops with the upper benches to be planted with suitable native shrub species and climbers to create vegetated ledges. It is envisaged that, subject to obtaining a waste permit, some future importation of inert soil and stone materials will assist with the restoration works whilst the extent of the final surface water feature within the restored area will depend on the availability of imported inert materials.

The hours of operation will continue as 08:00-20:00 hours, Monday-Friday, and 08:00-16:00 hours on Saturdays. The period 07:00-08:00 hours is used for truck loading thereby allowing trucks to leave the site in order to reach the Greater Dublin construction market. The quarry will not operate on Sundays or Bank Holidays, save in emergency situations, although plant maintenance takes place periodically outside of these hours.

There are no canteen / toilet facilities on site and employees (primarily family members) use the facilities of the adjacent dwellings owned by the operator. There is no fuel storage within the quarry and the refuelling of plant is carried out using a mobile tanker on an as needed basis. Oil and lubricants for plant and machinery will be stored on spill pallets in the container store provided within the quarry.

In order to improve sightlines at the entrance to the site it is proposed to carry certain road improvements to the south of same whilst public lighting is also to be provided at the site entrance. Other works outlined in the applicants response to the request for further information include the provision of road markings along Local Road L4382, the strengthening and resurfacing of the L4382 south of the bridge, the introduction of a priority control for the bridge, and various repair works to the bridge itself, including the reconstruction of walls and parapets and re-pointing works.

#### **ENVIRONMENTAL IMPACT STATEMENT:**

Paragraph 19 of Part 1 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, specifies the following class of development as necessitating an Environmental Impact Statement:

*‘Quarries and open-cast mining where the surface of the site exceeds 25 hectares’.*

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Furthermore, Paragraph 2(b) of Part 2 of Schedule 5 of the Regulations specifies that the ‘*Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares*’ will also necessitate the preparation of an Environmental Impact Statement:

The subject application seeks permission for the continuance of use of an existing quarry with a final extraction area of 15.5 hectares within an overall site area of 28.1 hectares and, therefore, the proposal is a prescribed form of development which requires the mandatory preparation of an EIS.

The Environmental Impact Statement which has accompanied the subject application provides a satisfactory description of the receiving environment, the proposed development, its impacts and proposed mitigation measures. It has been accompanied by a non-technical summary and includes the information required by Schedule 6 of the Planning and Development Regulations, 2001, as amended, and complies with Section 172 of the Planning and Development Act, 2000 and Article 94 of the Regulations.

### **RELEVANT PLANNING HISTORY**

#### On Site:

PA Ref. No. S99A/0016. Was refused on 22 November, 1999 refusing Michael Murphy permission to retain an earth embankment for the following reasons (as summarised in the Planning Officer’s Report):

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

Quarry Registration No. SDQU05A/1. On 19 April, 2006 the Planning Authority issued an order pursuant to Section 261(7) of the Planning and Development Act, 2000, as amended, in respect of the registration of the existing quarry, requiring the

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applicant to apply for planning permission and to submit an Environmental Impact Statement to the Planning Authority not later than 18 October, 2006 or such other period as may be agreed in writing with the Planning Authority in respect of the continued operation of the subject quarry.

ABP Ref. No. RL06S. RL2473. Section 5 referral made by Dublin Mountain Conservation & Environmental Group querying whether the intensification of use of a quarry, the use of explosives, the laying of material for a new road and a new entrance at Ballinascorney Upper, Brittas, Co. Dublin, are or are not development and are or are not exempted development. A decision is pending with the Board.

N.B. The Board is advised to consider the subject appeal in conjunction with this referral.

*High Court Judgement Ref. No. [1978] ILRM 85 (Frank Patterson and Eily Patterson v. Martha Murphy and Trading Services Ltd.):* In this judgement Costello J. concluded that the operations which were being conducted on site differed materially from those carried out prior to 1 October, 1964 in that the object of the 'new' operation was to produce a different product i.e. the manufacture of 4 inch stone, which was used for a different purpose in the building industry and which fetched a different price. Furthermore, he considered the method of production as being different to that in before 1964 in that the raw material (rock) was being obtained by means of regular blasting with large crushing and screening plant used to produce stones of the correct dimension. It was also noted that considerable ancillary equipment was being used and that a considerable labour force was employed. Finally, he concluded that the scale of the operation was a substantial one which beared no relationship to the scale of operations carried on prior to the appointed day. Accordingly, Costello J. stated that:

*' . . . if it appears that the scale of operations has so intensified as to render contemporary operations materially different from those carried on before the appointed day, this fact can be taken into account in considering whether what is presently being done commenced prior to 1 October, 1964 . . . The development, I am now considering was in fact, not commenced until the summer of last year. Thus, it was and is development which requires permission under Part IV of the 1963 Act and in my opinion I should prohibit its use under s.27. I should add that if the case fell to be considered as one of 'development' arising from the making of a material change in the use of land I would have reached the same conclusion.'*

## **PLANNING AUTHORITY CONSIDERATIONS AND DECISION**

### **Decision:**

Following the receipt of responses to requests for further information and subsequent clarification, on 23 September, 2008 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 40 No. conditions. Many of these conditions are of a standardised format and relate to issues including drainage, hours of operation, signage, ground and surface water protection, control of blasting, and the regulation of noise, dust and vibration. Conditions of note are as follows:

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- Condition No. 2 – States that prior to the end of the fifteenth year of this grant of permission the quarry operator shall seek the written consent of the Planning Authority to continue the extraction of rock and quarrying with any such consent to be subject to the conditions applicable pursuant to Section 261(8)(b) of the Planning and Development Act, 2000 which can be applied without liability for compensation.
- Condition No. 3 – Requires the operator / developer to lodge a separate planning application (within 6 months of the date of the grant of permission) for the retention and completion of land reclamation works on agricultural lands to the northeast of the site (within the applicants landholding).
- Condition No. 4 – Requires the submission and completion of a scheme for the improvement of the R114, or alternatively, the payment of a financial contribution of €67,500 per year for a period of 10 years.
- Condition No. 5 – Requires the operator / developer to submit details of, and a timescale for completion of, the various road improvement works required including the strengthening works to the L4382, the provision of public lighting at the site entrance, the provision of the priority control at the bridge and the remedial works to the bridge itself.
- Condition No. 6 – Refers to the achievement of sightlines and requires the operator / developer to submit the written consent of a third party landowner for the removal of trees / shrubs on their lands in order to achieve adequate vision splays.
- Condition No. 7 – Requires the submission of a management plan for the appropriate recovery and disposal of all production residues, including rock and subsoil of no commercial value, arising from the quarry operation.
- Condition No. 16 – Requires the preparation and submission of a Digital Terrain Model of the subject lands to be accompanied by a comprehensive photographic record of the quarry within three months of the grant of permission.
- Condition No. 17 – States that five years from the date of the grant of permission, and at five-yearly intervals thereafter, the quarry operator shall submit up-to-date Digital Terrain Models of the entire lands.
- Condition No. 28 – Refers to a programme of groundwater monitoring and also requires a hydrological / hydrogeological report of the quarry to be submitted to the Planning Authority within three months of the date of the grant of permission.
- Condition No. 32 – Requires the submission of a programme for the phasing of the quarry workings.
- Condition No. 33 – Refers to rehabilitation and landscaping works.
- Condition No. 34 – Requires the submission a comprehensive landscaping scheme to screen views of the quarry workings or otherwise ameliorate their visual impact.

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**Internal Reports:**

*Roads:* An initial report recommended that adequate vision splays be provided at the access point and that the application be referred to Wicklow County Council for its observations with regard to the provision of safe access from / to the local road which is within its jurisdiction. In addition, it was considered that the narrow bridge along the county road to the north should remain but with warning sign posted. The report proceeds to note that almost all HGV travel to/from the site must travel along the county road and the R114 to Brittas whilst HGVs are not permitted to travel the Ballinascorney Road as this is subject to a 3 tonne weight restriction. It was also noted that the Aghfarrell Road (R114) requires extensive maintenance each year due to the numbers of HGVs using it and that the road edges are not strong enough to withstand this loading. Accordingly, the Roads Dept. have prepared an estimate for the strengthening of this road in the sum of €1.35m and as both the subject quarry and the Kilsaran quarry produce approximately the same output and are practically the only generators of HGV traffic in the locality, it was recommended that the applicant pay a special contribution of €675,000 or €67,500 per year for 10 years.

A further report dated 10 December, 2007 noted that the applicant had forwarded unsolicited additional information which included a response from Wicklow County Council that had been omitted from Appendix C of the additional information report. In this respect, it is stated that the applicant has not addressed any of the items raised in the letter from the Roads Dept. of Wicklow County Council.

Following the receipt of a response to a request for clarification, a final report was prepared which raised concerns with regard to the failure of the applicant to provide documentation detailing sufficient legal interest to carry out the works identified as necessary to improve the vision splay at the site entrance. In addition, it was noted that a designer's response had not accompanied the Road Safety Audit whilst the Auditors had recommended without exception that South Dublin County Council / NRA carry out remedial works to the problems identified. This would conflict with a response received from Atkins which proposed that the applicant carry out the works i.e. repairs to the bridge, the priority control for the bridge, strengthening / resurfacing of the L4382.

It is considered that, apart from the works required in the Co. Wicklow area and at the bridge, major remedial works to the R114 and to the junction of the R114 / L4382 are necessary due to the movement of HGVs generated by the proposed development and other quarries in the vicinity. Therefore, it is recommended that a condition be applied to any grant of permission requiring the owner / operator to submit a scheme for the improvement of the R114, for the written agreement of the Planning Authority, with this scheme to be carried out at the owner / operators own expense. Alternatively, the owner / operator should be required to pay a financial contribution towards these works as set out in the earlier report.

*Parks and Landscape Services:* An initial report noted that the mitigation recommendation set out in the EIS, whilst acceptable, lacked detail, and, therefore, it was recommended that additional information be sought with regard to the amount of overburden material proposed to be used for restoration purposes and a landscaping plan for the site.

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*Environmental Services:* An initial report recommended that additional information be sought from the applicant including a Surface Water Quality Baseline Study for adjacent surface water courses, a hydrogeological study to outline the measures to be taken to minimise any significant impact on groundwater resources and details of how it is proposed to ensure there is no reduction in the baseflow of streams downstream of the development. It was also stated that in the event of the quarrying activities having an adverse impact on private wells in the vicinity that the developer should be required to undertake appropriate remedial measures to be agreed with the Planning Authority. In addition, it was recommended that the developer carry out monthly monitoring of surface and ground waters in the vicinity of the site with the details of these arrangements to be agreed with the Planning Authority.

Following the receipt of a response to a request for further information and subsequent clarification, a further report was prepared which indicated no objection subject to conditions.

*Forward Planning (Bob Matthews):* With regard to the ‘reclamation’ works carried out on lands to the northeast of the subject site it is stated that it is not clear from the submitted information whether the material deposited constitutes waste material arising from the quarrying works. Furthermore, it is considered that in the absence of documentation detailing the proposed reclamation works, such as the existing topography and condition of the land, the depth of fill, the duration of the activity on site, and evidence of works to complete the reclamation such as importation of topsoil, it is not clear that the primary object of the activity is land reclamation and not the disposal of quarry wastes.

This report subsequently proceeds to refer to Section 3(2)(b)(iii) of the Planning and Development Act, 2000 in that where land is used for the deposit of mining waste the use of the land is taken to have been materially changed. Reference is also made a referral (ABP Ref. No. 09.RL.2169) determined by the Board which concluded that the deposit of builder’s waste and rubble constituted a material change in the use of the lands. Having regard to the foregoing, it is then stated that the deposition of material extracted from the quarry lands may not constitute exempted development as claimed by the applicant and, therefore, in such circumstances, it may be appropriate to attach a condition to any grant of permission requiring the submission of a separate planning application for the retention and completion of the land reclamation works conducted on agricultural lands located outside the quarry boundary. Alternatively, full details of the land reclamation works could be submitted for the approval of the Planning Authority. It is also recommended that a condition be imposed seeking a management plan for the appropriate recovery or disposal of all production residues arising from the quarrying operations.

**Prescribed Bodies / Other Consultees:**

*Health Service Executive / Environmental Health Officer:* Considers the proposal to be acceptable subject to conditions including a requirement that in general the quarry be operated in such a way as not to give rise to a nuisance by virtue of emissions that are so prolonged, or of such frequency, as to be reasonably considered as being a justifiable cause for complaint.

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*Wicklow County Council:* States that the applicant has not addressed its concerns with regard to usage of the road and bridge located within Co. Wicklow which are to be used to access the proposed quarry. It is considered that these items are deficient in terms of pavement, structure and width, and are inadequate for the level and type of traffic to which they will be subjected over the expected 40-year life of the quarry. Therefore, the applicant should be directed to submit proposals to address all these concerns and permission should not be granted without the satisfactory resolution of same.

**Objections / Observations:**

A single objection was received from the appellant, the principle contents of which are reiterated in the grounds of appeal.

**GROUNDS OF APPEAL**

**Third Party Appeal:**

This appeal has been lodged by the Dublin Mountain Conservation & Environmental Group and the grounds of appeal can be summarised as follows:

- The subject quarry was subjected to a massive intensification of works in the year 2000. Prior to this it comprised a small quarry with a low output which was not visible from the R114 Regional Road and it is submitted that, pursuant to a High Court Judgement (Patterson v. Murphy [1978] ILRM 85), the Murphy's were prevented from extending the quarry.
- The intensification of works has led to an increase in lorry traffic from the quarry and it is considered that the road infrastructure is inadequate to cater for the proposed development and therefore it poses a serious risk to public safety.
- The use of explosives was prevented under High Court Judgement [1978] ILRM 85 and it is submitted that as this establishes a precedent the use of explosives at the quarry should be prohibited.
- The registration of the quarry contains inaccurate information in that the address provided is incorrect as no such townland exists in Co. Dublin whilst the site was a working farm in the 1930s and not a quarry.
- No details have been provided in the subject application of the previous uses of the subject site or any planning applications made on site. In addition, the minutes of a pre-planning consultation dated 10 August, 2006 have not been entered on file.
- It is considered that the failure to apply for permission for the retention of the unauthorised works renders the subject application invalid.
- The applicant failed to engage in public consultation prior to registration as per Section 1.5 of the '*Quarry and Ancillary Activities, Guidelines for Planning Authorities, 2004*'.
- The failure by the applicant to carry out a hydrological survey raises concerns with regard to the impact of the proposal on the quality and quantity of groundwater. The site is located within a major catchment area for drinking water serving the Dublin, Wicklow and Kildare areas and it is submitted that the consultants have failed to adequately address the potential for groundwater pollution.

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- It is considered that the Environmental Impact Statement is seriously deficient in its appraisal of the impact of the quarry on the environment.
  - The proposal materially contravenes the County Development Plan and should be refused in that there are no mitigating circumstances which would allow the Board to grant permission. It is also unclear if the Planning Authority carried out the correct material contravention process as regards the subject application.
  - It is submitted that the applicant has illegally dumped a significant quantity of material on its lands and has failed to disclose same in the application. Furthermore, the Planning Authority has failed to address the issue of illegal dumping in its decision to grant permission.
  - The file pertaining to Quarry Registration No. SDQU05A/1 does not include any correspondence from Wicklow County Council contrary to a reply issued by the Planning Authority to the Board in respect of ABP Ref. No. RL06S. RL2473.
  - There is no correspondence on file which indicates that Wicklow County Council approves of the proposed improvement works to Local Road L4382 and no EIA has been prepared in respect of any such works.
  - Ordnance Survey maps show that no quarrying was carried out on the lands until 1970 and this can be verified by reference to Valuation Appeal No. VA06/3/047 dated 18 April, 2005 which states that the quarry had been in existence for over 30 years. It is submitted that the original quarry comprised a sand and gravel pit pre-1970 and that the applicant has failed to provide any evidence to support its claim that the quarry was in existence prior to 1964 and that it was in continuous operation pre-1964 within a defined land area with a regular tonnage / rate of extraction.
  - There is no correspondence on either the subject file or on the registration file from Dublin City Council (Water Dept.) or An Taisce, and the Planning Authority should be requested to confirm that they have complied with their requirements under Article 28 of the Planning and Development, Regulations, 2001, as amended.
  - The Planning Authority has failed to implement the Environmental Liability Directive (Directive 2004/35/EC).
  - The extraction rate at subject quarry is 450,000 tonnes per annum compared to only 30,000 tonnes during the 1970s and 1980s.
  - The proposed development cannot be treated in isolation and should be assessed having regard to all the unauthorised works already carried out on site, the two other quarries within a 3 mile radius and the number of adjacent worked out and abandoned sand and gravel pits.
  - The surrounding road infrastructure is inadequate to cater for the proposed development. A road survey undertaken by Atkins in June 2008 confirms the substandard condition of the roadway between the L4382 and the N81 whilst there are weight restrictions in place between the L4382 to the R114 travelling east to Old Bawn and Firhouse. The applicant cannot use this direct route to Tallaght and the M50 and a condition should be imposed to prohibit same.
  - Development which would be seriously injurious to the visual amenity of an area should not be encouraged and no quarrying activities should be permitted above the 350m contour line as per the County Development Plan.

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- The applicants forecasts with regard to future demand for stone are rejected given the collapse in the construction sector. Furthermore, it is submitted that if the applicants were refused permission or if the quarry output were to be restricted to pre-1963 levels, any future demand for material could be met by other suppliers.
  - The applicants have failed to disclose that there is a public amenity area adjoining the site.
  - It should be noted that Hegarty Demolition Ltd., Southern Excavations Ltd and Trexton Ltd. have all been refused permission for the importation of soil, subsoil and construction waste. Millions of tonnes of material will be required to reinstate the subject site and it is considered that permission for same would not be forthcoming given the unsuitability of the road network and environmental considerations including the unacceptable risk of pollution to the Poulaphouca Reservoir.
  - The existing quarry is far removed from the original sand and gravel pit and further illegal works were carried out on site during 2008. It should also be noted that no explosives would have been used in the original pit.
  - It is submitted that the information supplied by the applicant to support its claim of pre-1964 status is totally inadequate and includes hearsay. Furthermore, it is considered that to support such a claim information such as tax returns, receipts, invoices and aerial photography would require to be submitted.
  - It is queried as to why the Planning Authority did not pursue Mr. Murphy as the High Court Judgement issued in respect of [1978] ILRM 85 established that the quarry was unauthorised and required planning permission.
  - The applicant has failed to provide an accurate description of the proposed development in that it does not include for unauthorised works such as the construction of a road and the illegal dumping of material. Similarly, it does not include for all the overburden mounds and has failed to refer to the proposals to excavate the quarry floor by 30m and to carry out works to make a new entrance.
  - The enclosed Map 3 details that the lands on which the existing quarry is situated were being used for agricultural purposes in 1969.
  - Map No. 1 as enclosed shows a sand and gravel pit located a considerable distance from the existing quarry and the present-day quarry cannot be considered to form a continuance of same.
  - An intensification of use has taken place since 2000 which included the re-introduction of the use of explosives.
  - The proposed development will have a serious negative impact on the character and fabric of the Dublin Mountains and will set a precedent for further development in mountainous regions across the country above the 350m contour line.

**First Party Appeal:**

*N.B.* I would advise the Board that although the first party appeal was initially invalidated, following consideration of a submission made by the applicant dated 16 February, 2009, (which accompanied the applicants response, also dated 16 February, 2009, to an invitation to comment on the observation made by An Taisce) the Board determined that it would be appropriate to invite the applicant to re-submit its first

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party appeal. The applicant subsequently availed of this opportunity and re-lodged its appeal accordingly. It should be noted that this re-submission of the first party appeal necessitated the cross-circulation of material between the various parties to the appeal, including observers, and thus has delayed the determination of the file and resulted in the submission of a plethora of responses from individual parties.

This appeal has been lodged by SLR Consulting Ireland on behalf of the applicant, Shillelagh Quarries Ltd., in respect of the inclusion of Condition Nos. 2, 3, 4, 28(b) & 38. The grounds of appeal are summarised as follows:

*Condition No. 2:-*

- It is submitted that this condition should be deleted on the grounds that the quarry commenced operation prior to 1 October, 1964 and as there is no existing limit on the duration of the development.
- Other planning authorities have not imposed a limit on the duration of pre-1964 quarries / pits when attaching conditions pursuant to Section 261 of the Planning and Development Act, 2000, and it is submitted that such a condition would be grounds for compensation under Section 261(8)(b) of the Act.
- Whilst the Board may have concerns with regard to future changes in environmental standards and technologies it is considered that these concerns are specifically addressed by Condition No. 19 as imposed by the Planning Authority.
- If the Board were to impose a limit on the duration of the development it is submitted that this should be commensurate with the life of the proven aggregate reserves on site in order to accord with the recommendations of the *'Quarry and Ancillary Activities, Guidelines for Planning Authorities, 2004'*.

The EIS confirms proven aggregate reserves of 18.2 million tonnes and, on the basis of an average extraction rate of 450,000 tonnes per annum, the total lifespan of the quarry would equate to 40 years. By allowing for 1-2 years to complete final site restoration the overall life of the quarry would be 42 years. Therefore, in the event that a limit is imposed on the duration of the quarry then the condition should be amended to specify a lifetime of 42 years.

*Condition No. 3:-*

- The land reclamation works referred to in Condition No. 3 are the subject of separate enforcement proceedings initiated by the Planning Authority. In response to a letter issued by the Enforcement Section of South Dublin County Council dated 11 October, 2006 a response was made on behalf of the applicant which stated the following:

*'It is clear from the above that the development carried out by the landowners on the agricultural lands relate to land reclamation, and improvement of the land for agricultural purposes. This development is therefore exempted development under Class 11, Part 3, Schedule 2 of the Planning and Development Regulations, 2001'*

No response has been received to this correspondence.

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- The lands referred to in this condition are not owned by Shillelagh Quarries Ltd and, therefore, it is unreasonable to impose a condition requiring the applicant to lodge a planning application on lands owned by a third party.
  - If the Planning Authority wishes to pursue this matter it should do so through recourse to the enforcement process and not by way of a condition attached to the grant of permission.

*Condition No. 4:-*

- The imposition of a financial contribution towards roads on an established operation would be considered an economic restriction and could lead to claims for substantial compensation under Section 261(8) of the Planning and Development Act, 2000.
- It was not intended, and is not within the spirit of the Act, for planning authorities to use Section 261 to impose financial charges on the continued operation of quarries.
- The Board has previously considered the issue of the imposition of financial contributions in respect of Section 261 quarry registrations and specific reference is made to ABP Ref. Nos. 06.QC.2119, 06F.QC.2001, & 24.QC.2053. In these cases the Board concluded that, having regard to the pre-1964 status of the quarries and the decision of the planning authorities to impose conditions on the operation of the quarries in accordance with the provisions of Section 261(6)(a)(i) of the Planning and Development Act, 2000, there was no provision in either Section 261 or Section 48 of the Act which would authorise the imposition of conditions requiring the payment of a financial contribution.
- The subject application has been lodged in accordance with Section 261(7)(a) and relates to an existing quarry and an established traffic route on a regional road. It is not a standard Section 34 planning application, and for the reasons set out above, the Planning Authority should not have levied financial contributions on the existing quarry registered under Section 261.
- On the basis of the foregoing, the Board is requested to delete Condition No. 4 in its entirety.

*Condition No. 28(b):-*

- Section 3.4 of the EIS contains a hydrological / hydrogeological assessment of the quarry prepared by Eugene Daly Associates. Section 3.4.6 – Mitigation Measures states the following:

*‘Although the development does not pose a significant threat to the groundwater or surface water of the surrounding area, the following measures are proposed to prevent any reduction in the aquatic environment. These mitigation measures are in accordance with the “best practice / possible mitigation measures” set out in Section 3.4 of the DoEHLG (2004) Quarries and Ancillary Activities: Guidelines for Planning Authorities’.*

The mitigation measures are described in Section 3.6.4 of the EIS.

- It is considered, on the basis that a hydrological / hydrogeological report has already been prepared by a suitably qualified person and submitted as part of the EIS, that this condition should be deleted in its entirety.

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*Condition No. 38:-*

- The basis for the financial security of €310,000 is unclear and appears to be excessive.
- The Board is referred to its previous decision in respect of ABP Ref. No. 20. 215417 in which it imposed a financial security of €250,000 which equated to €3,700 per hectare of the quarry site area or €10,500 per hectare of extraction area. On this basis, the financial security required by the subject quarry would be in the range of €104,000 to €163,000. An average of these two amounts is considered to be an appropriate level of financial security for the existing quarry and therefore the Board is requested to amend the condition accordingly.

**RESPONSE TO THIRD PARTY GROUNDS OF APPEAL**

*Response of Planning Authority:*

- It is the view of the Planning Authority that subject to compliance with all the conditions attached to the grant of permission, the proposed development would accord with the proper planning and sustainable development of the area.

*Response of Applicant:*

- The quarry was not the subject of a massive intensification of works in the year 2000 and the appellant has furnished no evidence to support such an allegation. Prior to 2000 the quarry was large with a high output and was at all material times visible from the R114.
- The Murphy's were not prevented by Court Order from extending the quarry (Patterson v. Murphy [1978] ILRM 85) and that order was subsequently vacated by Order of the High Court in June 1999 as part of the settlement of further proceedings entitled:

*'In the Matter of Section 27 of the Local Government (Planning and Development) Act 1976 and in the Matter of an Application Between Brendan Noctor, Brenda Noctor, Frank Patterson, Eily Patterson and Aidan Clarke, Applicants – and – Michael Murphy and Shillelagh Quarries Limited, Respondents, The High Court, Record No. 1992/41 MCA'*

and,

*'Frank Patterson and Eily Patterson, Plaintiffs – and - Michael Murphy and Shillelagh Quarries Limited, Defendants, The High Court, Record No. 1999/4841P'.*

- The use of explosives was not prevented in the proceedings entitled:

*'Frank Patterson and Eily Patterson, Plaintiffs – and – Martha Murphy and Trading Services Limited, Defendants, The High Court Record No. 1977/6215P'.*

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These proceedings primarily concerned a nuisance that had been created by the second-named defendant in its operation of the quarry. The Court granted injunctive relief to prevent a nuisance being caused to the Plaintiffs and under Section 27 the Court prohibited development being the manufacture of four-inch stone by means of blasting and crushing. These Orders (made in 1978) were subsequently vacated by the High Court in June, 1999 as part of the settlement of the above proceedings. At all material times from the conclusion of the proceedings in May, 1978 the late Michael Murphy continued to operate the quarry at Aghfarrell with Ballyboden Quarries Ltd. as his license from 1989, and subsequently with Shillelagh Quarries Ltd as his license from 1991 until his death in 2002 which continues to operate the subject quarry.

- The address provided for the quarry is correct and the townland of Aghfarrell is clearly shown on Ordnance Survey mapping.
- The submitted planning application does not contain any inaccurate information. The documentation was reviewed by the Council and was validated as part of their acceptance and consideration of the application.
- The applicant is not aware of any previous planning applications on the quarry lands whilst the attachment of the minutes of pre-planning consultations to the file is a matter for the Planning Authority.
- The subject application has been submitted in accordance with the requirements of Section 261 of the Planning and Development Act, 2000.
- There is no requirement under Section 261 of the Planning and Development Act, 2000 for a quarry operator to carry out public consultation although the Planning Authority issued notice in the newspaper informing members of the public that Shillelagh Quarries had registered the quarry in accordance with Section 261.
- Section 3.4 of the EIS includes a hydrological assessment of the subject site.
- Contrary to the appellants assertions the submitted EIS is not seriously deficient in the appraisal of the potential impact of the quarry.
- The existing quarry predates the current and previous County Development Plans and does not material contravene the current Plan as the extractive industry is open for consideration in this area.
- The land reclamation works are the subject of separate enforcement procedures. A response to a letter issued by the Planning Authority in respect of same stated that:

*'It is clear from the above that the development carried out by the landowners on the agricultural lands relate to land reclamation, and improvement of the lands for agricultural purposes. This development is therefore exempted development under class 11, Part 3, Schedule 2 of the Planning and Development Regulations, 2001. No response to this correspondence has been received from the Planning Authority'.*

- There is no requirement under Section 261 of the Act for a planning authority to consult with adjoining planning authorities in respect of quarries registered within their functional area.
- Condition No. 5 as imposed by the Planning Authority requires a series of road improvement works to be undertaken by the applicant to Local Road

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- L4382. The requirement for these works arose from consultation with Wicklow County Council and the applicant has not appealed same.
- The quarry at Aghfarrell commenced prior to and was extant on the appointed day i.e. 1 October, 1964. In accordance with the judgement of the Supreme Court (Murphy J.) in *Waterford County Council v. John A. Wood Ltd.* [1999] 1 IR 556 Section 24 of the Local Government (Planning and Development) Act, 1963 necessarily permitted the continuation to completion of particular quarrying works commenced before the appointed day at this location, even where they involved a material change of use of the adjoining land.
  - The issue of compliance with the provisions of Article 28 of the Planning and Development Regulations is a matter for the planning authority.
  - It is considered that the Environmental Liability Directive is not relevant to the continued operation of the existing quarry.
  - The quarry is currently extracting approximately 200,000 tonnes per year.
  - Section 2 of the submitted EIS acknowledges the presence of the two other quarries referenced by the appellant, however, the applicants business is based on the continued operation of the subject quarry.
  - South Dublin County Council has concluded that the road network in the vicinity of the existing quarry, subject to the improvements to the L4382 required by Condition No. 5, is adequate to serve the continued operation of the quarry.
  - Section 3.8 of the EIS addresses in detail the visual impact of the continued operation of the existing quarry.
  - The quarry produces low quality fill materials. The stone produced at the Ballinascorney and De Selby quarries is of a higher quality and as such it is not in the interest of sustainability to use higher quality stone as a substitute for lower quality fill materials. On this basis there is a clear need for a number of quarries to provide a range of stone products and aggregates.
  - The subject lands have been quarried continuously since in or about 1900 and the previous owner of the site, the late Michael (“Sonny”) Murphy, swore in an Affidavit that it was his belief that his grandfather quarried the land from about 1900 and to his own knowledge his own father quarried the lands from the 1940s up to 1964. Since 1964 he, Michael Murphy, quarried the lands at Aghfarrell firstly on behalf of his mother up to 1979 and on his own behalf up to 1991 when Shillelagh Quarries Ltd. commenced to operate the quarry within his existing licensee Ballyboden Quarries Ltd. which had quarried the said lands in that capacity since 1989. The quarry therefore commenced before 1 October, 1964, has been registered pursuant to Section 261 and an application for planning permission accompanied by an EIS has been submitted as required by the Planning Authority.
  - Shillelagh Quarries Ltd (the applicant) has not failed to disclose that there is a public amenity adjoining the quarry.
  - Section 2.5 of the EIS describes the proposed restoration scheme for the quarry and the Board is referred to Condition Nos. 35, 37 & 38 as imposed by the Planning Authority. Contrary to the appellants assertions it will not require millions of tonnes of soil to be imported to the site.
  - The appellants suggestion that all correspondence between Dublin County Council and Mr. Frank Patterson and his agents be entered on file is a matter for the Planning Authority.

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- An explanation as to why Dublin County Council did not pursue Mr. Murphy as regards the High Court Judgement issued in respect of [1978] ILRM 85 (*Patterson v. Murphy*) which established that the quarry was unauthorised and required planning permission is a matter for South Dublin County Council.
  - The placement of all planning and environmental material held with regard to Mr. Murphy and Shillelagh Quarries Ltd. is a matter for South Dublin County Council.
  - It is considered that the description of the development is appropriate and includes all ancillary works associated with the quarry.
  - Map No. 2 as referenced in Item No. 31 of the grounds of appeal was not provided in colour and therefore it is not possible to respond to the specific issue raised by the appellant.
  - The proposed development relates to an existing quarry registered in accordance with Section 261 and the subject application was a requirement of same. Contrary to the appellants assertion it does not relate to a new development and therefore will not create a precedent in respect of any future applications for new development in mountainous regions above the 350m contour.
  - The submitted EIS and related documentation confirms that the quarry can operate in accordance with recommended environmental threshold limit values for dust deposition, noise etc. It also incorporates best practice mitigation measures for the sector as set out in the DoEHLG's '*Quarry and Ancillary Activities, Guidelines for Planning Authorities, 2004*' and the EPA's '*Environmental Management Guidelines, 2006*'.

### **OBSERVATIONS:**

#### An Taisce:

- There is a preliminary requirement in determining the third party appeal to consider the implications and relevance of ECJ Judgement C/215/06 dated 3 July, 2008 to the subject site. The aforementioned judgement has invalidated the use of 'retention' for developments coming within the EIA Directive and the appeal submission contains significant information which puts the validity of the application under the EIA Directive in question.
- The subject site is stated to have been the scene of 'massive' intensification of works in 2000 and the appeal submission states that the registration of the quarry under Section 261 of the Planning and Development Act, 2000, was not based on accurate information on the historic use of the site.
- The subject application is deficient in that the public notices by referring to continuation and expansion of quarrying do not address the legal status of quarrying on the site in the first instance, nor do they identify the nature and extent of unauthorised quarrying on the site for which, in effect, retention and continuation is being sought.
- In addition to the area of the quarry for which retention is being sought, it is submitted that the particulars are deficient in failing to identify or describe the full nature and extent of development proposed for retention, including road construction, deposition of fill and spoil on site, the location of overburden mounds, quarry depth and site entrance.

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- It is submitted that the aforementioned items are preliminary to the evaluation of the environmental and planning arguments relating to the suitability of the site for quarrying purposes. It is considered that there is an onus on the Board to address the legal status of the application under the EIA Directive and to determine that the site comes under the considerations set out in the ECJ Judgement of 3 July, 2008 thereby invalidating the application and requiring action by the Planning Authority to curtail any further unauthorised development on site.

Michael John Hales:

- Around the mid-1960s the observer regularly holidayed on his grandmother's farm at Augh Farrell Farm, Brittas. He submits that at this time the farm was primarily used as a self-sufficient smallholding with cattle and chickens and that it occasionally benefited commercially from the sale of cattle for market. Another small sideline was the drawing of sand from a nearby sandpit though this was not located on the family landholding.
- It is submitted that the farm was always used as an agricultural holding and that it was never, as claimed by the applicant, used in the context of a commercial quarry, either since, nor during the period from 1936 until only recent times. The site area in particular was always covered in grass, heather and trees until recent years when an intensification of use came through the activities of the applicant.

*N.B.* On the basis of the family history set out in the foregoing observation it would seem that the observer's father was a step-brother of the late Michael (Sonny) Murphy i.e. the observer is a grandchild of the late Martha (nee Hales) Murphy.

Catherine Donohue & Others:

- The subject lands are zoned as 'H' in the County Development Plan and regard should be had to same.
- As children the observers were regularly brought to visit their grandmother on the subject lands and thus they are familiar with its layout and use. During the 1950s & 1960s, and up until 1977, the lands were to all intents and purposes very much based on agricultural / farmland use.
- It is submitted that the observers' knowledge extends to the subject lands comprised in Folio DN 3636 and includes that portion of land which the applicant has claimed in both the subject application and the Section 261 registration application.
- With regard to the applicants claim that the subject lands have been in use as a quarry since 1936 it is noted that statutory declarations were furnished by various third parties giving evidence to this effect. Notably, there is no procedure within the registration process to verify, rebut or otherwise challenge such claims. Therefore, it is submitted that the circumstances surrounding the registration of the quarry are fraudulent in that, from the observers' own knowledge, the quarry did not exist prior to 1964.
- In a survey of the lands by the Land Commission just 2 years before the first registration of the land in 1936, the Land Commission maps show that there was no mention in the survey of any quarry at this location or that comprised in Folio DN 3636.

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*N.B.* On the basis of the family history set out in the foregoing observation it would seem that the observers are grandchildren of Mrs. Martha (Hales) Murphy, and that the directors and secretary of Shillelagh Quarries Ltd are also grandchildren of the late Mrs. Martha (Hales) Murphy.

*William Michael Collins:*

- It is submitted that the land was always in use as a farm even up to the time of the death of Mrs. Martha Murphy in 1988. Contrary to the applicants claim, it was never in commercial use as a quarry.
- The planning fee which accompanied the subject application is incorrect in that it was not calculated on the basis or formula of the applicable scale of fees having regard to the site area, its commercial status and the submission of an EIS. Accordingly, the subject application is invalid. The same error was repeated by the applicant in its lodgement of a first party appeal which was deemed invalid by the Board.
- It is considered that the proposed development is subject to the findings of ECJ Judgement C/215/06.
- The application site is the same site which was the subject of High Court proceedings under [1978] ILRM 85 which, in turn, established a legal precedent with regard to the question of exempted development and unauthorised development.
- It is submitted that the information supplied with regard to the registration of the quarry is not factual or accurate.
- The applicants have intensified the use of the unauthorised development since 2000.
- A settlement was made between the father (Mr. Michael Murphy) of the persons who comprise the applicant company and the representatives of the late Frank Patterson which involved the transfer of Shillelagh Lodge to the applicant. This is the only land retained by the applicant company. The applicant does not own the subject site comprising Folio DN 3636 which appears to be in the ownership of Mrs. Joan Murphy as the widow of the late Michael Murphy.
- The intensification of use of the quarry since 2000 was not challenged in the absence of the parties to the agreement / settlement referred to above, however, the quarry remains unauthorised as per the decision of the High Court in 1978.
- The Local Authority has not conducted any meaningful or reliable investigation in respect of the bona fides of the registration of the quarry. In this respect the Board is advised that there are a number of challenges currently before the High Court with regard to Section 261 applications and given the fact that no appeal can be made as to the accuracy or reliability of the statutory declarations which accompany such applications.
- It is submitted that the Board must be satisfied that the applicant has sufficient legal interest in the subject site. Having regard to the title of the application site and the history of same, the observer is of the view that the applicant does not retain the required sufficient legal interest.
- Having regard to the zoning provisions of the County Development Plan, it is submitted that quarrying above the 350m contour line is contrary to the proper planning and sustainable development of the area.

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- The EIS is considered to be deficient in the following areas:
    - It does not include a survey of bryophytes
    - It does not consider the adjoining public lands which include natural habitats for red grouse, hare and deer.
    - It does not consider the public walkways through the adjoining forest.
    - There are concerns with regard to public safety given the proximity of mounds to adjacent public and forested lands and the absence of warning signage.
    - There are deficiencies with regard to the negative impacts of dust, noise, pollution, visual impact, groundwater and surface waters etc.
  
  - The proposal will impact on the heritage and scenic beauty of the area.
  - The impact on the substandard road network has not been adequately addressed nor have the concerns of Wicklow County Council with regard to same.
  - The application does not include any adequate or meaningful proposals for an identifiable site office or to address health and safety issues including the maintenance of plant and machinery, fuel storage and waste management etc.
  - The R114 is a major arterial route at this location and presently trucks from the site transport material to the east via same which has a 3-tonne weight restriction.

*N.B.* On the basis of the family history set out in the foregoing observation, the observer is the grandson of the late Mrs. Martha (Hales) Murphy.

**RESPONSE TO SECTION 131 NOTICE (*circulation of observation received from An Taisce*):**

*Response of Planning Authority:*

- None.

*Response of Applicant (Ref. No. 3251 ABP L04):*

- An Taisce has requested the Board to address the legal status of the subject application having regard to the EIA Directive and to determine that the site is subject to the considerations set out in the ECJ Judgement (C-215/06) of 83 July, 2008 thereby invalidating the application. In this respect the Board is referred to Circular PD6/08 issued by the Department of the Environment, Heritage and Local Government on 8 October 2008 (copy enclosed), the last paragraph of which states the following:

*'It is the Department's understanding that a notification need not be made in respect of a permission granted since 3 July for the continued operation of a quarry in respect of which an application for planning permission was made under and in strict accordance with Section 261(7) of the 2000 Act, i.e. an application, with an environmental impact statement, made within such period as was specified by or agreed with the planning authority for the purposes of the subsection in respect of a quarry that commenced operations before 1 October, 1964. (By extension, any such application currently being processed may proceed to determination).'*

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The subject quarry commenced operation before 1 October, 1964 and has been in operation since c. 1909 until the present day. It was registered in accordance with the requirements of Section 261 and the subject application and EIS were submitted in accordance with Section 261(7)(a) of the Act. On the basis of the foregoing, and by virtue of the fact that the Planning Authority has not issued the applicant with any written correspondence advising them not to act upon the permission, the applicant is satisfied that it has acted appropriately in respect of the registration of the quarry and the lodgement of the subject application and EIS.

*N.B.* The applicants response to the observation of An Taisce was accompanied by a second set of correspondence (Ref. No. 3251 ABP L03) dated 16 February, 2009 which related to the initial decision of the Board to invalidate the first party appeal on the grounds that the proposal related to unauthorised development and therefore an incorrect fee had been submitted. This correspondence stated that the original planning application (and accompanying EIS) made no reference to any element proposed for retention and that it was made solely for the continuance of use and extension of the existing quarry pursuant to Section 261 of the Act. It was also submitted that the standard application fee paid to the Planning Authority was accepted with the application validated and subsequently granted permission.

With regard to Condition No. 3 as imposed by the Planning Authority which requires the applicant to lodge a separate planning application to retain and complete land reclamation works on adjacent lands, the applicant submitted that these lands lay outside of the site area, were the subject of separate enforcement action and did not form part of the subject application.

This correspondence subsequently concluded by requesting the Board to reinstate the first party appeal, otherwise the applicant would have to seek legal advice, including the possibility of an Application for Leave to Apply for Judicial Review.

*N.B.* The Board subsequently reviewed its earlier decision and opted to allow the re-submission of the first party appeal without prejudice (Please see the grounds of appeal set out above).

*Response of Third Party Appellant (Dublin Mountain Conservation and Environmental Group):*

- Valuation Office records for Folio No. 3636 show that this land was rated as agricultural from the 1930s through to the 1980s. It is submitted that there was no quarrying on the subject lands until the 1970s when Mr. Frank Patterson took his High Court case.
- Following the death of Mrs. Martha (nee Hales) Murphy (the occupier of the land in the 1930s) a grant of probate was issued in 1990 to her son, Mr. Michael Murphy (described as a farmer). The Board is referred to the contents of same (copies attached) including the response of Mr. Murphy to the following question:

*'If the real estate includes unlet fishing or sporting rights, unlet building land, mines sandpits, quarries or other property which has no annual value, to the*

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*annual value whereof is no criterion of the market value, full details should be given'*

It is submitted that Mr. Michael Murphy made a sworn statement in 1989 that the lands in question (c.120 acres) were agricultural in nature and valued at £60,000. The Board is subsequently referred to the probate papers following the death of Mr. Michael Murphy including the statement that none of the property previously referenced was agricultural.

- It is submitted that it is evident that there was no quarrying on the subject site pre-1963 and that Mr. Murphy was prevented from quarrying by the late Mr. Frank Patterson pursuant to the High Court Judgement [1978] ILRM85.
- It is believed that Mr. Murphy carted material from adjacent sand and gravel pits, however, these do not form part of Folio No. 3636 and were not owned by either Martha Murphy or Michael Murphy and are not owned by Shillelagh Quarries Ltd. It is submitted that it is these lands from which Mr. Tom Watkins extracted sand and gravel and no explosives were used for same. Accompanying Valuation Office records purportedly show that these lands were registered as a sandpit.
- It is submitted that the applicant has dumped a significant amount of material on those lands to the northeast of the quarry in breach of Waste Framework Directive 75/442/EEC as amended by 91/156/EC. In the probate papers of Mr. Michael Murphy, Mrs. Joan Murphy (his wife) has sworn that all the land is non-agricultural and is therefore all quarry land. No records have been furnished with regard to the nature, origin or quantity of this material and the applicant has also failed to comply with the request for further information in respect of the material dumped and the need to retain same. This illegal dumping combined with the intensification of development resulted in a significant increase in lorry traffic along the L4382 and the R114.
- The surrounding county roads are inadequate for the lorries associated with the existing quarry and the Road Safety Audit prepared by Atkins confirms the substandard condition of both the L4382 and the R114. A copy of a traffic count taken in 2005 is enclosed, however, traffic levels have since increased due to development in surrounding towns including Blessington.
- It is submitted that both the applicant and hauliers associated with the quarry use a section of the R114 from Aghfarrell to Old Bawn which is subject to a 3-tonne weight limit.
- The applicant has failed to address all of the concerns of Wicklow County council with regard to the L4382 which has stated that permission should not be granted until these issues have been resolved to its satisfaction.
- The subject application does not include for the retention of (a) the overburden mound, (b) the illegal dumping (c) road construction and (d) works to the site entrance. The description of the development also fails to include for the excavation of the quarry floor and does not identify the area of the quarry for which retention is being sought.
- Conflicting information has been provided with the subject application (e.g. annual extraction rates, the number of employees, the frequency of blasting etc.) when compared to that which accompanied the Section 261 application.

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- The EIS fails to note that the site is within the primary catchment area of the Blessington Lakes (and Poulaphouca Reservoir) which supply drinking water to the Dublin, Wicklow and Kildare areas.
  - The Brittas River has salmonid status and both the river and its tributaries contain significant stocks of crayfish which are listed for protection in the First Schedule, Part 11, of the European Communities (Natural Habitat) Regulations, 1991 (SI 94/97).
  - It is submitted that the analysis carried out by the applicant does not meet the criteria required for adequate testing (Primary Drinking Water Standards).
  - The tentative groundwater protection code assigned to the quarry is PI/H-E. It is highly-extremely vulnerable to pollution and demonstrates the sensitivity of the aquifer. The proposed development poses an unacceptable risk to both ground and surface water systems and Section 3.4 of the EIS is totally inadequate.
  - The applicant is not the registered owner of Folio No. 3636, which is the correct folio pertaining to the subject lands, as Mr. Michael Murphy (deceased) is the registered owner of same. It would appear from the probate papers of Mr. Murphy that Joan Murphy is the main beneficiary to his estate. Mrs. Murphy is not a director of Shillelagh Quarries Ltd. and no letter of consent from her accompanied the application for registration or the subject planning application.
  - It is submitted that by not seeking further details with regard to evidence of the pre-1964 status of the quarry and land ownership etc. the Planning Authority has failed to carry out its statutory requirements under the Act which provides for a heightened level of scrutiny in cases of applications for the retention of unauthorised development.
  - The applicant significantly intensified works at the quarry in 2000 and also introduced drilling and blasting which has resulted in a change of use and an intensification of works.
  - The proposed development will adversely impact on the amenity of Brittas village.
  - The proposal will adversely impact on the amenity of the Dublin Mountains and has already caused irreversible damage to the environment. The Board is referred to the ‘Santona Marshes’ case wherein it was determined that member states have an obligation to protect and avoid the deterioration of areas that ought to be but are not yet formally designated as Special Amenity Areas. In the subject case, it is submitted that there should be no development above the 350m contour as this would contravene the relevant land use zoning as ‘H’ – To protect and enhance the outstanding natural character of the Dublin Mountain Area.
  - The proposed development would set an undesirable precedent.
  - It is considered that the EIS is deficient and fails to comply with EIA Directive 85/337/EC.
  - The Environmental Management System is only a paper exercise and is not in place in reality.
  - During the Section 261 registration process the applicant indicated that shale was being extracted from the site (which can be described as ‘Clay rock that splits readily into thin layers along the bedding plane’). This material is being processed into four-inch stone by means of crushing and screening in a

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manner similar to that in 1978. It is submitted that sand and gravel are different to shale and that the probate papers issued to Mrs. Joan Murphy in 2005 described Mr. Michael Murphy as a sand and gravel contractor. This sand and gravel was not excavated from the subject site but from adjacent lands (as detailed on an accompanying map).

- Having regard to ECJ Judgement C215/06, it is submitted that the decision to grant permission is ultra vires. Accordingly, the Board must annul this decision and ‘curtail any further unauthorised development at this site’.
- No details of pre-planning meetings were entered on file thereby denying third parties access to this information.
- The Board is referred to the contents of High Court Judgement [1978] ILRM 85 which includes the following:

*‘Where present day development differs materially from development carried on prior to the 1963 Act, it cannot be said to have been commenced prior to the appointed day. The quarrying carried on in the field following the agreement of May 1977 was a major intensification of the drawing of shale customary in the field prior to 1963. The intensification was such as to render contemporary operations materially different from this carried on prior to the appointed day. It was, therefore, development requiring permission under Part IV of the 1963 Act’.*

- It is submitted that there are conflicting accounts with regard to letting of the land contained in High Court Judgement [1978] ILRM 85 and the probate papers of Mrs. Martha Murphy.
- The applicant (Shillelagh Quarries Ltd.) has claimed that those lands subject to illegal dumping are not in their ownership under Folio No. 3636, although they claimed ownership in both the subject application and during the Section 261 registration of Folio 3636R which was transferred to Folio 3636.
- A new road, entrance and illegal dumping have all occurred on those lands contained in Folio 3636 and are all unauthorised developments. The land contained in Folio 3636 on which the unauthorised quarrying activity is taking place is not in the applicants ownership and is registered in the Valuation Office as agricultural land up to 31 December, 2005.
- It is submitted that the applicant has increased an area of 25 sq. yds of scraped surface within a 4-acre field in 1973 to 27.9 acres of unauthorised quarry without planning permission with an intensification of works in 2000.

**RESPONSE TO (2 No.) SECTION 131 NOTICES (dated 30 March, 2010):**

In the interest of clarity I would advise the Board that two separate Section 131 Notices were issued on 30 March, 2010. The first of these notices requested certain parties to make submissions / observations on the first party appeal dated 9 March, 2010. The second notice requested the parties to make submissions / observations on the following:

- The submission dated 16 February, 2009 received from SLR Consulting on behalf of the applicant
- The submission from the Dublin Mountain Conservation & Environmental Group

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- The submission received on 18 March, 2009 from Catherine Donohue & Others, William Michael Collins and Michael John Hales.

Due to these notices having been issued on the same date, several of the parties to the appeal have chosen to lodge combined submissions responding to each of the notices. Whilst this has complicated matters I propose to summarise the various responses as follows:

Response of Planning Authority:

- In respect of the letter dated 16 February, 2009 submitted by SLR Consulting (Ref. No. 3251 ABP L03) on behalf of the applicant, the Planning Authority's consideration of the matter of the deposition of quarry wastes on adjacent lands is set out in the Council's Record of Executive Business and Manager's Order dated 21 September, 2008, a copy of which has already been forwarded to the Board.

Drg. No. 02 which was submitted with the planning application shows that the c.48.5 hectares of land ownership as including both the quarry lands and the subject area. In this regard it should be noted that Section 8 of the Planning and Development (Strategic Infrastructure) Act, 2006 provides that conditions under Section 34(1) of the principal Act, as amended, may, inter alia, include:

- a) conditions for regulating the development or use of land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant if the imposition of such conditions appears to the planning authority:
  - i) to be expedient for the purposes of or in connection with the development authorised by the permission.
- In relation to the letter dated 16 February, 2009 submitted by SLR Consulting (Ref. No. 3251 ABP L04) on behalf of the applicant, the Planning Authority has no comments on same.
- In relation to the third party submissions the Planning Authority has no comment on same.

Response of Applicant:

Response to Third Party Submission:

- The Board is referred to the comments of Mr. John Gibbons S.C. with regard to the historic use and legal issues raised in the appeal (a copy of which is enclosed in Appendix 1) in that the lands contained in Folio 3636 have been quarried since the 1940s and that such quarrying was carried out prior to 1 October, 1964, a fact accepted by Mr. Justice Costello in his judgement, *Patterson v. Murphy* [1978] ILRM 85.
- Sworn affidavits and correspondence from a sister of the late Michael Murphy, confirm that quarrying commenced on site prior to 1 October, 1964 and that it has continued to-date.
- The attached land folio map (Figure 1) is based on OSi mapping from 1908/1909 and indicates quarrying activity with the northern and southern areas of the lands. Figure 2 is an extract from an aerial photograph obtained

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from the OSi dated 5 June, 1973 which also shows quarrying with the Section 261 area.

- The Planning Authority has accepted the pre-1963 use of the site by way of its registration of the quarry and its request for the lodgement of a planning application accompanied by an EIS.
- It is considered that those references by the appellant to proceedings under other statutory codes such as the Valuation Act, Succession Act and Probate are irrelevant to the issues to be determined.
- The reference contained in Folio 3636 to the fact that the 'Registration does not extend to the mines or minerals' is irrelevant as the subject quarry is only extracting stone and not scheduled minerals.
- Allegations of illegal dumping are being dealt with by the Enforcement Section of the Planning Authority and are not considered to be of relevance. Furthermore, the lands subject to the alleged illegal dumping are located outside of the appeal site.
- The site address has been correctly identified as Aghfarrell.
- The restoration scheme for the quarry as set out in Section 2.5 of the EIS does not require the importation of any materials to the site. All materials required for restoration will be sourced from within the existing site.
- No evidence has been submitted to support the appellants allegation that a massive intensification of works was undertaken at the quarry in the year 2000. At all material times the applicant has operated the quarry since 1991, when it was licensed to operate same by the then owner Michael Murphy, on a 5½ day basis from 08:00-20:00 on weekdays and 08:00-16:00 on Saturdays. Drilling and blasting has been used in the quarry since the 1930s with specific blasts taking place in 1946 & 1949 and during the 1950s, 1960s and 1970s. Drilling and blasting have been the method of extracting rock in this quarry and have not resulted in a change of use or an intensification of works.
- The subject application does not include any reference to retention but rather seeks a continuance of use and extension of the existing quarry as required under Section 261. Accordingly, it is submitted that ECJ Judgment C-215/06 is not relevant as DoEHLG Circular PD6/08 has advised that:

*'It is the Department's understanding that a notification need not be made in respect of a permission granted since 3 July (2008) for the continued operation of a quarry in respect of which an application for permission was made under and in strict accordance with section 261(7) of the 2000 Act i.e. an application with an environmental impact statement, made within such period as was specified by or agreed with the planning authority for the purposes of the subsection in respect of a quarry that commenced before 1 October, 1964'.*

It is considered that that the subject application can be categorised as per the above Departmental Circular and therefore it can proceed to determination.

- With regard to land ownership, Mrs. Joan Murphy is the personal representative of the estate of her late husband, Michael Murphy, whose estate, including the land in Folio 3636, was vested to her. A letter from Mrs. Murphy consenting to the planning application is enclosed.

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- Following an assessment of the EIS, further information and subsequent clarification of further information, the Planning Authority was satisfied that the development accorded with the policies and objectives of the Development Plan and that it met the criteria set out in Article 94 of the Planning and Development Regulations, 2001.
  - All of the issues raised by the Roads Section of Wicklow County Council were addressed in response to a request for clarification of further information (which included a Road Safety Audit). This was considered by the Roads Section of the Local Authority which confirmed that they had '*no objection subject to conditions*'.
  - The proposed development concerns an existing quarry registered pursuant to Section 261 and does not relate to new development. Accordingly, it will not create a precedent in respect of any future planning applications for new development above the 350m contour.
  - Section 3.8 of the EIS includes a detailed visual assessment of the subject site which concludes that the proposed development will have a limited affect on the landscape given the presence of existing extractive operations at both Aghfarrell and Ballinascorney Quarries, a number of historical sand and gravel pits in the valley floor and extensive blanket forestry plantations.
  - The application includes restoration / landscaping plans for the quarry and conditions have been imposed by the Planning Authority accordingly. This is consistent with the land use zoning objective '*To protect and enhance the Outstanding Natural Character of the Dublin Mountain Area*'.
  - It is submitted that the development will not seriously impact on the amenity of either Brittas village or the Dublin Mountains.
  - Contrary to the appellants claims, Section 3.4 of the EIS refers to the surface water catchment and states that the watercourse receiving discharge from the quarry partly '*drains to the Poulaphouca Reservoir via the Lisheens River*'.
  - The letter of the Eastern Regional Fisheries Board provided by the appellant in support of the claim that the Brittas River has salmonid status is almost 12 years old, however, the river no longer retains such status according to characterisation of the river basin under the Water Framework Directive. The biological status of the river is discussed in the EIS and reference is made to sensitive sites such pNHAs within the catchment.
  - With regard to water sampling, and contrary to the appellants submission, the drinking water standards applicable in Ireland are SI 278 of 2007. In any event, drinking water standards are not considered appropriate to environmental assessment and the water analysis in the EIS targeted potentially deleterious parameters arising from quarrying activities.
  - With regard to the adjacent Hegarty Demolition site, it is considered that any references to same are irrelevant in that the site is inactive and situated at a lower elevation than that of the quarry and, therefore, it cannot affect the hydrology and hydrogeology of the quarry.
  - The geology of the site is described in detail in Section 3.3 of the EIS whilst groundwater vulnerability is discussed in Section 3.4.
  - The appellant has not provided any evidence to substantiate its claim that '*Shillelagh quarries Ltd. has failed to submit an adequate hydrological / hydrogeological study and have failed to have regard to 85/337/EEC and the*

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*Water Framework Directive*'. The submitted EIS is considered to be a fully-researched, realistic and unbiased appraisal of the quarry operations.

- An Environmental Management System, incorporating an Environmental Monitoring Plan, was submitted to the Planning Authority in December, 2007 in response to a request for further information. Furthermore, there is an ongoing environmental monitoring programme in place at the quarry whilst an annual environmental report is also prepared.

*Response to Observation of Catherine Donohue & Others:*

This response reiterates the applicants earlier comments (as set out above) with regard to the historic use and legality of the existing quarry, the allegation that an intensification of use has occurred on site, the visual impact of the proposal and its overall compatibility in terms of land use zoning.

*Response to Observation of Michael John Hales:*

This response also reiterates the applicants position with regard to the historic use and legality of the existing quarry.

*Response to Observation of William Michael Collins:*

This response reiterates many of the applicants earlier comments (as set out above) with regard to the historic use and legality of the existing quarry, the allegation that an intensification of use has occurred on site and environmental considerations. Additional comments include:

- The subject application did not include any elements for retention and thus no retention fee was paid. The application and EIS were validated by the Planning Authority with only the standard application fee having been paid.
- It is reiterated that the subject application does not include any reference to retention but rather seeks a continuance of use and extension of the existing quarry as required under Section 261. Accordingly, it is submitted that ECJ Judgment C-215/06 is not relevant as per the advice contained in DoEHLG Circular PD6/08.
- *'In the Matter of Section 27 of the Local Government (Planning and Development) Act, 1976 and in the Matter of an Application between Brendan Noctor, Brenda Noctor, Frank Patterson, Eily Patterson and Aidan Clarke, Applicants – and – Michael Murphy and Shillelagh Quarries Limited, Respondents, The High Court, Record No. 1992/41 MCA'*, these proceedings were ultimately settled and on consent the Order made by Mr. Justice Costello on 11 May, 1978 in the proceedings entitled *'Frank Patterson and Eily Patterson, Plaintiffs, - and – Martha Murphy and Trading Services Limited, Defendants, The High Court, Record No. 1977/6215P'* was vacated.
- The ecological survey which accompanied the EIS did not identify any protected habitats on site or any protected, rare or endangered plant or animal species.
- Section 2.5.12 of the EIS details the measures to be put in place and the proposed barrier system in the interest of public safety and to prevent public access to the quarry.
- All of the issues raised by Wicklow County Council with regard to the local road network were addressed in response to a request for clarification of

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further information whilst South Dublin County Council also considered the surrounding road network in its decision to grant permission.

*Response of Third Party Appellant:*

*Response to First Party Appeal:*

- It is considered that the third party appeal is the only valid appeal made in respect of the subject application and that the reinstated first party appeal has been lodged outside of the statutory timeframe.
- The fees lodged by the applicant in respect of both the original planning application and the first party appeal are incorrect.
- No submissions from An Taisce have been circulated to the third party appellant.
- The High Court Judgement [1978] ILRM 85 has ruled that in 1977 the quarry constituted unauthorised development
- The Planning Authority has failed to require the applicant to submit proof of quarrying on site prior to 1963 and did not carry out a basic investigation to establish the true facts as required by the Act.
- It appears that there are serious doubts as to the validity of the Section 261 registration process as quarries are falsely claiming pre-1963 status which are not being suitably verified by Planning Authorities.
- The registration of a quarry does not confer planning permission and, therefore, the subject quarry remains unauthorised until granted permission. Accordingly, the decision to grant permission is ultra vires.
- It is submitted that no pre-1963 quarry existed on the lands (please refer to the accompanying OSi Map dated 1968 and an aerial photograph dated 5 June, 1973) as confirmed by the submissions of extended family members.
- It is believed that quarrying did not take place on these lands until after Mr. Frank Patterson purchased Shillelagh Lodge in 1974 who subsequently took an action in the High Court which stopped Mr. Michael Murphy from quarrying the land by way of an injunction.
- The observers' submissions provide a comprehensive account of the history of 'Aghfarrell Farm' and cast serious doubt on the credibility of the evidence presented by the applicant in both the subject application and the Section 261 registration.
- No agreement has been reached between the DoEHLG and Commission Officials on how to proceed with regard to ECJ Judgement C215/06.
- The Council has failed to comply with the County Development Plan which prohibits quarrying over the 350m contour line. It has also failed to comply with the mandatory objectives of the Act and has failed to protect the natural heritage and fabric of the Dublin Mountains.
- The applicant has deposited a significant volume of waste material on the lands in the absence of a waste permit.
- The applicant has failed to carry out a surface water and hydrogeological assessment.
- The applicant has failed to comply with the European Liability Directive 2004/35/CE.
- The development detrimentally impacts on amenity by reason of traffic hazard, dust, noise and environmental pollution.

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- Conflicting information has been provided in the subject application and the Section 261 registration documentation.
  - The submitted EIS is seriously deficient (N.B. Please refer to the appellants response to the observation of An Taisce).
  - The road infrastructure is substandard and unsuitable for the development proposed.
  - Valuation Records document the lands owned by Mrs. Martha (Hale) Murphy as agricultural with no reference to any quarrying works. Maps from the OSI in 1969 show no quarry on site.

*Specific Response to Conditions Appealed by First Party:*

- With regard to Condition No. 2 it is submitted that other planning authorities have imposed a limit on the life of pre-1964 quarries and in this respect it is considered that a 10-year limit would be appropriate for the subject quarry. Furthermore, it should be noted that on the basis of 95 No. 20-tonne truck movements (as detailed by the applicant) 600,000-700,000 tonnes of material would leave the site each year. Accordingly, on the basis of 18.2 million tonnes of reserves and such a rate of extraction the lifespan of the quarry would equate to 30 years.
- In relation to Condition No. 3 it is submitted that the applicant has dumped a significant quantity of material on land to the northeast of the quarry in breach of the Waste Framework Directive and that no details of the quantity, nature or origin of this material have been provided in either the subject application or the Section 261 registration. It is further submitted that conflicting information has arisen from the first party appeal with regard to the ownership of lands and that it appears that the applicant is not the registered owner of the subject lands as claimed in the planning application etc.
- With regard to Condition No. 4 it is considered that both the R114 and Local Road No. L4382 are unsuitable for 20-tonne lorries with particular reference to that section of the R114 between Aghfarrell and Old Bawn which is subject to a 3-tonne weight restriction. Due to the intensification of works at the subject site these roads are in a serious state of disrepair as has been acknowledged by the Planning Authority. Levies towards road improvements have been imposed on other quarrying operations and in this respect it is submitted that the contribution of €675,000 is totally inadequate to upgrade the R114 to the required standard.

If the Board decide to delete Condition No. 4 it is submitted that Condition No. 5 should also be deleted. It should also be noted that the R114 to the east of the quarry and the works to the L4382 were not included in the submitted EIS.

- In respect of Condition No. 28(b) it is submitted that the applicant has failed to submit an adequate hydrological / hydrogeological study and has also failed to have regard to 85/337/EEC and the Water Framework Directive. The applicant has not identified the Brittas River as having salmonid status whilst the EIS fails to refer to the site location within the catchment area of the Blessington Lakes which supply drinking water to the Dublin, Wicklow and Kildare areas. There are further concerns with regard to the analysis of water quality and the vulnerability of ground and surface waters to pollution.

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- The appellant has no confidence with regard to the applicants intentions for rehabilitation of the subject site. The monies sought by the Planning Authority under Condition No. 38, and as suggested by the applicants agent, are considered to be inadequate to cover the actual cost of the necessary rehabilitation works.
  - Having regard to the applicants accounts and the extent of environmental damage it is submitted that the existing quarry is not a viable operation.

The remainder of this submission proceeds to reiterate those points already made by the appellant in earlier correspondence.

*Response of Catherine Donohue & Others (Observer):*

- The observer is in agreement with the contents of the earlier observations lodged by Michael John Hales and William Michael Collins and that of the third party appeal.
- It is reiterated that the current operations at Aghfarrell Farm are unauthorised and that there was never a quarry on this site prior to 1963. Any claim to the contrary is considered to be without foundation. There was no quarry operation of any note in the 1960s and the operation was stepped up in the 1970s without planning permission. Furthermore, the present use of the site is a further intensification which only commenced in 2000 similarly without planning permission.

*Response of Michael John Hales (Observer):*

- It is reiterated that there was no commercial quarrying operation on site prior to 1963 and that the information put forward by the applicant is inaccurate.
- The observer concurs with the contents of other observations and the third party appeal.

*Response of William Michael Collins (Observer):*

- The manner in which the subject application has been processed to date is questionable as is the decision of the Board to allow the re-submission of the first party appeal.
- It is noted from the appeal file that an inspector's report was furnished to the Board some time ago although the appeal was not determined. It is also noted that there is an outstanding Section 5 referral pertaining to the subject site.
- It is reiterated that it is a matter of public record that there was never any 'pre-use' on site on which to base the subject application for a 'continuance of use'. The operations on site were (and remain) unauthorised. Furthermore, the intensification of use which has occurred since 2000 is a change of use in law and therefore requires full planning permission.
- The Section 261 registration is unsound as it was made on foot of submissions claiming that the site operated as a quarry prior to 1964 without any verification of same. Furthermore, the registration of a quarry does not confer planning permission nor does it validate the subject application for a 'continuance of use'.
- In 1978 the High Court ruled that the operation at that time was on a smaller scale that they are at present. This ruling set legal precedent and injunctive reliefs were also obtained prohibiting the unauthorised quarry operation.

- The Planning Authority has erred in granting permission for an unauthorised quarry, which is contrary to the proper planning and sustainable development of the area, while ignoring the policies and objectives of the Development Plan. Accordingly, the first party appeal must be considered as nullified.
- It is submitted that accompanying information from the Land Commission dated 20 April, 2010, together with a map of the application site and the land comprised in Folio 3636 DN, makes no mention of a quarry on these lands in 13 May, 1932. Further documentation is submitted to demonstrate that the subject lands were used historically for agricultural purposes.
- The observer is also in agreement with the contents of the earlier observations lodged by Michael John Hales and Catherine Donohue & Others.
- It is submitted that the observation by An Taisce was not circulated to the observer

**RESPONSE TO SECTION 131 NOTICE (dated 25 May, 2010 regarding circulation of submission by An Taisce dated 21 October, 2008):**

*Response of William Michael Collins (Observer):*

- The observer is in agreement with An Taisce in that the onus is on the Board to address the legal status of the subject site having regard to the ECJ Judgement of 3 July, 2008.
- The Planning Authority failed to notify An Taisce as a prescribed body of the subject application.
- Unauthorised operations have continued on site since the lodgement of the subject appeal in October, 2008 with no meaningful enforcement action having been taken by the Planning Authority.
- It is considered that the matter of Usk and District Residents Association v. An Bord Pleanala [2008] 1071 JR refers and that the circumstances of same are similar to those of the subject case regarding the preliminary issue in which the planning process to date has unfolded. The planning application should have been invalidated and appropriate action taken against the applicant to cease the unauthorised development on site.

**DEVELOPMENT PLAN**

**South Dublin County Development Plan, 2004-2010:-**

*Land Use Zoning:*

The proposed development site is located in an area zoned as 'H' with the stated land use zoning objective 'To protect and enhance the outstanding natural character of the Dublin Mountain Area'. In accordance with Table 10.3: Zoning Objective 'H' an 'Industry-Extractive' is open for consideration within the land use zoning objective, however, it is expressly not permitted above the 350m contour.

*Other Relevant Sections / Policies:*

Chapter 2: *Enterprise and Employment:*

Section 2.2: *Strategy:*

- Facilitate the efficient and sustainable operation of the extractive industry in the County.

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Policy EE17: *Extractive Industry:*

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

*Chapter 9: Landscaped, Natural Heritage & Amenities:*

Section 9.3: *Policy – Landscape:*

Policy LHA 1: *Preservation of Landscape Character:*

It is the policy of the Council to protect the character of the landscape in the County in accordance with the policies and objectives of the Development Plan and with the “Draft Guidelines for Landscape and Landscape Assessment, 2000” as issued by the Department of the Environment and Local Government or any finalised Guidelines issued by the Department.

Policy LHA 2: *Views and Prospects:*

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

(*N.B.* Views south along the R114 Regional Road are identified for preservation)

Policy LHA15: *Dublin Mountain and High Amenity Zones:*

It is the policy of the Council to conserve the character of the Dublin Mountain and High Amenity Zones.

Chapter 12: *Development Control:*

Section 12.3.4: *Extractive Industry*

Section 12.12.7: *Upland Mountain Areas / High Amenity Areas*

**NATIONAL AND REGIONAL POLICY:**

The ‘*Quarry and Ancillary Activities, Guidelines for Planning Authorities*’ published by the Department of the Environment, Heritage and Local Government in April, 2004 note the economic importance of quarries and the demand for aggregates arising from the needs of the construction industry with particular reference to house building and infrastructure provision. They note that aggregates can only be worked where they occur and that many pits and quarries tend to be located within 25km of urban areas where most construction takes place.

Chapter 2 identifies appropriate development plan policies and objectives with regard to the development of quarries.

Chapter 3 identifies the potential environmental issues associated with the development of the extractive industry / quarries and recommends best practice / possible mitigation measures in respect of:

- Noise and vibration
- Dust deposition / air quality
- Water supplies and groundwater
- Natural heritage
- Landscape

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- Traffic impact
  - Cultural heritage
  - Waste management

Environmental Management Systems are recommended as a quality assurance system to measure a company's operations against environmental performance indicators.

Chapter 4 refers to the assessment of planning applications and Environmental Impact Statements. It provides guidance on the information to accompany an application and the inclusion of possible planning conditions.

Chapter 5 refers to the implementation of the registration procedures set out in Section 261 of the Act.

The *'Regional Planning Guidelines for the Greater Dublin Area 2004-2016'* provide a long-term strategic planning framework for the development of the Greater Dublin Area. This framework aims to consolidate the Dublin Metropolitan Area including the city centre with an emphasis on improved multi-modal transport systems, increased residential development densities, well-designed urban environments and the prioritisation of public transport. Development in the hinterland will be balanced by the concentration of development into identified towns with strategic green belt lands, increased densities and high levels of employment activity, shopping and social facilities. The longer-term objective is the creation of self-sufficient towns with limited commuting to the Metropolitan Area.

The Guidelines identify the supply of aggregates as a potential 'bottle-neck' to the provision of the required number of housing units and other developments in the Greater Dublin Area and, therefore, they state that it would be prudent to assess the situation and identify measures to ensure that adequate supplies of aggregates are available to meet the needs of the strategy. Accordingly, the Guidelines recommend (Recommendation 10.2) that a review of aggregate resources in and close to the Greater Dublin Area, and of planning policies affecting their extraction, be instigated with a view to ensuring that adequate supplies of aggregates are available to meet the needs of the strategy.

## **ASSESSMENT**

I propose to assess the Third Party appeal first, followed by the First Party's appeal against a number of the conditions.

### ***Third Party Appeal:***

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are as follows:

- The planning status of the existing quarry
- Intensification of works post-2000
- Alleged unauthorised dumping of waste material / land reclamation works
- Traffic implications
- Impact on the 350m contour line / visual impact on the Dublin Mountains area

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- The adequacy of the Environmental Impact Statement

These are assessed as follows:

***The Planning Status of the Existing Quarry:***

With regard to the planning status of the existing quarry and its implications with regard to the determination of the subject case, it is first necessary to consider the applicants claim that the existing operation on site commenced prior to 1 October, 1964 and to review the evidence submitted to substantiate same. The initial planning application and accompanying Environmental Impact Statement as submitted to the Planning Authority on 1 April, 2007 simply referred to the proposed development as comprising the continuance of use of an existing quarry on lands that have been used for this purpose since before 1 October, 1964 on a site registered in accordance with Section 261 of the Planning and Development Act, 2000. Other than a reference to the quarry having commenced operation in c. 1936 no evidence was provided at this stage of the application to substantiate the claim of pre-1964 status, and it was during its initial assessment of the proposal that the Planning Authority received a submission from the appellant which claimed that work at the existing quarry had significantly intensified since 2000 and that prior to this it only comprised a small quarry with a low output.

Regrettably, in its request for further information issued on 11 June, 2007 the Planning Authority choose not to query the legal status of the existing quarrying activities, although it did query the planning status of those lands located to the northeast of the subject site which were being used for the storage of materials associated with the existing quarry works. In its response to the request for further information the applicant claimed that the works outside the site boundary involved land reclamation works and reiterated its claim that the quarry had been in existence since the 1930s.

During the remainder of its assessment of the subject application, up to and including its decision to grant permission, the Planning Authority choose not to comment further on the applicants claim of the pre-1964 status of the existing quarry or the claim by a third party that works on site had been intensified since 2000.

Having reviewed the grounds of appeal, in my opinion, the appellant has raised legitimate concerns with regard to the planning / legal status of the existing quarry and, whilst I would accept that matters of enforcement are beyond the remit of the Board, any issues of unauthorised development on site are relevant considerations in the assessment of the subject appeal. Whilst I also note the reference by An Taisce in its submission on the subject appeal to the ECJ Judgement C-215/06, in my opinion, it is necessary in the first instance to critically analyse the applicants claim that the subject site has the benefit of pre-1964 status and, secondly, in the event of accepting same, to consider whether or not there has been any intensification of operations on site which would amount to a material change of use without the benefit of planning permission.

With regard to the claim of pre-1964 status, in its grounds of appeal the appellant submits that the subject lands were only used as a farm in the 1930s and not as a quarry and that this can be verified from Ordnance Survey mapping which

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purportedly shows that no quarrying was undertaken at this location until 1970. It is further submitted that in Valuation Appeal No. VA06/3/047 it is stated that the quarry had been in existence for over 30 years (as on 18 April, 2005) whilst no evidence has been supplied to support the claim that the quarry existed prior to 1964 and that it was in continuous operation from this date within a defined land area with a regular tonnage and rate of extraction. At this point it is of relevance to note that the appellant has referred to the 'original quarry' as 'a sand and gravel pit pre-1970' although it subsequently states that this pit is far removed from the present-day quarry. In my opinion, whilst the appellant is of the view that the applicant has failed to support its claim of pre-1964 status I would suggest that the bulk of the grounds of appeal similarly fail to provide any definitive evidence to the contrary, with one notable exception. The appellant has referred to *High Court Judgement Ref. No. [1978] ILRM 85 (Frank Patterson and Eily Patterson v. Martha Murphy and Trading Services Ltd.)* which would seem to relate to the subject site and I note that the applicant does not dispute (indeed it would seem to accept) that this case relates to the lands in question.

In summary, this case involved an action taken by the Patterson's against the then owner and operator of the quarry with regard to a claim for damages arising from the nuisance generated by quarrying operations which had been developed in close proximity to their home. In addition, the Patterson's brought a Motion pursuant to Section 27 of the Local Government (Planning and Development) Act, 1976 for an order prohibiting the operations being carried out in the 'quarry field'. In his judgement Mr. J. Costello concluded that the operations then being carried out differed materially from those carried on prior to 1 October, 1964 as follows:

*'The object of the present operations is to produce a different product to that being produced in 1964. As stated in the parties agreement, the operations are designed to manufacture shale. The 4 inch stone now being produced is different to shale; it is used for a different purpose in the building industry, and it fetches a different price. The method of production is different to that obtaining in and before 1964. The raw material (rock) for the end product is now obtained by means of blasting and this is done on a regular basis. Large crushing and screening plant is used to produce stones of the correct dimension. Considerable ancillary equipment is used and a considerable labour force employed. Finally, the scale of operations is now a substantial one, and bears no relationship to the scale of operations carried on prior to the appointed day . . .*

*. . . if it appears that the scale of operations has so intensified as to render contemporary operations materially different from those carried on before the appointed day, this fact can be taken into account in considering whether what is presently being done commenced prior to 1 October, 1964 . . . The development, I am now considering was in fact, not commenced until the summer of last year. Thus, it was and is development which requires permission under Part IV of the 1963 Act and in my opinion I should prohibit its use under s.27. I should add that if the case fell to be considered as one of 'development' arising from the making of a material change in the use of land I would have reached the same conclusion.'*

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In my opinion, this judgement represents a significant source of reliable information relevant to the subject appeal and in this respect I would attach particular weight to it. With regard to the background to the subject lands the Mr. Costello found that from 1964 to 1969 the 'quarry field' had been used very intermittently by Mr. Michael Murphy (deceased) to obtain shale by means of a mechanical shovel which was used to scrape the top of the soil and to put the shale into lorries. In 1969 this field was worked more intensively by a Mr. Mansfield for only a period of some weeks using a caterpillar bulldozer which scraped the lands to a depth of 7-10 feet in places. After Mr. Mansfield vacated the site the field was once again only used very intermittently for the purpose of obtaining shale and from time to time it was let for sheep grazing. In May, 1977 Mr. Murphy subsequently entered into an oral agreement with a Mr. Daragh, the managing director of Trading Services, granting *'permission to install crusher screeners and conveyors and necessary equipment for the purpose of manufacturing stone'* and not long after Trading Services brought into the field *'a large crushing plant, a Parker Screening plant, an excavator, two dumpers, a loading shovel, a compressor and a drill'*. The operations which subsequently commenced involved the blasting of large quantities of rock which were loaded by an excavator to a waiting dumper which then transferred the rock to a hopper at the rear of the crusher. The crushed stone was then transferred by means of a conveyor to a screening plant with the four-inch stone loaded into lorries and transported off site i.e. the object of the operation was the manufacture of 4-inch stone.

With regard to the pre-1964 use of the lands Mr. Costello found that before 1 October, 1964 Mr. Murphy Sr. had for some years drawn shale from the quarry field and that as long ago as 1946 explosives were used to dislodge material, but that apart from this one occasion no explosives were ever used in the field until 1974. It was also accepted that there was definitive evidence that shale had been drawn from the field in 1949 to be used in the foundations of the Blue Gardenia public house and that in 1962 further shale was taken from the field for the foundations of a roadway and factory at Baldonnell. On the basis of this evidence and further submissions Mr. Costello found that the pre-1964 'development' amounted to the loosening of shale with picks and bars, the scraping of portions of the surface of the field with a mechanical shovel, and the loading of the shale into lorries with the help of a mechanical shovel. It was further held that these operations were carried out intermittently and on a small scale.

This background information is of particular relevance in that it establishes the use of the lands in question prior to 1964 and acknowledges that there was some intermittent extraction activity undertaken on site. Accordingly, this establishes the general scale operations at this time and provides a baseline against which the current operations can be compared.

In response to the grounds of appeal, the applicant refers to legal advice received from Mr. John Gibbons S.C. and states that the existing quarry commenced prior to and was extant on the appointed day i.e. 1 October, 1964. It is submitted that the lands have been quarried continuously since c. 1900 with the late Mr. Michael Murphy providing a sworn affidavit that it was his belief that his grandfather quarried the lands whilst his own father quarried the land from the 1940s up until 1964 at which point he, Michael Murphy, quarried the land either on his own or his mother's behalf until 1991 when the applicant, Shillelagh Quarries Ltd., commenced operating the quarry. With regard to [1978] ILRM 85 (*Patterson v. Murphy*) it is submitted that the

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Murphy's were not prevented by this Court Order from extending the quarry and that the order made in that case was subsequently vacated by Order of the High Court in June 1999 as part of the settlement proceedings entitled *'In the Matter of Section 27 of the Local Government (Planning and Development) Act, 1976 and in the Matter of an Application Between Brendan Noctor, Brenda Noctor, Frank Patterson, Eily Patterson and Aidan Clarke, Applicants – and – Michael Murphy and Shillelagh Quarries Limited, Respondents, The High Court, Record No. 1991/41 MCA'*. Furthermore, it is submitted that under [1978] ILRM 85 (*Patterson v. Murphy*) the court granted injunctive relief to prevent a nuisance being caused to the Plaintiffs and under Section 27 it prohibited development *'being the manufacture of four-inch stone by means of blasting and crushing'*. In effect, the applicant is making the case that the earlier court order only specifically prohibited the manufacture of 4-inch stone and did not relate to the wider use of the land as a quarry.

In response to the circulation of the observation made by An Taisce, the appellant has supplied a plethora of additional documentation including folio details and probate papers which purportedly support its case with regard to the historic use and legal status of the quarry, concerns with regard to the applicants legal interest in the site and land ownership issues etc. Given the volume and nature of much of this material it is difficult to verify same, however, in my opinion, the information most relevant to the historic use of the subject lands can be derived from the Valuation Office records and the probate papers. In summary it has been submitted that Valuation Office records for Folio No. 3636 show that this land was rated as agricultural from the 1930s through to the 1980s i.e. not as a (commercial) quarry. Furthermore, following the death of Mrs. Martha (nee Hales) Murphy a grant of probate was issued to her son in 1990, Mr. Michael Murphy, who supplied a sworn statement in 1989 that the lands in question (c.120 acres) were agricultural in nature and valued at £60,000. Accordingly, the appellant is making the point that the subject lands were described in these legal papers at this time as being agricultural in nature i.e. they were not in use as a quarry.

Following the subsequent death of Mr. Michael Murphy, a grant of probate was made in 2005 to his wife Mrs. Joan Murphy (the present owner of the subject site) and the appellant has also submitted copies of the relevant papers. In the 'Schedule of Lands and Buildings' the lands are not declared as agricultural, whereas in accompanying papers, business assets comprising a quarry with a gross market value of €2,371,000 are declared. Therefore, the appellant would seem to be claiming that it is only at this point that the subject lands were declared as a commercial quarry.

In response to this submission the applicant reiterates its claim with regard to the historic use of the quarry and states that the lands contained in Folio 3636 have been quarried since the 1940s and that such quarrying was carried out prior to 1 October, 1964, a fact accepted by Mr. Justice Costello in his judgement, *Patterson v. Murphy* [1978] ILRM 85. It is further submitted that sworn affidavits and correspondence from a sister of the late Michael Murphy, confirm that quarrying commenced on site prior to 1 October, 1964 and that it has continued to-date. Reference is also made to OSi mapping from 1908/1909 which indicates quarrying activity with the northern and southern areas of the lands whilst an aerial photograph from the OSi dated 5 June, 1973 also shows quarrying with the Section 261 area. Finally, it is submitted that the Planning Authority has accepted the pre-1963 use of the site by way of its registration

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of the quarry whilst the appellants references to proceedings under the Valuation Act, Succession Act and Probate are irrelevant to the subject application

With regard to the applicants reference to OSi mapping dated 1908 / 1909 as indicating existing quarrying activity, whilst I would acknowledge that this map does identify a gravel pit located within the northernmost extent of the applicants land I note that this feature is located outside of the confines of the existing rock quarry on the opposite side of the laneway and thus is disconnected from same. Therefore, I cannot accept that the presence of this gravel pit establishes the current use of the existing rock quarry on lands further south (*N.B.* I would also suggest that the operations associated with a rock quarry such as the method of extraction etc. are materially different to that associated with a sand and gravel pit). Secondly, with regard to the feature shown on the map on the southernmost fringe of the application site, I note that this feature is not clearly identified as a quarry / pit and thus may actually be some other form of feature such as an archaeological monument or ringfort. In any event, this feature is similarly physically separate from the existing quarry operation and thus does not provide any evidence to support the pre-1964 status of the existing operation as claimed by the applicant (i.e. the existing quarry does not form a physical extension of same).

I would accept that the aerial photograph dated 1973 as submitted by the applicant does appear to show some ground disturbance within the confines of a single field which now forms part of the existing quarry, however, whether this is extraction / quarrying activity is unclear. At this point I would refer the Board back to the judgement of Mr. J. Costello in *Patterson v. Murphy* [1978] ILRM 85 in which he refers to Mr. Frank Patterson as having walked the 'quarry field' prior to purchasing Shillelagh Lodge in 1973. At this time Mr. Patterson is stated as having observed that some of the topsoil had been scraped away leaving an area of broken rock and shale in an area of c. 25 square yards with the rest of the field consisting of rough grazing and heather. Although I cannot be definitive it is possible that the area of disturbance shown in the aerial photography may correspond with that area referenced by Mr. Patterson and as accepted by Mr. J. Costello.

In addition to the information submitted by both the applicant and the appellant, a number of observations have also been lodged by grandchildren of the late Mrs. Martha (Hales) Murphy which also question the planning history of the existing quarry. In summary these parties submit from their own knowledge, having visited 'Aghfarrell Farm', that the lands in question were historically used for agricultural purposes and not as a quarry.

On the basis of the foregoing, it is clear that there are conflicting submissions as regards the historic use and planning status of the existing quarry and, therefore, on the basis of same, it is difficult to draw a definitive conclusion as to whether or not the existing quarry has the benefit of pre-1964 status. However, the judgement of Mr. J. Costello in *Patterson v. Murphy* [1978] ILRM 85 provides clarity in this respect and I would again emphasise that the applicant (and his legal adviser) acknowledge that this judgement pertains to the subject site. Therefore, it is necessary to consider the existing operations on site in light of this judgement (*N.B.* whilst the injunctive relief granted under [1978] ILRM 85 would seem to have been vacated through the

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settlement of a later legal action, it is my understanding that this does not affect the earlier findings of Mr. J. Costello as regards the use of the site).

At present, the existing quarry extracts stone / rock for use as general stone fill products, including Clause 804 aggregates, for the construction market at a rate of 450,000 tonnes per annum. Conventional blasting techniques are used to dislodge material from the quarry face with blasting operations occurring 2-4 times per month depending on market demand. This material is then fed by mechanical loading shovel into mobile crushing and screening plant located on the quarry floor to produce crushed stone products which are then stockpiled and transported off site by lorry. Equipment present on site during the course of my site inspection included 2 No. heavy duty dumper trucks, 3 No. crushing / screening plants, excavators, loading shovels and various lorries transporting material off site. It was also evident from my inspection that a number of different grades of stone products were being produced on site and in this respect I would refer the Board to the copy of a Judgement of the Valuation Tribunal which accompanied the grounds of appeal and which relates to the subject quarry. This document confirms that the quarry produces low grade material suitable for use in general site development works, namely, '*2 and 4 inch down materials*'. In addition, a representative of the subject applicant confirmed that since 2005 the quarry produced c. 60,000 tonnes per annum of 'Clause 804' material (commonly used as a sub-base material in roads construction).

In light of the foregoing, it is clear that the existing quarry is a significant operation in terms of its overall scale, extent and means of production. Whilst it would seem that the subject lands were previously used on an intermittent basis for the extraction of shale on a small scale using somewhat primitive methods, it is clear that the existing quarry is a much more sophisticated operation using a variety of plant and machinery in addition to regular blasting to produce various stone products on a much larger scale. Accordingly, I am of the view that the existing operation bears little resemblance to the pre-1964 development carried out on site. It would seem that it was only around 1977 that the operation on site was intensified through the introduction of the regular blasting of large quantities of rock and the processing of same into four-inch stone. These activities were deemed to be materially different from the development carried out prior to 1 October, 1964 having regard to the object of the operations, the method of production and the scale of the operations. Considering the nature and scale of the operations presently being conducted from the site it would seem that these exceed even those conducted c. 1977 and are far removed from the pre-1964 operation. Accordingly, it is my opinion that the existing operation on site is development which is materially different to the pre-1964 development both by reason of the nature and intensity of the works and the making of a material change in the use of the land (including the original fields which previously made up the wider site and which were used for agricultural purposes). Having concluded that the existing operation is development which does not have the benefit of pre-1964 status, and in the absence of any grant of planning permission authorising same, in my opinion, the existing quarry operation constitutes unauthorised development and thus the Board is precluded from considering a grant of permission in this instance.

With regard to the applicant's suggestion that the fact that the quarry has been registered in accordance with Section 261 of the Planning and Development Act, 2000, has regularised the planning status of the site, I would refer the Board to

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Section 5.10 of the ‘*Quarries and Ancillary Activities, Guidelines for Planning Authorities*’ states the following:

*‘It should be noted that the registration of quarries under section 261 does not confer planning consent for a quarry that is an unauthorised development. Therefore, an unauthorised development remains unauthorised even after registering with the planning authority’.*

The registration of the quarry is irrelevant in the determination of its legal status and I would also refer the Board to DoEHLG Circular PD/08 in relation to applications arising under Section 261(7) of the Act which assumes strict compliance with the requirements of that section including that the quarry in question had commenced operation before 1 October, 1964.

Furthermore, given the apparent unauthorised status of the existing operation, the fact that the quarry exceeds the threshold for the mandatory preparation of an EIS, and noting that the subject application should have sought permission to retain the existing operation, I am of the opinion that the subject application falls foul of ECJ Judgement C215-06 in that it involves an application for a development including a substantial retention element where EIA is required.

**Intensification of Works Post-2000**

It has been alleged that the existing quarry significantly intensified its operations from 2000 onwards in terms of the rate of production, traffic levels etc. and, in particular, the introduction of blasting, however, such an allegation of intensification is rejected by the applicant. Again conflicting information has been provided with regard to the intensity of operations conducted from the subject site, however, I would refer the Board to the aerial photograph of the site dated 1973 as supplied by the applicant and aerial photography of the site taken in 1995, 2000 and 2005 which is publicly available from the OSi website.

With regard to OSi aerial photography of the site this is of particular relevance in that it establishes a clear timeline as regards the gradual development of the site. In 1973 it would seem that the extent of ground disturbance or quarrying works were essentially restricted to one field defined along its southern boundary by a drain or ditch. By 1995 it is clear that the extent of the quarry had significantly extended both southwards and eastwards into adjoining lands. By the year 2000 the quarry would seem to have doubled in area from that apparent in 1995 whilst by 2005 the quarry had extended further southwards and appears to have deepened given the evidence of bench workings.

On the basis of the foregoing, it is possible that between 1973 and 1995 the quarry workings extended gradually over a 22-year period, although this is somewhat speculative in that it assumes a regular rate of extraction, however, I am inclined to conclude that during the 10-year period between 1995 and 2005 operations at the site significantly intensified both in terms of the extent and depth of the workings. With regard to blasting, I note that in his judgement [1978] ILRM 85 Mr. J. Costello recorded that as long ago as 1946 explosives had been used to dislodge material, but that apart from this one occasion no explosives were ever used in the ‘quarry field’

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until 1974. Accordingly, the re-introduction of blasting activities in 2000 could be interpreted as an intensification of operations.

On balance, it would seem likely that the quarry operation did intensify over the period 1995-2005, however, I do not propose to comment further in this respect given my earlier comments with regard to the unauthorised status of the overall operation on site.

**Alleged Unauthorised Dumping of Waste Material / Land Reclamation Works:**

The lands which have been subjected to unauthorised dumping of quarry waste as alleged by the appellant are located to the northeast of the existing quarry on the opposite side of the laneway and are not included within the application site as outlined in red, although they are detailed on the site location map (Figure 1.2 of the EIS) as forming part of the applicants landholding. The initial Planner's Report noted that these lands were the subject of enforcement proceedings with regard to the dumping of waste material on agricultural lands and considered that this issue should be addressed in the subject application. Therefore, the applicant was required by way of a request for further information to outline the planning status of these lands and their use for the storage of material associated with the existing quarry and, if required, to incorporate the retention of same into the subject application. In response to this request, the applicant simply stated that the lands in question were the subject of a separate submission made to the Enforcement Section of the Planning Authority and that they did not form part of the current application (*N.B.* It would seem that the applicant had previously submitted to the Planning Authority that these infilling works constituted land reclamation and thus they were exempted development).

Following a request for clarification on this matter, the applicant submitted that the works undertaken to date consisted of the importation of shale and topsoil for land reclamation purposes in order to allow the land in question to be used more effectively for agriculture i.e. in its original condition the land was unsuited to agricultural use due to its topography and poor drainage qualities. The applicant then refers to Class 11 of Part 3 of the Second schedule of the Planning and Development Regulations, 2001 which states that '*Development consisting of the carrying out, on land which is used only for the purpose of agriculture or forestry, of any of the following . . . land reclamation*' shall be exempted development. It is further submitted that the applicants' family will adhere to the recommendations of a Teagasc Agricultural Adviser in respect of the establishment of grass on the reclaimed lands and that topsoil will be imported onto the lands in order to complete the works.

In its final appraisal of this issue the Planning Authority took the view that the works involved the deposit of waste material, in particular overburden and rock from the adjacent quarry, onto former agricultural fields under grass cover, and that this had resulted in a material change in the use of the land by reference to the provisions of Section 3(2)(b)(iii) of the Planning and Development Act, 2000 in that where land becomes used for the deposit of '*mining or industrial waste, builder's waste, rubbish or debris*' the use of the land shall be taken as having materially changed. The Planner's Report also outlines how, in its opinion the deposit of rock and overburden would not be conducive to agriculture and that the subject lands are not currently used for agricultural purposes in that they form part of the wider site used as a quarry. Accordingly, it considered that there was insufficient evidence to establish that the

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works were for the purpose of land reclamation for agricultural or forestry use and therefore it attached a condition to its notification of a decision to grant permission that a separate application be made for the retention and completion of the land reclamation works. Notably, the applicant has actually appealed the imposition of this condition on a number of grounds including the case that the lands in question are not owned by Shillelagh Quarries Ltd and that it is unreasonable to impose a condition requiring the applicant to lodge a planning application on lands owned by a third party.

In my opinion, given the location of the lands in question outside of the application site and their physical detachment from the principle quarrying activity, the determination as to whether or not the deposit of this material on these lands is or is not exempted development is not of critical importance to the assessment of the subject application and I would suggest that such matters would be more appropriately assessed through recourse to a Section 5 reference. Accordingly, I do not propose to comment further on this matter.

**Traffic Implications:**

Access to the existing quarry is obtained via a private laneway which extends southwards from Local Road No. L4382 which in turn intersects with the R114 Regional Road in the form of a priority controlled major / minor ('T') junction. This junction is located on the outer apex of a tight bend in the R114 with the approach to same from the east along the R114 being subject to a maximum weight restriction of three tonnes. The overall width and condition of the regional road is reasonable and defined by road markings although it narrows on travelling east past the junction with Local Road No. L4382 beneath a bridge towards Old Bawn. The local road is winding with a carriageway width of c. 4-5m and includes a narrow masonry bridge which is only capable of accommodating single file traffic.

Section 3.11 of the EIS states that the existing quarry generates approximately 95 No. HGV trips per day with arrival / departure rates being essentially constant at c. 9 trips per hour. It is also submitted that neither the current extraction rate nor the number of personnel employed at the quarry is proposed to change on account of the proposed development.

The road traffic analysis contained in the EIS concludes that the surrounding road network has the capacity to accommodate the proposed development, however, it also makes a number of recommendations in respect of road improvements. It recommends that visibility for traffic exiting the quarry should be improved by the Local Authority through the trimming back of the roadside vegetation and the installation of convex mirrors on the L4382 in order to improve lateral visibility. In addition, it recommended that the Local Authority consider putting in place traffic management measures at the narrow bridge which could incorporate a priority control arrangement whereby traffic approaching from the quarry direction would have priority over oncoming traffic. Finally, it considered that all HGV traffic associated with the quarry should be restricted to use Haul Route 1 (westbound along the R114 to the N81) in order to avoid the three-tonne weight restriction to the east.

With regard to the proposal to install convex mirrors to improve visibility from the site exit the Roads Section of the Planning Authority considered such a measure to be

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unacceptable, most notably, as the local road is situated within the administrative area of Co. Wicklow. Accordingly, it was recommended that the application be referred to Wicklow County Council for its observations and that adequate vision splays be provided at the site entrance. In addition, whilst it was accepted that all traffic from the quarry would have to travel westbound along the R114 given the weight restriction to the east it was noted that this regional road required extensive maintenance each year arising from damage caused by HGV traffic. The sides of the road are apparently very weak whilst its narrow width results in lorry wheels traversing the edges of the carriageway which are not strong enough to withstand this loading. Therefore, it was recommended that the applicant be required to pay a special contribution of €675,000 or €67,500 per year for 10 years.

Notably, following a request for further information, the applicant submitted details of consultations with Wicklow County Council which raised a number of additional roads issues including the overall condition, width and pavement of the L4382 and the masonry bridge. It also queried the number of truck movements to / from the site and the haul route and it was considered that a Road Safety Audit was required. Accordingly, the Planning Authority subsequently requested the applicant to address these items by way of clarification of further information. A response to this request was received on 30 July, 2007.

With regard to the improvements to the site entrance it is proposed to clear those lands to the south of same in order to provide adequate visibility for vehicles exiting the site, however, I note that this would appear to necessitate works to lands outside of the applicants control and that no consent has been provided for same. Whilst the Planning Authority has attached a condition requiring the applicant to submit the written consent of the third party landowner as regards the removal of these trees / shrubs, in my opinion, such a condition would most likely be unenforceable.

The applicant has also submitted proposals to provide public lighting at the site entrance, to provide advance warning signage on the local road, to strengthen and resurface the road between the site entrance and the bridge, and to provide centreline markings and signage along the local road. In addition, it is proposed to install a priority control system at the bridge with various repairs including re-pointing and wall and parapet reconstruction to be carried out to the bridge itself. These measures would seem to have been accepted by the Planning Authority, however, it has also required the applicant to submit (and complete) a scheme for the improvement of the R114, or alternatively, to pay a financial contribution of €67,500 per year for a period of 10 years.

In principle, whilst I would accept the various proposals submitted as regards road improvement, I would reiterate my position that the scale and intensity of the existing quarry operation is significantly in excess of that which could be reasonably associated with any pre-1964 operation conducted from the site. Accordingly, the volume of additional traffic movements generated by the existing quarry should be considered in this context, however, I am inclined to accept that the surrounding road network can accommodate the level of traffic associated with the proposed development subject to the identified road improvements.

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**Impact on the 350m Contour Line / Visual Impact on the Dublin Mountains Region:**

The proposed development site is located in an area zoned as 'H' with the stated land use zoning objective 'To protect and enhance the outstanding natural character of the Dublin Mountain Area' and whilst an 'Industry-Extractive' is open for consideration within this land use zoning it is subject to a limitation in that such a use is expressly not permitted above the 350m contour.

Notably, the Planning Authority initially expressed concerns with regard to the proposal to extend the quarry above the 350m contour line as it was considered that such an extension would appear as a visually prominent open cast feature in the landscape. Accordingly, the applicant was requested by way of a request for further information to omit the proposed extension as it appeared to materially contravene Sections 9.3iv and 12.12.7 of the County Development Plan. In response, the applicant submitted that the existing quarry had extracted material above the 350m contour line for a significant period of time and that this extraction pre-dated the introduction of the 350m contour restriction in the South Dublin County Development Plan, 1998. Furthermore, it was submitted that as the subject application had been lodged pursuant to Section 261 of the Planning and Development Act, 2000, that a restriction as suggested by the Planning Authority would entitle the operator / owner of the quarry to a claim for compensation under Section 261(8)(b). At this point I would refer the Board to information contained in ABP Ref. No. RL06S. RL2473 in which the applicant has claimed that the quarrying activity reached the 370m contour in 1998 whilst a survey carried out on behalf of the Council found activity at the 395m contour line in 2004.

The existing quarry is located on the northern slope of Butter Mountain on the fringe of the Dublin Mountains and, accordingly, this area is particularly sensitive to inappropriate development. At present the existing quarry and overburden storage areas are readily visible from various vantage points along the R114 Regional Road with the face of the extraction particularly prominent. Notably, the views south from the R114 towards the quarry are listed for preservation in the County Development Plan and in this regard I would refer the Board to the provisions of Policy LHA 2: *Views and Prospects* of the Plan wherein it is the policy of the Council to protect views and prospects of special amenity value or special interest. It is also of relevance to note the provisions of Policy LHA15: *Dublin Mountain and High Amenity Zones* which seeks to conserve the character of the Dublin Mountain and High Amenity Zones and also Section 12.12.7 of Plan.

Whilst I note the contents of the visual impact assessment which has accompanied the EIS, in my opinion, the proposal to extend the quarry further southwards into the hillside is unacceptable in light of the detrimental visual impact of same. The extension would essentially involve the excavation of the quarry face almost up to the ridge line of the existing hill with little in the way of effective screening due to the surrounding topography thereby resulting in a significant and permanent (notwithstanding the proposed restoration works) scarring of the landscape. In this respect I would refer to the Board to the visualisations of the proposed extension as detailed in Section 3.8 of the EIS which I consider to demonstrate this point. Whilst I would acknowledge that the significance of the visual impact of the proposed works, when taken in conjunction with the existing quarrying activities carried out to date, is

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somewhat reduced, I would again reiterate my earlier comments with regard to the historic use and planning status of the existing operation. In my opinion, the existing operation on site is development which is materially different to the pre-1964 development both by reason of the nature and intensity of the works and the making of a material change in the use of the land (including the original fields which previously made up the wider site and which were used for agricultural purposes). Therefore, I would suggest that it would be inappropriate to consider the visual impact of the proposed extension in conjunction with that of existing unauthorised works.

**The Adequacy of the Environmental Impact Statement:**

In my opinion, the Environmental Impact Statement which accompanied the subject application provides a satisfactory description of the receiving environment, the proposed development, its impacts and proposed mitigation measures and includes the information required by Schedule 6 of the Planning and Development Regulations, 2001, as amended, and complies with Section 172 of the Planning and Development Act, 2000 and Article 94 of the Regulations.

Furthermore, it is considered that the additional documentation submitted in response to the requests for further information and subsequent clarification served to address those concerns raised by the Planning Authority in respect of noise monitoring etc. In my opinion, any outstanding issues such as noise levels, the regulation of blasting and the monitoring of surface water discharge to an adjacent stream etc. can be satisfactorily addressed by way of condition. However, I would acknowledge that it would have been preferable if the applicant had provided additional details with regard to any potential impact associated with the dewatering required by the deepening of the quarry excavation.

***First Party Appeal:***

The first party appeal relates to Condition Nos. 2, 3, 4, 28(b) & 38 as imposed by the Planning Authority. These are assessed in turn as follows:

**Condition No. 2:**

This condition requires the quarry operator to seek and obtain the written consent of the Planning Authority, prior to the end of the fifteenth year of the grant of permission, for the continued extraction of rock and quarrying. In effect, this condition would seem to limit the lifespan of the quarry to only 15 years with the possibility that the Planning Authority would 'consent' to further works after this time. At the outset I would suggest that the wording of this condition is poor in that it does not expressly limit the grant of permission to 15 years nor does it include a mechanism for resolution in the event that the Planning Authority would not 'consent' to further works after the expiration of 15 years.

The applicant has submitted that such a condition is inappropriate given the pre-1964 status of the quarry and as there is no existing limit on the duration of the development. It is further submitted that whilst the Board may have concerns with regard to future changes in environmental standards and technologies these concerns are specifically addressed by Condition No. 19 as imposed by the Planning Authority. Furthermore, in the event that the Board opt to impose a limit on the duration of the development it is submitted that this should be commensurate with the life of the

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proven aggregate reserves on site (40 years with an additional two years for site restoration) in order to accord with the recommendations of the *'Quarry and Ancillary Activities, Guidelines for Planning Authorities, 2004'*.

The subject application has been lodged pursuant to the requirements of Section 261 of the Planning and Development Act, 2000, as amended. With regard to the attachment of conditions, Section 5.6 of the *'Quarry and Ancillary Activities, Guidelines for Planning Authorities, 2004'* advises planning authorities to have regard to the matters contained in Chapter 3 i.e. environmental implications. Notably, advice pertaining to the life of a grant of planning permission is actually contained in Chapter 4 of the Guidelines and this would seem to be intended to apply to normal planning applications for quarries as opposed to applications lodged pursuant to Section 261. In any event this states that *'In deciding the length of the planning permission, planning authorities should have regard to the expected life of the reserves within the site. The purpose of setting a finite period is not to anticipate that extraction should not continue after the expiry of that period, but rather to enable the planning authority, in conjunction with the developer and environmental authorities, to review changes in environmental standards and technology over a decade or more since the original permission was granted'*.

Having regard to the apparent pre-1964 status of the existing quarry I am inclined to suggest that the imposition of a restriction on the lifespan of the operation is inappropriate, however, it may be appropriate for the Board to consider restricting the existing operation to within the footprint of the existing extraction area thereby prohibiting the 'new' extension of the quarry further into the mountain and over the 350m contour line with its associated visual impact.

Condition No. 3:

This condition requires the 'operator / developer' to lodge a separate planning application (within 6 months of the date of the grant of permission) for the retention and completion of the land reclamation works carried out on agricultural lands to the northeast of the site (within the applicants landholding).

In the first instance the applicant disputes the need to lodge an application for retention on the grounds that the works comprise land reclamation aimed at improving the lands in question for agricultural purposes and, therefore, constitute exempted development by reference to Class 11, Part 3, Schedule 2 of the Planning and Development Regulations, 2001. Secondly, the applicant states that it does not own these lands and therefore the imposition of a condition requiring it to lodge a planning application on lands owned by a third party would be unreasonable.

With regard to land ownership, I find it somewhat paradoxical that the applicant is now claiming not to retain ownership of the lands subject to the reclamation works despite the fact that these lands were clearly included in the landholding map which accompanied the initial application. I find this rather disingenuous particularly when the applicant company initially claimed that it retained ownership of the quarry lands, however, it subsequently transpired that it was not the registered owner of same and thus had to submit the written consent of the actual owner, namely, Mrs. Joan Murphy.

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Notwithstanding the foregoing, I would refer the Board to my earlier comments with regard to the third party appeal in that the determination as to whether or not the deposit of material on the lands in question / land reclamation is or is not exempted development is not of critical importance to the assessment of the subject application. Therefore, I would suggest that this condition is unnecessary and that the key issue of infilling / reclamation works would be more appropriately assessed through recourse to a Section 5 reference.

Condition No. 4:

This condition requires the submission and completion of a scheme for the improvement of the R114, or alternatively, the payment of a financial contribution of €67,500 per year for a period of 10 years.

In my opinion, having regard to the pre-1964 status of the original quarry, it would be inappropriate to attach a condition requiring the payment of a financial contribution in respect of road improvements or to require the quarry operator to carry out improvements to the R114. However, I would advise the Board, as outlined earlier in this report, that the existing quarry has expanded and intensified its activities far beyond the original pre-1964 quarry. Therefore, in the event that the Board opts to grant permission for the subject proposal based on current extraction rates I would suggest that a special financial contribution commensurate with the Planning Authority's estimations would be appropriate.

Condition No. 28(b):

This condition requires the submission of a hydrological / hydrogeological report in respect of the quarry to the Planning Authority within three months of the date of the grant of permission. This report is to detail all proposed measures intended to protect groundwater resources and it is to have regard to all the relevant requirements of Water Framework Directive (or its future equivalent).

Having regard to the contents of Section 3.4 of the submitted EIS I do not consider this element of the condition to be warranted.

Condition No. 38:

This condition requires the lodgement of a bond or equivalent security with the Planning Authority to the value of €310,000 in order to ensure the satisfactory rehabilitation of the site. Notably, the applicant does not appear to dispute the appropriateness of such a condition but rather questions the actual amount of the security sought and reference is made to two previous Board decisions in an attempt to establish a comparative basis for the calculation of the required security.

It is unclear as to how the Planning Authority arrived at its figure of €310,00, however, given the scale of the site, the nature of the proposed restoration works and the sensitivity of the site location, I am inclined to take the view that security in the amount of €250,000 would be appropriate in this instance.

**CONCLUSION:**

Notwithstanding my adjudication of the first party appeal, I am of the opinion that the existing operations on site have expanded and intensified to such a degree as to

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constitute a material change of use (without the benefit of a grant of planning permission) from any pre-1964 operation carried out from the site. Accordingly, I am satisfied that the existing operation constitutes unauthorised development and that the Board is precluded from considering a grant of permission in these circumstances.

### **RECOMMENDATION**

Having regard to the foregoing I recommend that permission be refused for the proposed development for the reasons and considerations set out below:

#### **Reasons and Considerations:**

1. On the basis of the submissions made in connection with the planning application and the appeal, the planning history of the site, High Court Judgement Ref. No. [1978] ILRM 85 (*Frank Patterson and Eily Patterson v. Martha Murphy and Trading Services Ltd.*), and available aerial photography, the Board is not satisfied that the existing quarrying operations presently conducted on site commenced prior to the appointed day, namely, 1 October, 1964, nor are they authorised by a grant of planning permission. Accordingly, the Board is precluded from considering a grant of permission for the proposed development in such circumstances.
2. Having regard to:-
  - (a) the planning history of the site,
  - (b) High Court Judgement Ref. No. [1978] ILRM 85 (*Frank Patterson and Eily Patterson v. Martha Murphy and Trading Services Ltd.*),
  - (c) the nature, scale and extent of activities carried out on site,
  - (d) the provisions of Section 261 of the Planning and Development Act, 2000, as amended, and
  - (e) the judgment of the European Court of Justice in Case C-215/06, *Commission v. Ireland*, delivered on 3rd day of July 2008, in which it was held that the retention permission system, as it applies in Irish law to projects that are required to be subject to Environmental Impact Assessment under the EIA Directives, does not comply with the Directives,

it is considered that as the proposed development for which permission is sought is of a class that requires Environmental Impact Assessment in accordance with the requirements of EU Directive 85/337/EEC (as amended) and that it includes a significant element of retention permission, the Board is, therefore, precluded from considering a grant of planning permission in this case.

Signed: \_\_\_\_\_  
Robert Speer  
Inspectorate

Date: \_\_\_\_\_

APPENDIX 6  
PLANNING ENFORCEMENT HISTORY DOCUMENTS

## **ENFORCEMENT HISTORY**

**FILE RREFERENCE NUMBER:S6004**

**DESCRIPRION OF UNAUTHORISED DEVELOPMENT:** Illegal Quarrying and dumping (An Bord Pleanala determination PL.06S.231371, see Appendix 5)

Scan to  
S6610

SOUTH DUBLIN COUNTY COUNCIL  
PLANNING DEPARTMENT

**PLANNING ENFORCEMENT**

Enf: S6004

M. Hunt.  
A.O.

Date: 19<sup>th</sup> January 2010  
Date of Inspection: N/A

**1<sup>st</sup> Report**

**Re: Shillelagh Quarries Ltd, Aghfarrell, Brittas, Co. Dublin**

**Representation.**

Representation has been received in connection with the unauthorised operation of the above quarry.

**Registration of Quarries**

Section 261 of the Planning and Development Act 2000 introduced in 2004, a once off system of registration for all quarries, except those for which planning permission was granted in the previous 5 years.

Under the registration system, quarry operators were required to supply full details of their operations to the planning authority. This information had to be submitted by 27th April 2005.

Following the registration of the quarry, the planning authority could

- Impose conditions on the operation of a pre-1964 quarry (Planning system in Ireland commenced on 1<sup>st</sup> October 1964. Quarries operating prior to this date did not require planning permission.)
- Require the quarry operator to apply for planning permission in certain circumstances
- Restate, modify or add to conditions on the operation of a quarry which had received planning permission more than 5 years ago from April 2004

If the owner or operator receives a notice to apply for permission and fails to do so within 6 months (or another agreed period) the quarry is deemed to be unauthorised development thereafter. In the interim however, and **until any application for permission, or subsequent appeal, is determined, the quarry continues to retain its authorised status and can continue to operate on that basis.**

**Planning History.**

According to APAS, the following is the relevant planning details:

**SDQU054/1**

In accordance with Section 261 of the P. & D. Act 2000 an application for registration of a quarry was made:

Applicant: Shillelagh Quarries Ltd., Aghfarrell  
 Location: Aghfarrell, Brittas, Co. Dublin.  
 Proposed Development: Application for registration of a quarry under Section 261 of Planning & Development Act 2000.  
 Decision: After requesting and upon receipt of additional information, in April 2006 it was decided to require the owners to apply for planning permission and submit an Environmental Impact Statement. This application was to be submitted not later than 18<sup>th</sup> October 2008 or such period as may be agreed in writing with the planning authority. Failing the receipt of a planning application, the quarry shall be unauthorised development.  
 An extension of time was granted in writing to 18<sup>th</sup> April 2007.

SD07.1/0276

Date Received: 18/04/2007  
Applicant: Shillelagh Quarries Ltd., Aughfarrell  
Location: Aghfarrell Townland, Brittas, Co Dublin  
Proposed Development: (a) Continuance of use of the existing quarry on lands that have been used for this purpose since before 1st October 1964 on a site registered under Section 261 of the Planning and Development Act 2000 (Quarry Reference SDQU05A 1); (b) all existing ancillary facilities including the existing processing plant (crushing and screening plant), overburden storage areas, stockpile areas, water management system and the truck vehicle parking area; (c) extension of the existing quarry extraction area by 4.2 hectares, within the registered area, to give a total extraction area of 15.5 hectares within an overall application area of 28.1 hectares; (d) provision of a wheelwash and hydrocarbon interceptor; (e) landscaping and final restoration of the site. This application is accompanied by an Environmental Impact Statement.  
Decision Date: 23/09/2008  
Decision: GRANT PERMISSION

Appealed to An Bord Pleanala:

Lodged: 17/10/2008  
Appellant Type: 3RD PARTY & 1ST PARTY  
Nature of Appeal: Conditions and Decision  
Status as per ABP website: Proposed decision date not available at this time

**Appraisal**

Under Section 261(10)(b) where a quarry is required by Section 261(7) to submit a planning application and said application is not submitted, that quarry will become unauthorised development.

However, in this instance the planning application was submitted and is currently with An Bord Pleanala. Therefore, the quarry cannot be classified as unauthorised development.

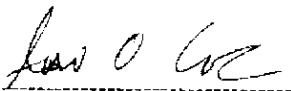
Accordingly, until any application for permission, or subsequent appeal, is determined, the quarry continues to retain its authorised status and can continue to operate on that basis.

**Recommendation.**

1. I recommend that the file be re-examined in 6 months time to establish whether An Bord Pleanala have reached a decision.

2. Should any further complainants be received, they are to be informed of the following:

*An application for planning permission is currently with An Bord Pleanala (PL06S,231371) and until such time as a decision is made, the quarry continues to retain its authorised status and can continue to operate on that basis.*



A. O. Connor  
Planning Inspector.

c.e. J. Johnston, S.E.P.

APPENDIX 7  
AN BORD PLEANALA S.5 DETERMINATION PL.06S.RL2473

**SECTION 5 REFERRALS**  
**PL.06S.RL2473**

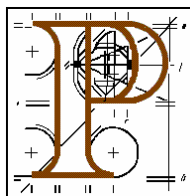
WHETHER INTENSIFICATION OF USE OF QUARRY, USE OF EXPLOSIVES,  
LAYING OF MATERIAL FOR A ROAD AND A NEW ENTRANCE ARE OR  
ARE NOT DEVELOPMENT OR ARE OR ARE NOT EXEMPTED  
DEVELOPMENT:-

**AN BORD PLEANALA DETERMINATION;**  
INSUFFICIENT EVIDENCE WAS AVAILABLE TO MAKE A DECISION ON  
THE ROADWAY AND ENTRANCE

THE INTENSIFICATION WAS DEVELOPMENT AND NOT EXEMPTED  
DEVELOPMENT

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# An Bord Pleanála



## Inspector's Report

**Ref.:** RL06S. RL2473

**Reference:** Whether the intensification of use of quarry, use of explosives, laying of material for a road and a new entrance are or are not development and are or are not exempted development.

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

**Referred By:** Dublin Mountain Conservation and Environmental Group

**Other Parties:** Shillelagh Quarries Ltd.

**Planning Authority:** South Dublin County Council

**Date of Site Inspection:** 22 July, 2010

**INSPECTOR:** Robert Speer

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## **INTRODUCTION**

This report should be read in conjunction with that of the previous reporting inspector and the inspector's report prepared in respect of ABP Ref. No. PL06S. 231371.

## **SITE LOCATION AND DESCRIPTION**

The subject site is located in the rural townland of Aghfarrell, Co. Dublin, approximately 3km southeast of the village of Brittas and 10km northeast of Blessington, and extends into the northern slope of Butter Mountain which is in turn situated on the fringe of the Dublin Mountains. It is accessed via Local Road No. L4382, part of which is situated within the administrative area of Wicklow County Council, which extends southwards from the R114 Regional Road between Brittas and Oldbawn. The junction of the local road with the R114 is located on the outer apex of a sharp bend in the regional road and is situated immediately west of the commencement of a 3-tonne weight restriction to the east along the R114. The local roadway is winding with a carriageway width of c. 4-5m and includes a narrow masonry bridge. Access to the quarry itself, and several residences owned / occupied by members of quarry operator's family, is obtained via a well-maintained tarmac private roadway which is secured by electronic gates. This roadway subsequently forks in two with separate access provided to the quarry and adjacent residences and farmlands.

The subject site is irregularly shaped with a stated site area of 28.1 hectares (as derived from ABP Ref. No. PL06S. 231371) and presently comprises a working rock quarry which has been excavated in a south-easterly direction into the hillside with associated crushing, screening and stockpiling of aggregates. Overburden storage areas are located along the western extent of the site and also to the north of the quarry floor with working benches progressing south-eastwards. A site office, a further cabin and a weighbridge are located at the existing entrance to the pit floor.

## **THE QUESTION BEFORE THE BOARD**

On 26 July, 2007 Mr. Michael McCoy on behalf of the Dublin Mountain Conservation and Environmental Group applied for a Section 5 declaration from South Dublin County Council in respect of a number of items relating to the existing quarry located at Aghfarrell, Brittas, Co. Dublin. South Dublin County Council subsequently failed to issue a declaration on these issues within the statutory period and, therefore, pursuant to Section 5(3)(b) of the Planning and Development Act, 2000, as amended, Mr. Michael McCoy on behalf of the Dublin Mountain Conservation and Environmental Group has now referred the matter to the Board for a determination.

Having reviewed the submitted information I am in agreement with the previous reporting inspector in that the exact nature of the questions referred to the Board for determination is unclear. However, I would concur with her subsequent framing of the questions as follows:

- 
- Whether the intensification of use of the quarry (including excavation and deposition of material and incursion onto additional lands) is or is not development and is or is not exempted development.
  - Whether the use of explosives is or is not development and is or is not exempted development.
  - Whether the laying of material for a new road is or is not development and is or is not exempted development, and
  - Whether the creation of a new entrance is or is not development and is or is not exempted development.

## **RELEVANT PLANNING HISTORY**

### **On Site:**

PA Ref. No. S99A/0016. Was refused on 22 November, 1999 refusing Michael Murphy permission to retain an earth embankment for the following reasons (as summarised in the Planning Officer's Report):

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

Quarry Registration No. SDQU05A/1. On 19 April, 2006 the Planning Authority issued an order pursuant to Section 261(7) of the Planning and Development Act, 2000, as amended, in respect of the registration of the existing quarry, requiring the applicant to apply for planning permission and to submit an Environmental Impact Statement to the Planning Authority not later than 18 October, 2006 or such other period as may be agreed in writing with the Planning Authority in respect of the continued operation of the subject quarry.

PA Ref. No. SD07A/0276 / ABP Ref. No. PL06S. 231371. Application by Shillelagh Quarries for permission for continuance of use of existing quarry, all existing ancillary facilities, extension of the quarry extraction area by 4.2 hectares to give a

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total extraction area of 15.5 hectares within site of 28.1 hectares. This application is presently on appeal and a decision is pending with the Board.

*N.B.* The Board is advised to consider the subject referral in conjunction with this appeal.

*High Court Judgement Ref. No. [1978] ILRM 85 (Frank Patterson and Eily Patterson v. Martha Murphy and Trading Services Ltd.):* In this judgement Costello J. concluded that the operations which were being conducted on site differed materially from those carried out prior to 1 October, 1964 in that the object of the ‘new’ operation was to produce a different product i.e. the manufacture of 4 inch stone, which was used for a different purpose in the building industry and which fetched a different price. Furthermore, he considered the method of production as being different to that in before 1964 in that the raw material (rock) was being obtained by means of regular blasting with large crushing and screening plant used to produce stones of the correct dimension. It was also noted that considerable ancillary equipment was being used and that a considerable labour force was employed. Finally, he concluded that the scale of the operation was a substantial one which bore no relationship to the scale of operations carried on prior to the appointed day. Accordingly, Costello J. stated that:

*‘ . . . if it appears that the scale of operations has so intensified as to render contemporary operations materially different from those carried on before the appointed day, this fact can be taken into account in considering whether what is presently being done commenced prior to 1 October, 1964 . . . The development, I am now considering was in fact, not commenced until the summer of last year. Thus, it was and is development which requires permission under Part IV of the 1963 Act and in my opinion I should prohibit its use under s.27. I should add that if the case fell to be considered as one of ‘development’ arising from the making of a material change in the use of land I would have reached the same conclusion.’*

### **GROUNDS OF REFERENCE**

The subject referral does not contain any clear grounds of reference and instead it comprises a list of questions, several of which relate to matters which are not suitable for determination through recourse to Section 5, including the validity of the Section 261 registration process and the planning application lodged under PA Ref. No. SD07A/0276. Accordingly, I would refer the Board to the questions as set out by the previous inspector which have been extrapolated from the submitted referral documentation.

### **RESPONSE TO REFERRAL**

#### Response of Planning Authority

The response of the Planning Authority to the subject referral includes a background of the existing quarry and refers to its registration pursuant to Section 261 of the Planning and Development Act, 2000 and the subsequent lodgement of a planning application accompanied by an Environmental Impact Statement under PA Ref. No.

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SD07A/0276. In addition, the response tabulates 13 No. issues raised in the referral documentation and comments on each in turn.

In respect of Item No. 1 which queries whether or not the registration of the quarry is valid, the Planning Authority has responded by stating that no details have been provided regarding any inaccurate information pertaining to same and that the registration of the quarry is therefore considered to be valid and in compliance with Section 261 of the Act. With regard to Item Nos. 2-11 these are considered to be matters for consideration under PA Ref. No. SD07A/0276. In response to Item No. 13 it has been confirmed that Wicklow County Council was notified of both the Section 261 registration and PA Ref. No. SD07A/0276. Finally, the Planning Authority states that it considers PA Ref. No. SD07A/0276 to be a valid planning application.

Response of Landowner

None.

**RELEVANT LEGISLATION:**

The Board received this reference on 17 September, 2007 and therefore the Planning and Development Act, 2000, as amended, and Regulations made thereto apply.

**Planning and Development Act, 2000:**

Section 2(1) of the Act defines “works” as follows:

*“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.*

Section 3(1) of the Planning and Development Act, 2000, as amended, states as follows:

*“Development” in this Act means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in use of any structures or other land.*

Section 4(2) of the Act states that the ‘Minister’ may by regulations provide for any class of development to be exempted development for the purposes of the Act.

**ISSUES AND ASSESSMENT**

*Whether the intensification of use of the quarry (including excavation and deposition of material and incursion onto additional lands) is or is not development and is or is not exempted development:*

With regard to the intensification of use of the existing quarry I would refer the Board to my report prepared in respect of ABP Ref. No. PL06S. 231371 in which I have concluded that the operations presently conducted from the existing quarry

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constitute a material and unauthorised intensification of works and the making of a material change in the use of the land.

The existing quarry is a significant operation in terms of its overall scale, extent and means of production and whilst it would seem that the subject lands were previously used on an intermittent basis for the extraction of shale on a small scale using somewhat primitive methods, it is clear that the existing quarry is a much more sophisticated operation using a variety of plant and machinery in addition to regular blasting to produce various stone products on a much larger scale. Accordingly, I am of the view that the existing operation bears little resemblance to the pre-1964 development carried out on site. It would seem that it was only around 1977 that the operation on site was intensified through the introduction of the regular blasting of large quantities of rock and the processing of same into four-inch stone. Notably, these activities were ruled by Mr. J. Costello in *High Court Judgement Ref. No. [1978] ILRM 85 (Frank Patterson and Eily Patterson v. Martha Murphy and Trading Services Ltd.)* to be materially development from the development carried out prior to 1 October, 1964, having regard to the object of the operations, the method of production and the scale of the operations.

Considering the nature and scale of the operations presently being conducted from the site it would seem that these exceed even those conducted c. 1977 and are far removed from the pre-1964 operation. It is my opinion that the existing operation on site is development which is materially different to the pre-1964 development both by reason of the nature and intensity of the works and the making of a material change in the use of the land (including the original fields which previously made up the wider site and which were used for agricultural purposes). Having concluded that the existing operation is development which does not have the benefit of pre-1964 status, and in the absence of any grant of planning permission authorising same, in my opinion, the existing quarry operation constitutes unauthorised development through the material intensification of works. I am also of the opinion that the extent of the quarry has been extended beyond the confines of that area originally quarried and that there has been a material change in the use of lands.

Furthermore, in my opinion, aerial photography obtained from the OSi would tend to support the proposition that the existing quarrying operation significantly intensified both in terms of the extent and depth of the workings during the 10-year period between 1995 and 2005. With regard to blasting, I note that in his judgement [1978] ILRM 85 Mr. J. Costello recorded that as long ago as 1946 explosives had been used to dislodge material, but that apart from this one occasion no explosives were ever used in the 'quarry field' until 1974. Accordingly, the re-introduction of blasting activities in 2000 could also be interpreted as an intensification of operations

On the basis of the foregoing, it is my opinion that the intensification of the use of the quarry through both an intensification of works and the making of a material change in the use of the lands through an extension of the quarry area constitutes development which is not exempted development.

With regard to the referrer's comments in relation to the deposition of material on land it would seem that this is in reference to those lands located to the northeast of

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the existing quarry which have been subjected to apparent 'land reclamation' works as claimed by Shillelagh Quarries Ltd. In this regard I would refer the Board to my report prepared in respect of ABP Ref. No. PL06S. 231371.

Whilst the general act of the deposition of material on land would most probably involve an act of construction and therefore constitute works on land i.e. 'development' as defined by the Act, it is possible that these works may constitute exempted development through recourse to Class 11 of Part 3 of the Second Schedule of the Planning and Development Regulations, 2001 which states that '*Development consisting of the carrying out, on land which is used only for the purpose of agriculture or forestry, of any of the following . . . land reclamation*' shall be exempted development. However, given the general lack of detail contained in the referral with regard to the works, including the specifics of the site location and the exact extent, depth and nature of the fill material deposited, I am unable to confirm whether or not they are exempted development.

*Whether the use of explosives is or is not development and is or is not exempted development:*

At present, conventional blasting techniques are used to dislodge material from the quarry face with blasting operations occurring 2-4 times per month depending on market demand (as derived from ABP Ref. No. PL06S. 231371). In my opinion, the carrying out of such blasting operations for the excavation of rock comprises 'works' and, therefore, pursuant to Section 3(1) of the Planning and Development Act, 2000, as amended, can be defined as development which is not exempted development. Notably, this would seem to be supported by Section 5.11 of the '*Quarries and Ancillary Activities, Guidelines for Planning Authorities, 2004*' which identifies major changes in production methods, including the introduction of blasting, as constituting a 'material change'. Whilst the use of explosives in itself cannot be considered to constitute development, the actual act of blasting can be categorised as works i.e. development.

With regard to the subject site, I would refer the Board to *High Court Judgement Ref. No. [1978] ILRM 85 (Frank Patterson and Eily Patterson v. Martha Murphy and Trading Services Ltd.)* in which Mr. J. Costello concluded that the scale of the operations then being carried out on site had been so intensified as to render them materially different from those carried on before the appointed day. In this respect he noted that the object of the operation was to produce a different product (4-inch stone) to that being produced in 1964 (shale), that the method of production was different to that obtaining in and before 1964 in that raw material (rock) for the end product was being obtained by means of regular blasting, and that the scale of the operations were substantial and bore no relationship to the scale of operations carried on prior to the appointed day.

In ABP Ref. No. PL06S. 231371, the applicant has submitted that under *[1978] ILRM 85 (Patterson v. Murphy)* the court granted injunctive relief to prevent a nuisance being caused to the Plaintiffs and that under Section 27 it prohibited development '*being the manufacture of four-inch stone by means of blasting and crushing*'. In effect, the case is made that the court order only specifically prohibited

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the manufacture of 4-inch stone by means of blasting and crushing and did not relate to the wider use of the land as a quarry and the carrying out of blasting within same.

Whilst I would accept that the order made under [1978] ILRM 85 (*Patterson v. Murphy*) seems to be specific in prohibiting the manufacture of four-inch stone by means of blasting and crushing, I would draw the Board's attention to further comments contained in the judgement. It would seem that prior to 1964 it was found that as long ago as 1946 explosives were used to dislodge material in the quarry, but that apart from this one occasion no explosives were ever used in the field up until 1974. During this period excavations were carried out intermittently on a small scale using somewhat primitive techniques involving the loosening of shale with picks and bars and the scraping of portions of the surface of the field with a mechanical shovel. On the basis of the foregoing, it would seem that it was accepted that some 'minor' quarrying operations were conducted from the lands prior to 1964, however, there were concerns with regard to the introduction of regular blasting and the overall increased scale and intensity of the quarrying operation. Therefore, I would suggest that the aforementioned court order is open to interpretation and that it may have been intended to restrict blasting as a whole in the quarry operation. In any event, it would seem clear that the re-introduction of blasting in the existing quarry c. 2000 (as alleged by the appellant in ABP Ref. No. PL06S. 231371) and the continued use of same would involve an intensification and material change in the nature of the works carried out on site and would, therefore, constitute development which is not exempted development.

*Whether the laying of material for a new road is or is not development and is or is not exempted development:*

At present, a private laneway extends from the public road (Local Road No. 4382) to provide access to a number of residences, agricultural lands and the existing quarry. This laneway is well-maintained and surfaced in tarmacadam and subsequently forks in two to provide separate access to the quarry itself, however, it is unclear as to what extent of laneway / roadway the subject referral relates to, and in the absence of further details, I am unable to comment further on this issue.

*Whether the creation of a new entrance is or is not development and is or is not exempted development:*

In the absence of any site specific information with regard to the entrance to which the subject referral relates I am unable to comment on its planning status. The existing quarry is accessed via a shared private laneway which extends from the public road, however, this laneway subsequently forks in two to provide separate access to a number of dwelling houses and the quarry itself. Without further clarity as regards the location of the entrance in question I am unable to investigate it.

### **RECOMMENDATION**

It can be concluded, given the foregoing, that the intensification of the use of the quarry is development and is not exempted development whereas the use of explosives is not development. With regard to the question as to whether or not the laying of material for a new road is or is not development and is or is not exempted

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development, and whether the creation of a new entrance is or is not development and is or is not exempted development, in the absence of sufficient site specific information pertaining to these items, it is not possible to make a determination on same. Accordingly, a draft order is set out below:

**ORDER**

**WHEREAS** a question has arisen as to whether the intensification of the use of a quarry, the use of explosives, the laying of material for a road, and a new entrance, are or are not development and are or are not exempted development:

**AND WHEREAS** the said question was referred to An Bord Pleanála by Mr. Michael McCoy on behalf of the Dublin Mountain Conservation and Environmental Group on the 17<sup>th</sup> day of September, 2007:

**AND WHEREAS** An Bord Pleanála in considering this reference, had regard particularly to -

- a) Sections 2, 3 & 4 of the Planning and Development Act, 2000,
- b) the planning history of the site, including PA Ref. No. SD07A/0276 / ABP Ref. No. PL06S. 231371, and
- c) High Court Judgement Ref. No. [1978] ILRM 85 (*Frank Patterson and Eily Patterson v. Martha Murphy and Trading Services Ltd.*)

**AND WHEREAS** An Bord Pleanála has concluded that –

- a) the intensification of the use of the quarry through the carrying out of operations which are materially different to the pre-1964 development both by reason of the nature and intensity of the works and the making of a material change in the use of the land,
- b) the use of explosives is not in itself development

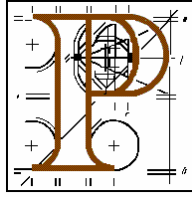
**NOW THEREFORE** An Bord Pleanála in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides that:

- a) the intensification of the use of the quarry is development and is not exempted development,
- b) the use of explosives is not development

Signed: \_\_\_\_\_  
Robert Speer  
Inspectorate

Date: \_\_\_\_\_

# An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2010

## South Dublin County

An Bord Pleanála Reference Number: 06S.RL.2473

**WHEREAS** a question has arisen as to whether the intensification of the use of a quarry, including the use of explosives for blasting, the laying of material for a new road and a new entrance on lands at Aghfarrell, Brittas, County Dublin are or are not development or are or are not exempted development:

**AND WHEREAS** Dublin Mountain Conservation and Environmental Group care of Michael McCoy of Ballinascorney Upper, Brittas, County Dublin requested a declaration on the question from South Dublin County Council and no declaration issued by the planning authority:

**AND WHEREAS** the said Dublin Mountain Conservation and Environmental Group referred the question for decision to An Bord Pleanála on the 17<sup>th</sup> day of September, 2010:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to -

- (a) sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) the planning history of the site, including the submission made in connection with planning register reference number SD07A/0276, An Bord Pleanála reference number PL 06S.231371, and
- (c) High Court Judgement Ref. No. [1978] ILRM 85 (Frank Patterson and Eily Patterson v. Martha Murphy and Trading Services Limited):

**AND WHEREAS** An Bord Pleanála has concluded that -

- (a) insufficient evidence has been put forward to enable the Board to reach a decision in relation to the planning status of the laying of material for a road and of a new entrance,
- (b) the intensification of the use of the quarry, and including the use of explosives for blasting, constitutes the carrying out of operations which are materially different to the development carried out on the lands before the 1<sup>st</sup> day of October 1964, by reason of the nature and intensity of the operations amounting to the making of a material change in the use of the land,
- (c) the change of use is considered to be a material change of use and the said material change of use constitutes development,
- (d) there is no provision in the Planning Acts or Regulations by which the said development is exempted development, and
- (e) no permission under the provisions of either the Local Government (Planning and Development) Acts, 1963-1999, or the Planning and Development Acts, 2000-2010, has been granted authorising the said development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (b) of the 2000 Act, hereby decides that the intensification of the use of the quarry, and including the use of explosives for blasting, at Aghfarrell, Brittas, County Dublin, are development and are not exempted development,

### **MATTERS CONSIDERED**

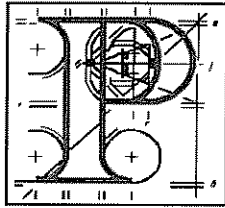
In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

---

**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.**

**Dated this                      day of                      2010.**

## An Bord Pleanála



## Board Direction

**Ref: 06S.RL2473**

The submissions on this file, including that from Shillelagh Quarries Ltd. received on 2<sup>nd</sup> December 2010, and the Inspectors' reports were considered at a Board meeting held on 23<sup>rd</sup> December 2010.

The Board decided that the question referred to it for decision is whether the intensification of the use of a quarry, and including the use of explosives, the laying of material for a road and a new entrance, at Aghfarrell, Brittas, Co. Dublin, are or are not development and are or are not exempted development.

The Board decided that the intensification of the use of the quarry, and including the use of explosives, is development and is not exempted development. The Board also concluded that insufficient evidence has been put forward to enable the Board to reach a determination in relation to the planning status of the laying of material for a road and of a new entrance.

### DRAFT ORDER

**WHEREAS** a question has arisen as to whether the intensification of the use of a quarry, and including the use of explosives for blasting, the laying of material for a road, and a new entrance, are or are not development and are or are not exempted development:

**AND WHEREAS** the said question was referred to An Bord Pleanála for decision by Mr. Michael McCoy on behalf of the Dublin Mountain Conservation and Environmental Group on the 17<sup>th</sup> day of September, 2007:

**AND WHEREAS** An Bord Pleanála in considering this referral had regard particularly to -

- a) Sections 2, 3 & 4 of the Planning and Development Act, 2000,
- b) the planning history of the site, including the submissions made in connection with Planning Authority Reg. Ref. No. SD07A/0276 / ABP Ref. No. PL06S. 231371,
- c) the judgement of the High Court Ref. No. [1978] ILRM 85 (*Frank Patterson and Eily Patterson v. Martha Murphy and Trading Services Ltd.*) and
- d) the submissions made in connection with the referral.

**AND WHEREAS** An Bord Pleanála has concluded that –

- a) insufficient evidence has been put forward to enable the Board to reach a decision in relation to the planning status of the laying of material for a road and of a new entrance;
- b) the intensification of the use of the quarry, and including the use of explosives for blasting, constitutes the carrying out of operations which are materially different to the development carried out on the lands before the 1<sup>st</sup> October 1964, by reason of the nature and intensity of the operations amounting to the making of a material change in the use of the land;
- c) the said material change of use constitutes development;
- d) there is no provision in the Planning Acts or Regulations by which the said development is exempted development and
- e) no permission under the provisions of either the Local Government (Planning and Development) Acts, 1963-1999, or the Planning and Development Acts, 2000-2010, has been granted authorising the said development.

**NOW THEREFORE** An Bord Pleanála in exercise of the powers conferred on it by Section 5(3)(b) of the 2000 Act, hereby decides that the intensification of the use of the quarry, and including the use of explosives for blasting, at Aghfarrell, Brittas, Co. Dublin, is development and is not exempted development,

Board Member: \_\_\_\_\_ Date: 23<sup>rd</sup> December 2010  
Karl Kent

**SOUTH DUBLIN COUNTY COUNCIL  
COMHAIRLE CONTAE ÁTHA CLIATH THEAS**

Halla an Chontae, Tamhlacht,  
Baile Átha Cliath 24.  
Telefon: 01-4149000  
Facs: 01-414 0102  
For SMS queries text "counter" &  
your message to 086 1731707



*Planning Department,*  
County Hall, Tallaght,  
Dublin 24.  
Telephone: 01-4149000  
Fax 01-414 0102  
Email: [ccccounter@sdblincoco.ie](mailto:ccccounter@sdblincoco.ie)  
On-line: [www.southdublin.ie](http://www.southdublin.ie)

An Bord Pleanála ,  
64 Marlborough Street,  
Dublin 1

Dear Sir/Madam,

Date: 30-Jan-2008

**Register Reference :** ED07/0026

**Bord Pleanála Reference :** RL06S.RL2473

**Development :** Quarry registration and  
planning application for  
quarry.

**Location :** Ballinascorney Upper, Brittas,  
Co. Dublin

**Applicant :** Michael McCoy

**App. Type :** Declaration of Exemption  
Section5

**Date Recd :** 26-Jul-2007

With reference to the appeal on the above mentioned application  
I enclose herewith : -

Copy of correspondence dated 2<sup>nd</sup> and 9<sup>th</sup> July referred to in  
correspondence signed by Mairead Hunt.

Copy of letter from you dated 19<sup>th</sup> September.

**REPORT RE LETTER RECEIVED FROM AN BORD PLEANALA  
ON 13 DECEMBER 2007.**

**Introduction**

The above letter refers to an application to An Bord Pleanála for a declaration under Section 5 of  
the Planning & Development Act 2000 in relation to Shillelagh Quarries, Aghfarrell, Brittas,

Contact South Dublin County Council 24 hours a day at [www.southdublin.ie](http://www.southdublin.ie)  
Email at [ccccounter@sdblincoco.ie](mailto:ccccounter@sdblincoco.ie)  
SMS-text "ccccounter" and your query to 086 1731707

County Dublin. The application was submitted to An Bord Pleanala by Michael McCoy, Secretary, Dublin Mountain Conservation and Environmental Group, on 17 September 2007.

The letter refers to the registration of the above quarry under Section 261 of the Planning & Development Act 2000, and to a current planning application SD07A/0276 at Shillelagh Quarries, Aghfarrell, Brittas.

The letter includes 13 numbered items of reference relating to the above and requests a decision under Section 5 of the Planning & Development Act 2000 in relation to the issues cited.

It is noted that an application was made by the same applicant to South Dublin County Council on 26 July 2007 for a declaration under Section 5 of the Planning & Development Act 2000 in relation to Shillelagh Quarries, Aghfarrell, Brittas, County Dublin. No decision on that request was issued within the statutory period, and the application was referred by the applicant to An Bord Pleanala for adjudication on the expiry of the statutory period.

## **Background**

### **Section 261**

Shillelagh Quarry was registered under Section 261 of the Planning & Development Act 2000 (Register Reference SDQU05A/1). Following the registration of the quarry a statutory notice was served on the quarry owners under Section 261(7) requiring that a planning application and an environmental impact statement (EIS) be submitted in respect of the continued operation of the quarry.

### **Register Reference SD07A/0276**

A planning application and EIS were received on 18<sup>th</sup> April 2007 (Register Reference SD07A/0276). The planning application proposes the following:

- Continuance of use of the existing quarry on lands that have been used for this purpose since before 1<sup>st</sup> October 1964 on a site registered under Section 261 of the Planning and Development Act 2000 (Quarry Reference SDQU05A/1);
- all existing ancillary facilities including the existing processing plant (crushing and screening plant), overburden storage areas, stockpile areas, water management system and the truck/vehicle parking area;
- extension of the existing quarry extraction area by 4.2 hectares, within the registered area, to give a total extraction area of 15.5 hectares (38 acres) within an overall application area of 28.1 hectares;
- provision of a wheelwash and hydrocarbon interceptor; and
- landscaping and final restoration of the site.

Following consideration of the application a request for Further Information was sent to the applicant on 11<sup>th</sup> June 2007. A reply was received on 10 December 2007 and is currently under consideration.

Further information was requested in respect of ancillary works on adjoining lands, the impact of the proposed development on surrounding sensitive locations / environment with regard to noise, vibration and dust, water supplies and ground water, traffic impact, visual impact, rehabilitation, landscaping, possible chemical / fuel storage and staff facilities. The applicant has been requested to omit the proposed 4.2 hectares (10 acres) extension above the 350m contour.

It should be noted that under Section 261(7)(c) of the Act a planning authority, or the Board on appeal, shall, in considering an application for planning permission made pursuant to a requirement under Section 261(7)(a), have regard to the existing use of the land as a quarry.

**SDCC Comment re issues raised in letter from Michael McCoy dated 26 July 2007.**

	<b>Issue</b>	<b>Comment</b>
1.	Can SDCC state whether the registration of this quarry is valid or invalid in view of the fact that the application for registration of the above quarry on the 27 April 2005 contains inaccurate information and does not comply with section 261 of the Planning and Development Act.	It is noted that no details have been provided regarding any inaccurate information submitted. The registration of the quarry is considered to be valid and in compliance with Section 261.
2.	the inclusion of all land owned (by) Shillelagh Quarries Limited, (48.5 hectares) as registered on 27-4-05 constitutes intensification of use	Matter for consideration in current planning application
3.	The use of explosives at this quarry have been prohibited by the (Patterson v Murphy) court case for over 20 years. This we believe creates precedence	Matter for consideration in current planning application

4.	Since 2000 there has been a massive intensification of works at this quarry. Method of extraction has changed with the re-introduction of explosives. Since the court case (Patterson v Murphy 78) mechanical diggers were used as the sole means of extraction	Matter for consideration in current planning application
5.	material excavated at this quarry and deposited in a mound on the western side of the quarry	Matter for consideration in current planning application
6.	material excavated at this quarry and deposited on land to the east of the quarry	Matter subject of request for FI in relation to current planning application
7.	the excavation and laying of material for a road at this quarry	Matter for consideration in current planning application
8.	the excavation of quarry floor by 30 metres (which is not included in the description of the proposed development SD07A/0276)	Matter for consideration in current planning application
9.	works carried out to make new entrance at this quarry	Matter for consideration in current planning application
10.	Can SDCC state if Article 28 of the Planning Regulations has been complied with in registration and planning application of this quarry.	Matter for consideration in current planning application.
11.	the application area of 28.1 hectares constitutes intensification of use	Matter for consideration in current planning application
12.	Can SDCC state whether	Wicklow County Council was notified in

	Wicklow County Council have been notified about the registration and planning application of this quarry.	relation to both the Section 261 Registration, and planning application SD07A/0276
13.	Can SDCC state whether SD07A/0276 is a valid or invalid application in view of the inaccurate planning application.	The application is considered to be valid.

### Conclusion

Having regard to the above comments on the issues raised in the application for a declaration under Section 5, it is considered that any issues raised in relation to the contended unauthorised status of the quarry operations are presently being addressed in relation to the assessment of the planning application under SD07A/0276.

The planning report prepared in relation to the Registration of the Shillelagh Quarry under Section 261 (Reg Ref SDQU05A/1) may be of assistance to An Bord Pleanala in providing further background information in that regard.

A response is required in relation to the details requested in the letter from An Bord Pleanala dated 19 September 2007.

Yours faithfully

*Marian Dolan*

for Senior Executive Officer

APPENDIX 8  
PUBLIC NOTICE RELATING TO S261A AND SUBMISSIONS RECEIVED

## Review of Quarries

### Section 261A of the Planning and Development Act 2000 (as amended) (Further matters in relation to control of quarries)

1. South Dublin County Council intends to examine every quarry in its administrative area to determine, in relation to that quarry, whether having regard to the Environmental Impact Assessment Directive and the Habitats Directive, one or more than one of the following was required but was not carried out —

- (i) an environmental impact assessment;
- (ii) a determination as to whether an environmental impact assessment is required;
- (iii) an appropriate assessment.

2. Where South Dublin County Council determines in relation to a quarry that an environmental impact assessment, a determination as to whether environmental impact assessment was required, or an appropriate assessment, was required but was not carried out and the Council also decides that —

(i) the quarry commenced operation prior to 1 October 1964, or planning permission was granted in respect of the quarry, and

(ii) if applicable, the requirements in relation to registration under section 261 of the Planning and Development Act 2000 (as amended) were fulfilled, the Council will issue a notice to the owner or operator of the quarry requiring him/her to submit an application to An Bord Pleanála for substitute consent, such application to be accompanied by a remedial environmental impact statement or a remedial Natura impact statement or both of those statements, as appropriate.

3. Where South Dublin County Council determines in relation to a quarry that an environmental impact assessment, a determination as to whether environmental impact assessment was required, or an appropriate assessment was required, but was not carried out and the Council also decides that —

(i) the quarry commenced operation on or after 1 October 1964 and no planning permission was granted in respect of the quarry, or

(ii) if applicable, the requirements in relation to registration under section 261 of the Planning and Development Act 2000 (as amended) were not fulfilled, the Council will issue a notice to the owner or operator of the quarry informing him/her that it intends to issue an enforcement notice under section 154 of the Planning and Development Act 2000 (as amended) requiring the cessation of the operation of the quarry and the taking of such steps as the Council considers appropriate.

4. Where South Dublin County Council determines in relation to a quarry that an environmental impact assessment, a determination as to whether an environmental impact assessment was required, or an appropriate assessment, was required but was not carried out and the Council also determines that the development in question was carried out after 3 July 2008, the Council will issue a notice to the owner or operator of the quarry informing him/her that it intends to issue an enforcement notice under section 154 requiring the cessation of the operation of the quarry and the taking of such steps as the Council considers appropriate.

5. Any person may make submissions or observations in writing, without payment of a fee, to South Dublin County Council in relation to any quarry in its administrative area not later than 6 weeks after the date of this notice.

6. As the 6 week period referred to above will include Christmas 2011, the period for receipt of submissions or observations will be extended by 9 days by South Dublin County Council. Accordingly the last day for submissions is **January 27th 2012 at 4.30pm.**

Submissions may be made in writing or by email as follows, to; **Tony Shanahan, Administrative Officer, South Dublin County Council, Planning Dept., Town Centre, Tallaght, D24 or by email to devplan@sdblincoco.ie**

7. Submissions received within the period permitted will be considered by the Council. Submissions received may be made available for inspection by the Council or copies may be made available to persons on request.

8. A copy of any notice issued to the owner or operator of a quarry by South Dublin County Council directing him/her to apply to An Bord Pleanála for substitute consent, or informing him/her that the Council intends to issue an enforcement notice under section 154 in respect of the quarry, will be given to a person who made submissions or observations within the period permitted.

9. An owner or operator of a quarry to whom a notice is issued by South Dublin County Council, and any person to whom a copy of such a notice is given by South Dublin County Council, may apply to An Bord Pleanála, without payment of a fee, for a review of a determination or a decision, or both, referred to in the notice.

**Frank Nevin**  
Director  
Land Use, Economic & Transport Planning Dept

Web: [www.sdcc.ie](http://www.sdcc.ie)

# Former NIB director has exclusion quashed

## Disqualification order not valid, rules Supreme Court

MARY CARLON

AN ORDER disqualifying a former director of National Irish Bank (NIB) from involvement in managing any company for six years over "lack of a proper standard of conduct" is the least during his period of office but was quashed by the Supreme Court.

The court said the order was made against him by the High Court in 2009. A disqualification order is made against a director if he or she is found to be guilty of a "lack of proper standard of conduct" in the course of his or her duties as a director. The court said the order was made against Mr. Sheehan in 2009. A disqualification order is made against a director if he or she is found to be guilty of a "lack of proper standard of conduct" in the course of his or her duties as a director.



Mr. Sheehan's disqualification order was quashed by the Supreme Court.

The court said the order was made against him by the High Court in 2009. A disqualification order is made against a director if he or she is found to be guilty of a "lack of proper standard of conduct" in the course of his or her duties as a director. The court said the order was made against Mr. Sheehan in 2009.

Mr. Sheehan's evidence in relation to the disqualification order was found to be credible. The court said the order was made against him by the High Court in 2009. A disqualification order is made against a director if he or she is found to be guilty of a "lack of proper standard of conduct" in the course of his or her duties as a director.

# Greencore records rise in revenue of 8.7%

ALANNE LYNN

Greencore's revenue rose 8.7% in the first nine months of 2011, according to the company's interim financial report. The company's revenue for the first nine months of 2011 was €1.1 billion, compared with €1.01 billion in the same period last year.

The company's revenue for the first nine months of 2011 was €1.1 billion, compared with €1.01 billion in the same period last year. The company's revenue for the first nine months of 2011 was €1.1 billion, compared with €1.01 billion in the same period last year.

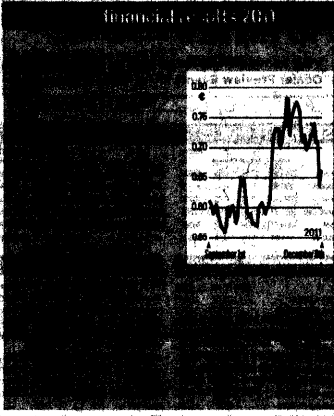
Greencore's revenue for the first nine months of 2011 was €1.1 billion, compared with €1.01 billion in the same period last year. The company's revenue for the first nine months of 2011 was €1.1 billion, compared with €1.01 billion in the same period last year.

# Year of relentless activity underpins excellent health of Irish food company

ALANNE LYNN

Greencore's year of relentless activity underpins its excellent health. The company's revenue for the first nine months of 2011 was €1.1 billion, compared with €1.01 billion in the same period last year. The company's revenue for the first nine months of 2011 was €1.1 billion, compared with €1.01 billion in the same period last year.

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# Living standards on the slide but executive pay seems out of sync

DAVID TEATHER

Living standards are on the slide but executive pay seems out of sync. The company's revenue for the first nine months of 2011 was €1.1 billion, compared with €1.01 billion in the same period last year. The company's revenue for the first nine months of 2011 was €1.1 billion, compared with €1.01 billion in the same period last year.

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Executive pay seems out of sync. The company's revenue for the first nine months of 2011 was €1.1 billion, compared with €1.01 billion in the same period last year. The company's revenue for the first nine months of 2011 was €1.1 billion, compared with €1.01 billion in the same period last year.

# Finance One posts after-tax profit of over €92,000 to end of March

COLLEEN

Finance One has reported an after-tax profit of over €92,000 for the first quarter of 2011. The company's revenue for the first quarter of 2011 was €1.1 billion, compared with €1.01 billion in the same period last year. The company's revenue for the first quarter of 2011 was €1.1 billion, compared with €1.01 billion in the same period last year.

# Review of Quarries

Section 261A of the Planning and Development Act 2000 (as amended) (Further matters in relation to control of quarries). 1. South Dublin County Council intends to examine every quarry in its administrative area to determine, in relation to that quarry, whether having regard to the Environmental Impact Assessment Directive and the Habitats Directive, either both or any of the following was required but was not carried out:

- (1) an environmental impact assessment;
  - (2) a determination as to whether an environmental impact assessment is required;
  - (3) an appropriate assessment;
  - (4) where South Dublin County Council determines in relation to a quarry that an environmental impact assessment was required, or an appropriate assessment was required, but was not carried out and the Council also decides that:
    - (a) the quarry commenced operation prior to 1 October 1984, or planning permission was granted in respect of the quarry, and
    - (b) if applicable, the requirements in relation to registration under section 261 of the Planning and Development Act 2000 (as amended) were not fulfilled, the Council will issue a notice to the owner or operator of the quarry requiring him/her to submit an application to an Bord Pleanáil for substitute consent, such application to be accompanied by a remedial environmental impact assessment or a remedial Natura impact statement or both of those statements, as appropriate;
  - (5) where South Dublin County Council determines in relation to a quarry that an environmental impact assessment was required, or an appropriate assessment was required, but was not carried out and the Council also decides that:
    - (a) the quarry commenced operation on or after 1 October 1984 and no planning permission was granted in respect of the quarry, or
    - (b) if applicable, the requirements in relation to registration under section 261 of the Planning and Development Act 2000 (as amended) were not fulfilled, the Council will issue a notice to the owner or operator of the quarry informing him/her that it intends to issue an enforcement notice under section 154 of the Planning and Development Act 2000 (as amended) requiring the cessation of the operation of the quarry and the taking of such steps as the Council considers appropriate;
  - (6) where South Dublin County Council determines in relation to a quarry that an environmental impact assessment was required, or an appropriate assessment was required, but was not carried out and the Council also decides that:
    - (a) the quarry commenced operation on or after 1 October 2008, the Council will issue a notice to the owner or operator of the quarry informing him/her that it intends to issue an enforcement notice under section 154 requiring the cessation of the operation of the quarry and the taking of such steps as the Council considers appropriate;
  - (7) any person may make submissions or observations in writing, without payment of a fee, to South Dublin County Council in relation to any quarry in its administrative area not later than 6 weeks after the date of this notice.
  - (8) As the 6 week period referred to above will include Christmas 2011, the period for receipt of submissions or observations will be extended by 9 days by South Dublin County Council. Accordingly the last day for submissions is January 27th 2012 at 4.30pm.
- Submissions may be made in writing or by email as follows: to Tony Shanahan, Administrative Officer, South Dublin County Council, Planning Dept, Town Centre, Tallaght, D24 or by email to [development@sdcc.ie](mailto:development@sdcc.ie)
7. Submissions received within the period permitted will be considered by the Council. Submissions received may be made available for inspection by the Council or copies may be made available to persons on request.
8. A copy of any notice issued to the owner or operator of a quarry by South Dublin County Council under section 154 of the Planning and Development Act 2000 (as amended) shall be a copy of such a notice to whom a notice is issued by South Dublin County Council, and any person to whom a copy of such a notice is given by South Dublin County Council, may apply to an Bord Pleanáil, without payment of a fee, for a review of a determination or a Section 154 notice, referred to in the notice.
- Frank Nevin  
Director  
Land Use, Economic & Transport Planning Dept  
Web: [www.sdcc.ie](http://www.sdcc.ie)

# THE IRISH TIMES

This page shows the article as it originally appeared in the newspaper. The article itself can be read on the following page.



This is the article's web address for reference.

<http://www.irishtimes.com/newspaper/archive/2011/1207/Pg017.html#Ar01709>

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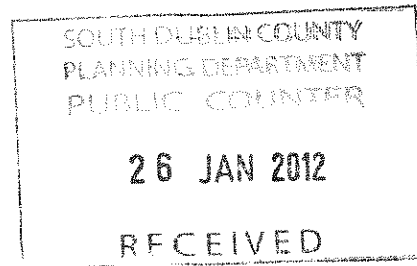
REVQUAR 045

SLR 

26th January 2012

By Hand

Mr. Tony Shanahan,  
Administrative Officer,  
South Dublin County Council,  
Planning Department,  
Town Centre,  
Tallaght,  
Dublin 24



Our Ref: 501-00066-00003 L01

Dear Mr. Shanahan,

**RE: REVIEW OF QUARRIES: SECTION 261A OF THE PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED)**

**QUARRY AT AGHFARRELL, BRITTAS, CO. DUBLIN – SUBMISSION ON BEHALF OF SHILLELAGH QUARRIES LTD.**

This submission is made on behalf of Shillelagh Quarries Ltd. with an address at Aghfarrell, Brittas, Co. Dublin in response to the public notice issued by South Dublin County Council in the Irish Times, dated 7<sup>th</sup> December 2011 inviting submissions or observations in relation to the statutory review of quarries under Section 261A of the Planning and Development Act 2000 (as amended) – Further Matters in the Control of Quarries.

## 1.0 SECTION 261 REGISTRATION

Shillelagh Quarries Ltd. registered the quarry at Aghfarrell with South Dublin Co. Council as required under Section 261 of the Planning & Development Act, 2000 (Quarry Ref. No. SDQU05A/1) on the 20<sup>th</sup> April 2005.

A subsequent public notice issued by South Dublin County Council advised that the quarry at Aghfarrell was registered in accordance with Section 261 of the Planning & Development Act and stating;

*'Planning permission has not been granted for this quarry. The PA is considering requiring the making of a planning application and the preparation of an environmental impact statement (EIS) in respect of the quarry in accordance with subsection (7) of Section 261 of the Act.*

Notification to Shillelagh Quarries Ltd. by South Dublin County Council under Section 261(5) requested that a planning application and accompanying EIS be submitted in relation to the quarry at Aghfarrell.

## **2.0 PLANNING APPLICATION SUBMITTED UNDER SECTION 261**

Shillelagh Quarries Ltd. submitted a planning application and accompanying EIS to South Dublin Co. Council. (Planning Ref. No. SD07A.0276), as required under the provisions of Section 261. This application includes the existing quarry area and a proposed extension area. South Dublin Co. Council issued a notification of decision to grant planning permission for the development. This decision was subject to first and third party appeals to An Bord Pleanála. The Board overturned South Dublin Co. Council's decision and refused planning permission.

Shillelagh Quarries Ltd. is currently engaged in court proceedings (Record No. 2011/154JR) with An Bord Pleanála in relation to the Board's decision to overturn the grant of planning permission by South Dublin County Council (Planning Ref. No. SD07A/0276 and ABP Ref. No. PL06S.231371) for the proposed development being:

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

This submission in relation to Section 261A is made without prejudice to any position Shillelagh Quarries Ltd's may take in relation to and arising from the above High Court proceedings. In that regard, it is submitted, that it is appropriate to await the outcome of those proceedings, due to be heard in March 2012, before a determination is made on whether an application for substituted consent should be made

## **3.0 SECTION 261A**

It is clear from the original quarry registration process that the local authority accepted the status of the quarry at Aghfarrell as being a quarry that commenced operation before 1<sup>st</sup> October 1964 and having an extraction area which was greater than 5 hectares at the time of registration and thereby registered it in accordance with subsection (7) of Section 261 of the Planning & Development Act.

Shillelagh Quarries Ltd. would also like to point out that it could have been quite conceivably foreseen before 1<sup>st</sup> October 1964 that the quarry would continue to operate and expand within the same single landholding boundary (Folio DN3636).

Shillelagh Quarries Ltd. has operated the quarry in accordance with the recommended environmental management guidelines for the sector (DoEHLG (2004) and EPA(2006). There is an ongoing environmental monitoring programme in place at the quarry that confirms compliance with the recommended emission limit values for noise, dust deposition

and air overpressure / groundborne vibration. The quarry operation is not resulting in significant effects on the environment.

It is respectfully requested that South Dublin County Council now make a determination that an application should be made to the Board for substitute consent with regard to the quarry at Aghfarrell under Section 261A (1)(b), being:

*"that where the planning authority determines in relation to a quarry that an environmental impact assessment, a determination as to whether environmental impact assessment was required, or an appropriate assessment, was require but was not carried out and the planning authority also decides that –*

- (i) The quarry commenced operation prior to 1<sup>st</sup> October 1964, or permission was granted in respect of the quarry under Part III of the Planning and Development Act 2000 or Part IV of the Local Government (Planning and Development) Act 1963, and*
- (ii) If applicable, the requirements in relation to registration under section 261 of the Planning and Development Act 2000 were fulfilled."*

It is clear from the original quarry registration process that the local authority accepted the status of the quarry at Aghfarrell as being a quarry that commenced operation before 1st October 1964 and having an extraction area which was greater than 5 hectares and thereby required an application for planning permission and an EIS to be submitted in accordance with subsection (7) of Section 261 of the Planning & Development Act. Further, it is clear that the requirements in relation to registration under section 261 of the Planning and Development Act 2000 were fulfilled. In so far as the EIS that accompanied planning application (Planning Ref. No. SD07A.0276) is concerned, this was not exclusively for the quarry that commenced operation before 1st October 1964 as it considered other development, for example, the extension of the existing quarry extraction area by 4.2 hectares. Thus, it is submitted, that an environmental impact assessment for the quarry *per se* was required and was not carried out

If you require any further information or clarification in relation to this submission please contact Shane McDermott or myself.

Yours sincerely  
**SLR Consulting Ireland**



Tim Paul  
Director

cc Mr. TJ Murphy (Shillelagh Quarries Ltd.)

Ballinascorney Upr.,

Brittas,

Co. Dublin

26-1-2012.

Ref:- Review of Quarries Section 261A Planning and Development Act 2000 -2011.

Dear Mr Horan,

We would like to make the following submission on Section 261A of the Planning and Development Act 2000 – 2011:-

(1) Shillelagh Quarries Limited. ( SDQU 05A/1) and others

- (a) We must point out that SDCC granted planning permission to Shillelagh Quarries Limited "Ultra Vires". SDCC failed to carry out even a basic check of Public records despite the fact that we had requested a full investigation into this unauthorised quarry. SDCC failed to request from Shillelagh Quarries Limited proof of Pre- 1964 status, ownership of land, etc. despite knowing that it was an unauthorised quarry with a very long history.
- (b) We would like to know why the same planning officer who granted planning permission to Shillelagh Quarries Limited has been appointed enforcement officer to this case by Mr Horan. This is not appropriate or acceptable.
- (c) Both Section 261 and 261A are developer led and probably represent some of the most ill-conceived and blatant Legislation drafted in the Planning Act. Both section 261 and 261A are designed to legitimise unauthorised and fraudulent quarries in breach of ECJ C/215/06 , 85/337/EEC. Section 261A designed to give a second chance to the owners of the unauthorised quarries.
- (d) It is a scandal that the Minister for the Environment has enacted and is promoting such legislation.

- (d) Section 261A we believe is in breach of the ECJ case C/215/06. 85/337/EEC. This we believe will result in cases returning to the ECJ once again. Resulting in Large fines being levied on the citizen's of this State once again, as a result of Incompetent governance.

We request that SDCC carry out immediate enforcement action under Section 154 for this unauthorised quarry ( Shillelagh Quarries Limited). The decision by An Bord Pleanala was made on the 24-12-2010 and we believe SDCC have not taken any enforcement action to date.

(2) Kilsaran Concrete Limited:- SDQU05A/6

- (a) SDCC granted an extra 6.676 Hectares for quarrying without Kilsaran Concrete Limited making any planning application for such a development. The area of this quarry is now 31.876 Hectares.
- (b) No adequate Environmental Impact Assessment/Appropriate assessment was carried out prior to the grant of planning permission to Kilsaran Concrete Limited.
- (c) This quarry was granted an additional 5 years duration in the planning permission to 2017. The quarry was almost worked out when Tracey Enterprises Limited sold it to Kilsaran Concrete Limited and was due to close in 2012. The overall size of the quarry Tracey Enterprises Ltd sold to Kilsaran Concrete was 25.2 Hectares.

Section 261A will promote further environmental destruction, to add to the last decade of what can only be described as the worst Planning and Development in the history of the State .

Should SDCC decide to proceed with Section 261A of the Planning and Development Act 2000 -2011 we request that we be informed about all quarries that are included and notified by SDCC including Shillelagh Quarries Limited and Kilsaran Concrete Limited.

Yours faithfully

Michael McCoy

Secretary D.M.C&E.G.

cc. P Hogan. Minister for the Environment, Heritage and Local Government.

6, Estate Cottages,  
Shelbourne Road,  
Ballsbridge,  
Dublin 4.

Tony Shanahan  
Administrative Officer  
South Dublin County Council  
Planning Department  
Town Centre  
Tallaght  
Dublin 24

**RE Observation Submission to REVIEW OF QUARRIES under  
Section 261A of the Planning and Development Act 2000.**

Dear Sir

I refer to the above and wish to make the following observations by way of invited submissions to SDCC and refer to the Notice on the website at Nr. 5 where it states " *Any person may make submissions or observation in writing without payment of a fee, to south Dublin County Council in relation to any quarry in its administrative area not later than 6 weeks after the date of this notice.* " .

I wish to draw attention to the illegal quarry at Aghfarrell, Brittas Co Dublin and operated by Shillelagh Quarries Limited.

The application made in respect of this quarry under section 261 was not properly considered and there was false information submitted on foot of the application form with regard to the ownership of the lands contained in folios which no longer existed and where the unauthorized development was taking place. South Dublin County Council granted permission for continuance of use in full knowledge that the operation was illegal and thankfully the decision of SDCC, which was *ultra vires* has been overturned by An Bord Pleanala by order dated 24<sup>th</sup> December 2010.

The subject quarry is still being investigated by the senior planner who granted permission for continuance of use and has now been given the enforcement file to regularize various breaches and illegality, however there has been no meaningful action or any visible action taken to date by SDCC against the owner or operators of the illegal quarry.

This beggars belief and I am awaiting an explanation from Mr Horan, the County Manager to account for this and explain why the same planner who granted permission for a known illegal and unauthorized operation at lands in Aghfarrell, has now charge of an enforcement file to which much of the irregularity consequently arising, can be attributed to him granting permission (*ultra vires*) in the first place, for a known illegal and unauthorized development.

I submit that the proposals contained in the above review raise concern regarding this particular quarry and any attempt to alter the procedures of Section 261A of the Planning and Development Act 2000 as proposed by SDCC for control, could in circumstances where it to allow or permit to create;

- (i) *further opportunity to re-apply under the section 261a where the operators of this unauthorized development, possess no planning permission by way of order of ABP.*
  
- (ii) *which was previously determined by the High Court to be an unauthorized development.*
  
- (iii) *the subject site in which the illegal operations continue to take place is not a quarry pre October 1<sup>st</sup> 1964.*

The above if permitted to unfold would likely result in the matter being complained of further in other forums and through procedures provided for under EU directives and reported to other superior authority notwithstanding the provision for the matter to be referred to ABP.

There is still no provision for third party evidence or participation in the application for a section 261 and accordingly this remains open to constitutional challenge. The proposed changes under the review would significantly add to excluding third parties from participation in this process as a review does not contain proposals to allow for same.

Accordingly in the circumstances I do not believe that the " review" of quarries as proposed, can be trusted by the public and in particular to the above named illegal quarry to be open or fair.

William M Collins

January 27 2012.

APPENDIX 9  
PATTERSON V MURPHY, HIGH COURT 1977 NO.6215P

of the special conditions of the present case should take into account three parties who are possible lessees of the basement premises; namely, the occupiers of Number 25 (Messrs. Tylers Ltd), the occupiers of the ground-floor of Number 24 (who happen to be Macey Ltd) and the occupiers of the ground-floor and basement of Number 23 (whoever they may be). It was argued that the fact that Macey Ltd happen also to be landlords of the premises is an irrelevant consideration.

I cannot accept the landlord's contention. I agree that the valuer under the terms of the rent review clause is required to consider a hypothetical situation. But this is not his only task. He is, in my opinion required to undertake the following exercise. Firstly, he is required to assume (i) that the premises are vacant and (ii) the existence of a willing landlord and a willing lessee. He then must turn to the factual situation at the date of the review and weigh up all the facts relevant for the purpose of ascertaining the open market rent at that date. He will take into account such things as the physical features of the premises and their location; the levels of rent of comparable premises; and any special local conditions which could affect the level of the rent such as the existence of neighbouring occupiers whose interest in the premises might increase competition and thus enhance the open market rent. He should take into account any legal restrictions which might affect the user of the premises. And he must, of course, take into account the terms of the lease itself.

Clearly, the terms of the lease and the factual situation resulting from the lease are matters he is required to consider. If he finds, as in this case, that the adjoining premises are occupied by a party who is the lessor of the premises the rent of which he is fixing then that party cannot, in fact, be a potential lessee of the premises. In such a situation he must make a valuation without taking into account the effect on the rent of the competition from this particular adjoining occupier because, in effect, the adjoining occupier is not in the market for the lessee's interest. The same conclusion results from another, related, reason. The valuer is required to give effect to the agreement of the parties. Macey Ltd have in this case agreed to give up possession of the basement for 21 years, provided certain conditions are complied with. They have agreed to a rent review at a time when they have precluded themselves from taking possession of the demised premises (save in exceptional circumstances which have not, in fact, arisen). They must, therefore, be taken as having agreed that in considering the demand for the premises from potential lessees the valuer should not take them into account, as they are not in a position lawfully to take possession of the premises. In my opinion, therefore, Macey Ltd are to be excluded as prospective lessees for the purpose of determining the rack rent of the premises in accordance with the terms of the lease of 19 October 1970. It follows, therefore, that the rent of the premises from 1 March 1975 will be the lower sum fixed by the arbitrator.

Solicitors for the lessor: *T. G. O'Connor & Co.*  
Solicitors for the lessee: *T. G. Quirke & Co.*

*Noreen Mackey*  
Barrister

**Frank Patterson and Eily Patterson v Martha Murphy and Trading Services Ltd. In the matter of the Local Government (Planning and Development) Act 1976: On the application of Frank Patterson and Eily Patterson v Martha Murphy and Trading Services Ltd:** High Court 1977 No. 6215P (*Costello J.*) 4 May 1978

*Local Government — Planning and Development — Quarry — Section 27 application — Whether development — Whether Minister required to decide dispute — Whether permission required — Intensification of use — Local Government (Planning and Development) Act 1963, (No. 28) ss 3, 5(1), 24(1) — Local Government (Planning and Development) Act 1976, (No. 20) ss 27, 46(4)*

*Tort — Nuisance — Quarry — Blasting operations — Heavy traffic — Dust and noise — Standard of comfort — Whether landlord liable for nuisance caused by the tenant's act — Whether plaintiffs entitled to damages and injunction — Contribution, as between defendants — Civil Liability Act 1961, (No. 41) ss 21, 34*

Facts S.5(1) of the Local Government (Planning and Development) Act 1963 provides that if any question arises in any particular case as to what is or is not development, the question must be decided by the Minister. S.27 of the Local Government (Planning and Development) Act 1976 permits application to be made to the High Court for an order restraining unauthorised development. S.46(4) of the said Act provides that the 1963 and 1976 Acts are to be construed together as one Act. The plaintiffs, a married couple, purchased a house from the first-named defendant in 1973. Access to the house was by means of a narrow laneway, to which, in addition to the house and surrounding land, the plaintiffs acquired a right-of-way. Prior to the purchase, the first-named plaintiff noticed that some topsoil had been scraped away from the adjoining field which was also the property of the defendant. He inspected the planning register and ascertained that no permission had been granted to use the field as a quarry. In May 1977, an oral agreement was entered into by the son of the first-named defendant, acting on her behalf, and the managing director of the second-named defendant. The written memorandum records the fact that the second-named defendant would take a lease of the field for three years. It was expressly agreed that permission was given for the installation in the field of 'crusher screeners and conveyors and necessary equipment for the manufacture of stone'. Pursuant to this agreement blasting operations commenced on a regular and extensive basis; on one occasion causing cracks to appear in the walls of the plaintiffs' house, breaking a window and causing shock and alarm to the second-named plaintiff who was pregnant at the time. Evidence was given that dust from the operations entered the house and lay about in layers. Because of the dust, the plaintiffs were unable to sit in their garden. Lorries travelling up and down the laneway in convoys also caused noise and dust. In wet conditions the laneway became a morass, and almost impassable. The plaintiffs brought an action for damages for nuisance and seeking an injunction to restrain

the defendants from committing further acts of nuisance. They also brought a motion pursuant to s.27 of the 1976 Act. By consent, the evidence in the nuisance action was treated as the evidence in the motion, and a single judgment was given. The defendants argued that the court had no jurisdiction to hear the s.27 application, contending that the work in the field was not development, and that s.5 of the 1963 Act applied. They also argued that permission for the development was not required under Part IV of the 1963 Act, since s.24(1) provides that permission is not required for development commenced before the appointed day, i.e., 1 October 1964. Evidence was adduced to show that shale had been drawn from the field at intervals since 1946, but on a small scale and with primitive equipment.

**Held** by Costello J in awarding damages for nuisance, in granting the relief sought in both the nuisance action and the s.27 motion, and in apportioning damages as follows: 75% to be borne by the second-named defendant and 25% by the first-named defendant:

(1) The standard of comfort to be applied to the plaintiffs in deciding whether a nuisance had been committed was that which a reasonable person living in an area used for normal agricultural purposes would expect to enjoy.

(2) The plaintiffs were entitled to damages for consequential loss resulting from the damage caused to their house by one of the blasting operations, for the shock caused to the second-named plaintiff on the same occasion and for the fact that they had been forced to leave their home and live in rented accommodation.

(3) The relationship created between the defendants by the agreement of May 1977 was that of landlord and tenant. The first-named defendant as landlord was liable for the nuisance caused by her tenant in so far as she expressly or by necessary implication authorised its commission. *Harris v James* (1876) 45 LJQB 545 followed.

(4) The object of the agreement of May 1977 was the manufacturing of stones from the field. The natural consequences of the large scale operations envisaged by the parties was nuisance arising from noise and dust in the field, and as such, was implicitly authorised by the first-named defendant.

(5) The damage caused to the plaintiffs' house was not a normal consequence of the blasting operations, as evidence showed that blasting could be carried out with delayed detonators which would avoid such damage. The first-named defendant was not therefore liable for the damage, nor for the alarm caused to the second-named plaintiff on the same occasion.

(6) Nuisance arising from the user of the laneway was implicitly authorised by the first-named defendant since by implication a right-of-way had been granted by her to the second-named defendant in respect of the laneway.

(7) Since the nuisance was actually committed by the second-named defendant, the major share of fault must be apportioned to it.

(8) The plaintiffs were prima facie entitled to an injunction, since the infringement of their rights was serious, and the injuries which they would suffer if

the nuisance were permitted to continue would not be adequately compensated for by damages.

(9) S.5 of the 1963 Act cannot be interpreted as meaning that the Minister is appointed to arbitrate in every possible dispute as to what constitutes development. It must be interpreted as meaning that where a question arises between a Planning Authority and another person in the course of the procedures established by the 1963 Act, as to what constitutes development, it must be referred to the Minister. S.5 cannot therefore in any circumstances bar an application to the court under s.27 of the 1976 Act.

(10) Where present-day development differs materially from development carried on prior to the 1963 Act, it cannot be said to have been commenced prior to the appointed day. The quarrying carried on in the field following the agreement of May 1977 was a major intensification of the drawing of shale customary in the field prior to 1963. The intensification was such as to render contemporary operations materially different from those carried on prior to the appointed day. It was, therefore, development requiring permission under Part IV of the 1963 Act.

#### Cases referred to in judgment

*Brooks v Secretary of State for the Environment* [1977] 1 WLR 1294; [1978] 1 All ER 733

*Carroll v Clare Co. Council* [1975] IR 221

*Guildford Rural District Council v Fortescue* (1959) 2 QB 112; [1959] 2 WLR 643

*Goldfarb v Williams* [1945] IR 433

*Halpin v Tara Mines* High Court 1973 No. 1516P (Gannon J) 16 February 1976

*Harris v James* (1876) 45 LJQB 545; 35 LT 240; 40 JP 663.

*Miller v Jackson* [1977] 1 QB 966; [1977] 3 WLR 20; [1977] 3 All ER 338

*Munnelly v Calcon Ltd* [1978] IR 387

*O'Sullivan v Dwyer* [1971] IR 275

*Readymix (Eire) Ltd v Dublin County Council* Supreme Court 30 July 1974, Unreported

*Sheffer v City of London Electric Co.* [1895] 1 Ch 287; [1891-4] All ER Rep 838

*Smith v Scott* [1973] 1 Ch 314; [1972] 3 WLR 783; [1972] 3 All ER 645

*Viscount Securities Ltd. In re* (1977) 112 B.L.R. 17

*Henry Barron SC and Paul Gilligan for the plaintiffs*

*Frederick Morris SC, Patrick J. Geraghty SC and Ericus Stewart for the first defendant*

*Henry Abbott for the second defendant*

**COSTELLO J** delivered his judgment on 4 May 1978 saying: The plaintiffs herein instituted proceedings for damages and injunction arising out of alleged acts of nuisance for which they claimed the defendants were responsible. They sought interlocutory relief and on the hearing of their motion a date was fixed for the trial of the action. As the matter was an urgent one an early date was fixed but this resulted in the fact that the rules relating to pleadings were not complied with. No point has been taken on this, however, and it is agreed that I should hear the case on the basis of the pleadings actually filed. The plaintiffs had also brought a motion under s.27 of the Local Government (Planning and Development) Act 1976. Again, by agreement I directed under Rule 6 of the Rules of the Superior Courts (No. 1) 1976 that evidence heard in the nuisance action should be treated as the evidence on the 1976 Act motion. Although different issues arise in the two proceedings it

was in fact found convenient to have them heard together. It will, I think, be equally convenient if I give one judgment in both proceedings, dealing firstly with the nuisance action.

The plaintiffs married in 1967. Both are, by profession, musicians, Mr Patterson being a singer and Mrs Patterson a pianist and harpist. They lived in Paris between 1967 and 1971. In 1971 they returned to Ireland renting a cottage in Brittas, County Dublin. They liked the area and sought somewhere in it where they could settle permanently. Late in 1972 Mr Patterson found Shillelagh Lodge. It was a small two-storeyed house, very old and in a dilapidated condition, but it ideally suited his requirements and the plaintiffs decided to purchase it and renovate it. It was situated in a very beautiful part of the countryside, and some distance from the main road. Access to it was by means of a narrow laneway. It was purchased in April 1973, along with five acres of land and a right-of-way up the laneway. The Pattersons did a lot of renovation work to the house, and built on a music room and moved into their new home in the month of September 1973.

The laneway ends beside the entrance to Shillelagh Lodge at an old gateway which leads into a field (which, for ease of reference I will refer to as the 'quarry field'). This field is a little over 4 acres in area. Mr Patterson took a walk in it before buying his new home, and he noticed that some of the top soil had been scraped away leaving areas of broken rock and shale. He said (and I accept his evidence) that the total area involved was approximately 25 yards square and the rest of the field appeared to consist of rough grazing and heather. He took the precaution of inspecting the planning register in the county council offices and found that no permission to use the field as a quarry had been given but that permission to erect a dwelling on the other side of the lane existed. In fact the plot of ground opposite Shillelagh Lodge had been purchased by Mr O'Sullivan who, not long after the Patterson's purchase, built a bungalow for himself (which is now known as Aughfarrel) which he moved into after his marriage in September 1974.

The owner of Shillelagh Lodge, and Aughfarrel, had been Mrs Murphy. She also owns the quarry field, the land over which the laneway runs and other land in the vicinity amounting in all to over 100 acres. Her home is lower down the lane closer to the main road. She is now a remarkable old lady of 91 who, as a child, was brought up in Shillelagh Lodge. Her husband, for many years, farmed the land and also carried on a sand and gravel business until he got into ill-health in the year 1964. Thereafter her son, Michael Murphy, has managed the family business and the farm and, in fact, all the negotiations in relation to the sale of the property and the dealings relating to the quarry field were conducted by Mrs Murphy's son on her behalf. Not surprisingly, Mrs Murphy's recollection of events is infirm, and the principal evidence in the case was given by her son. Some time in the month of August or September 1973 Mr and Mrs Patterson called on Mrs Murphy. As they were shortly to be neighbours they wanted to introduce themselves to Mrs Murphy and also raise with her the question of the gates on the lane. At that time there were two gates on the laneway and Mr Patterson hoped that an arrangement to keep them open could be made. In the course of the conversation Mr Patterson was told that

a 'big quarry' was to be opened in the quarry field. This was the first he learnt of this possibility. I should make it clear that I do not accept the suggestion that he had been told about this possible development by Mr Michael Murphy at or about the time he had effected the purchase some months previously. I think, however, that it is probable that Mr Michael Murphy was not in his mother's home when the Pattersons called to see her.

The possibility that a quarry might be opened up in the adjoining field came closer to reality in the month of July 1974. An explosion then took place in the field and a considerable quantity of rock was displaced. Mr Patterson went to his solicitor and to the county council offices and, no doubt as a result of his representations, a notice to cease development dated 25 September 1974 was served on Mr Murphy. The notice stated that the 'use of lands as a quarry' was being carried out without a grant of permission under the relevant Act and was unauthorised development. For approximately four weeks after the blast rock was removed by means of lorries but thereafter the situation reverted to the normally peaceful conditions which had existed prior to July. What those conditions were I will examine in greater detail later. But a new development and a most startling one from the Pattersons point of view occurred in the early summer of 1977. Large items of equipment and vehicles were brought up the laneway by the second-named defendants. Blasting rock on an extensive and regular basis commenced. Crushing equipment was used to reduce the size of the rocks, to produce 4 inch stones and a very considerable volume of traffic of heavy lorries commenced. In fact, quarrying operations on a considerable commercial scale had begun.

The plaintiffs claim that they have been subjected to a nuisance as a result of the quarrying operations carried on in the adjoining quarry field and by virtue of the traffic on the laneway and they seek damages and relief by way of injunction.

#### *Acts of Nuisance*

I should begin my examination of the nuisance claim by considering a submission of the second-named defendant. It is this. In ascertaining whether the noise, vibration and dust complained of in these proceedings amounts in law to a nuisance it is submitted that the standard of comfort to be applied is that of the ordinary and reasonable man in the locality in which the plaintiffs reside (see *Salmond on the Law of Torts* 17 edition p. 56); that as the plaintiffs came to reside in what was termed a 'mining area' the standard of comfort to which they are entitled is less than would apply in an ordinary rural area; that by applying the proper standards no nuisance has been established. In connection with this submission evidence was adduced both as to the nature of the locality in which Shillelagh Lodge was situated, and, also, the user of the quarry field adjoining the plaintiffs home. From the evidence I find the following facts:

1. Shillelagh Lodge is in fact situated on a hillside. It is surrounded by fields which are used for coarse grazing. The quarry field itself was covered to a considerable extent by heather. To the west of the field a large state forest commences. On the lane way close to Murphys house there was a gravel pit and

further away beside the main road there was a larger gravel pit formerly operated by Messrs Roadstone. At the time of the plaintiffs purchase this gravel pit had been worked out. About three quarters of a mile from Shillelagh Lodge there was a quarry known as Tracey's Quarry from which stone was extracted. The environs of Shillelagh Lodge are well illustrated in the fine panoramic photographs taken by Dr. O'Rahilly.

2. Later I will examine the use of the quarry field prior to October 1964. For the purposes of this part of the case I find that from 1964 to 1969 the quarry field was used very intermittently by Mr Murphy to obtain shale. For this purpose a mechanical shovel was used to scrape the top of the soil and to put the shale into lorries.

3. The quarry field was more intensively worked by a Mr Mansfield in the year 1969 (not the year 1970 as he thought). Mr Mansfield entered into an agreement with Mr Murphy and as a result of this he was given permission to take shale. He did this by using a Caterpillar bulldozer. He worked the field only for some weeks. During this time the bulldozer scraped to a depth of between seven to ten feet in portions of the field. When Mr Mansfield left the field the area exploited was that as subsequently seen by the plaintiff and described by him in evidence.

4. After Mr Mansfield vacated the field it was, again, only used very intermittently for the purpose of obtaining shale. It was, in fact, let from time to time by Mr Murphy for sheep grazing. Mrs Nocter (who moved into a house on the lane way in the year 1972) was in a good position to describe how the lane way and the quarry field was used. I accept her evidence (and that of Mr Leavy Jr. who grazed sheep on an adjoining field) to the effect that the lane way and the quarry field were very little used in the years from 1972. It is true that Mr Murphy produced in evidence tenders for the years subsequent to 1969 which he said had been accepted by Dublin County Council for the supply of shale. But these documents did not establish the amount of shale he actually supplied or from where it was obtained.

I conclude, therefore, that the existence of the gravel pits and the quarry some distance away from Shillelagh Lodge and the use actually made by the defendant of the quarry field do not reduce the standard of comfort to which the plaintiff was entitled when he purchased his new home. The standard to which he was entitled and which I should apply in considering the nuisance claim is that which an ordinary reasonable person would expect whose home was on a country lane in an area used for normal and common agricultural purposes.

The new developments which occurred from about the middle of 1977 were these. In the month of May of that year Mr Murphy and Mr Daragh, the managing director of 'Trading Services', (the second-named defendant) entered into an oral agreement about the use of the quarry field. Mr Daragh wrote out a Memorandum of the agreement, part of which reads — 'permission to install crusher screeners and conveyors and necessary equipment for the purpose of manufacturing stone'. Not long after their agreement Trading Services brought into the quarry field a large crushing plant, a Parker Screening plant, an excavator, two dumpers, a loading

shovel a compressor and a drill. Basically, the operations which Trading Services began were these. From time to time large quantities of rock were blasted by means of explosives. The blasted rock was loaded by the excavator into a dumper. The dumper transferred the rock into a hopper at the rear of the crusher. The material travelled by conveyor belt (having been crushed in the crushing machine) to the screening plant. The crushed stones fell from the screening plant into a hopper, and the four inch stones were loaded into lorries and taken away. As stated in the written memorandum the object of the operations was the manufacture of these stones. It appears that between twelve and twenty men were employed in the operations, and that they began at 8 o'clock in the morning and finished at 5.30 p.m. Large 30 ton lorries were used to take away the stone, and these, naturally, were driven up and down the laneway close to the plaintiffs' house. The intensity of the traffic varied. Sometimes lorries came in convoys of four and five and on some days more than 80 lorries would pass by the plaintiffs' entrance. The evidence establishes to my satisfaction that from the middle of 1977 until after the institution of the present proceedings the operations carried on in the quarry field were extensive and intense. To obtain the raw material for the manufacture of stone blasting occurred on 26 July, 8 August, 15 September, 28 September, 11 October, 20 October, 8 December. By arrangement made in the course of these proceedings a further blast occurred on 30 March of the present year. The total amount of explosives used in each blast varied. On 30 March last a total charge was 30 pounds; whilst on 8 August 1977 well over 2000 pounds were used. Blasting took place at distances from 500 feet from the plaintiffs' house to about 675 feet or thereabouts. The rock face of the quarry is now 10 to 12 metres high at its highest point. The crusher is about 175 yards from the house.

I have heard evidence from Mr and Mrs Patterson and Mr and Mrs O'Sullivan as to the effect of the operations which I have described. I have no hesitation in accepting their evidence. Each gave their testimony without exaggeration, with care for accuracy, and conscientiously. None could be regarded as being in any way abnormally sensitive. Turning, firstly to the allegation relating to noise and dust, I accept that the noise from the operations in the quarry field was continuous and loud and calculated to fray the nerves of any normal person. The noise came from the plant, including the crushing plant which was used continuously; it came from the movement of the rocks and stones as they were shifted in the different parts of the operation which I have described. I accept that the noise became so intolerable that Mrs Patterson was forced to leave her home and live elsewhere and that, similarly, Mrs O'Sullivan was driven from her home by it. Equally, I accept that serious nuisance from dust was created by the operations in the quarry field. The level of dust, naturally, varied according to the climatic conditions but I accept the evidence that on some occasions the dust could actually be felt on the face; that it created a film over the house and gardens; that it was such as to require windows to be kept closed, and prohibited Mr and Mrs Patterson from sitting in their garden.

Apart from the noise and dust emanating from the quarry field the evidence establishes to my satisfaction that further acts of nuisance were occasioned by the

lorries travelling to and from the quarry field. The laneway was unmetalled and in fine weather very considerable dust came into the plaintiffs' house and garden both from the loads being carried on the lorries but principally from the surface of the laneway. In addition the size of the lorries and the frequency of the journeys created an excessive amount of noise. In wet conditions the laneway became a morass and almost impassable on occasions, and the laying of stones from the quarry on the laneway proved an ineffective remedy.

I find, accordingly, that the plaintiffs have established acts of nuisance to a serious degree arising from the emanation of noise and dust from the quarry field and from the emanation of noise and dust from the laneway. I will now turn to deal with the allegations relating to the blasting operations.

Trading Services employed Irish Industrial Explosives Ltd, a firm specialising in the supply and use of explosives, to supervise the blasting operations on 26 July, 8 August, 20 October, 8 December, and 30 March of this year. The other blasts were supervised by Mr Daragh himself. Irish Industrial Explosives not only supervise the blasts but also record the results on an instrument called a vibrograph. The vibrograph measures what is called a peak particle velocity in millimetres of a second, the particle velocity being the rate of change of the amplitude of the vibrations set up by an explosion. The vibrograph records other data which is of significance in this case. It shows the amount of charge used, the number of holes used for placing charges, and the depth of the holes. Under the heading 'Burden' particulars are given of the distance the charges are set from the face of the quarry. This is of significance because the distance from the quarry-face affects the severity of the vibrations from the blast. Particulars under the heading 'Number of Delays' are also given. These particulars relate to the use of delaying devices which are employed to ensure that a slight delay (something in the region of .025 of a second) occurs in between the explosion of each charge. By this device the total explosion is fragmented and the vibration set up by the blast is very considerably decreased. The result is that the vibration effect is kept to what is called the 'maximum instantaneous charge' and this figure is also recorded on the vibrograph reports. The evidence establishes that there are two recognised methods for fragmenting an explosion, and for ease of reference I will refer to the process as the use of 'delayed detonators'. The records show that when the blasts were supervised by Irish Industrial Explosives delayed detonators were used. As a result the 'maximum instantaneous charge' was kept between 155 pounds and 80 pounds, the difference in the figures in the main being attributable to the extent of the 'burden' and the depth of the charge. If, as happened in this case, blasts took place and delayed detonators were not used then the 'maximum instantaneous charge' would have equalled the amount of the explosives used, thus setting up vibrations greatly in excess of those set up on the occasions when delayed detonators were used. The particle velocity was measured at or near the plaintiffs' house. Three different readings were taken. The figures varied on each occasion, the lowest being 3.8 millimetres per second, and the highest being 15.2 millimetres per second. The evidence of Mr Higgins, an experienced engineer called by Trading Services, was

that these figures were well within the safety margin as regards damage to structures. He admitted, however, that a peak particle velocity in excess of ten millimetres per second would affect human comfort and he advises that blasts should be kept below this figure. With the exception of 30 March, the vibrograph records show peak particle velocity figures in excess of ten millimetres per second. The noise level was measured only on one occasion, i.e. on 30 March last. It is to be noted that this was the occasion on which the lowest weight of charge in all the series was employed.

The evidence satisfies me that if delayed detonators had been used in the blasting operations no physical damage to the plaintiffs' house would have occurred. Unfortunately, on 29 September when Mr Daragh personally supervised the blasting operation delayed detonators were not used. A very considerable amount of explosives were used on that occasion and physical damage was, I am quite satisfied, caused to the plaintiffs' house by the blast set off on that day. I will now examine the claim arising out of this damage.

The blast of 29 September was a very severe one. The window of the living-room was shattered, and part of an old boundary wall was knocked down. Mr Patterson gave evidence of cracking appearing on the interior walls of the house which was not there before the blast and Mr Purcell, the well known architect, described these cracks as he saw them on his visit on 3 October. I am quite satisfied that the cracks described by Mr Purcell were caused by the explosion on 29 September. A further explosion took place on 11 October and Mr Purcell visited the premises on 14 October and described three additional cracks which he then saw. Although it does appear that in all probability delayed detonators were used for 11 October explosion, I am satisfied that, on the balance of probabilities, the extra cracks seen on that day were produced by the combined effect explosions carried out in the quarry field. Mr Purcell again examined the house after 30 March explosions. Some of the cracks had increased in width and length and for the first time he noticed external cracks. These external cracks (which he described in detail) were not present when he examined the premises in October. Controversy exists as to whether or not they were old cracks unassociated with the explosions. I am satisfied that the plaintiffs have discharged the onus which is on them of establishing that, on the balance of probabilities, all the cracks described by Mr Purcell were attributable to vibration from explosion and not otherwise. I am, however, not satisfied that the explosions caused any damage to the plaintiffs' chimney as has been alleged. It had been imperfectly constructed and had, in fact, given trouble long before the plaintiff's purchased the premises. Cracks in walls can of course, be serious or insignificant. In this case, none of the cracks are in any way serious; and they are, indeed, difficult to see. The blasting has not affected the structure of the premises. In sum, the physical damage to the house was, fortunately, small.

I will now consider the other aspects of the claim arising from the blasting operations. The blast on 29 September occurred in the afternoon. Mrs Patterson was lying down (she was then expecting a baby) and had actually gone to sleep. She was awoken by a very loud explosion which actually threw her up into the air.

method of reasonably restoring him to the position in which he was before the damage or destruction which imposes a less onerous burden on the defendant, . . . .

3. Whilst the difference between the burden imposed upon the wrongdoer by a cost of repair or restoration and the alternative assessment on the basis of diminution in value or pre-accident market price is a factor, and an important factor, to be taken into consideration in arriving at a conclusion as to whether it is reasonable for the plaintiff to repair or rebuild, it is not a determining factor. If the court is satisfied that the only reasonable method of restoring the plaintiff's position is the repair or restoration required, it should not deny him that by reason even of a substantial difference between that cost and the cost of the alternative method of assessing his compensation.

Applying these principles to this case, I have come to the conclusion that it is not necessary for the plaintiff to repair the cracks described by Mr Purcell and that payment of damages based on the diminution in value of the house would adequately compensate them in respect of this injury. The diminution in value is obviously slight. No cause of action arises from the defect in the chimney. The plaintiffs are entitled to the cost of repairing the window and the cost of rebuilding the boundary wall. Whilst I have no direct figures as to the actual costs of these items I think I am entitled to measure a figure for them. Doing this and calculating the diminution in the value of the house I award a sum of £450 in respect of damage to property. This is payable by Trading Services alone to the plaintiffs as joint owners of the property.

#### (ii) *Cost of alternative accommodation*

The plaintiffs acted reasonably in seeking somewhere to live away from the nuisance of which they rightly complained. The rent of £90 per month which they had to pay is not an excessive one and this sum is recoverable from both defendants from 12 December last to the present time. I award £450 under this heading. I do not think that the costs of hearing to which reference was made in the course of evidence has been established as a proper head of loss. The sum of £450 is payable by both defendants to the plaintiffs.

#### (iii) *Further consequential loss*

I accept Mr Patterson's evidence that he had intended to carry out extensive additions to his home in the autumn of last year and I accept Mr Stapelton's evidence that the cost now of doing the same work has increased by £1,567. A question arises, however, as to whether this loss is recoverable from the defendants. I do not think that it was necessary for the plaintiffs to have lived in the house when the additions were being made. Nor do I think that the nuisance was such as to prohibit Mr Stapelton's workmen from doing the work. Mr Patterson postponed the work, I am satisfied, because of the uncertainty arising about the plaintiffs' future use of the house arising from the nuisance and these proceedings. As a matter of law, is the loss which he thereby suffered recoverable from the defendants? It seems to me that it is not. The expenditure proposed could have been undertaken notwithstanding the infringement of the plaintiffs' rights. The decision to postpone it was taken by the plaintiffs having regard to their own particular interest. But the plaintiffs must take reasonable steps to mitigate the loss to them resulting from the

defendants' wrong, and I do not think that a plaintiff can say to a defendant, in effect: 'I am entitled to damages and an injunction, but in case I am not, I am postponing the additions to my house: you, of course, must pay the extra costs arising from the postponement if I win my case.' The loss which has resulted from the postponement of the expenditure in this case should in my view not fall on the defendants.

#### (iv) *Mrs Patterson's damages*

Mrs Patterson suffered a very frightening and an extremely upsetting experience as a result of the blast of 29 September. I measure the damages which she suffered as a result at £100. This is payable by Trading Services to her alone.

#### (v) *General damages*

General damages are payable to each of the plaintiffs separately for annoyance, discomfort, inconvenience and mental distress. In measuring the sums payable I have taken into account not just the conditions at Shillelagh Lodge from the summer of last year until 12 December but also the fact that the plaintiffs had to move to rented accommodation with all the inconvenience thereby resulting. Whilst it may be that Mrs Patterson suffered more acutely than Mr Patterson from the nuisance it must be borne in mind that Mr Patterson had an additional strain associated with his professional career as he was most particularly affected by the lack of proper facilities for practice in the rented accommodation. I conclude that a sum of £500 should be paid to each under this general heading and that both defendants are jointly liable for these payments. I do not think that the plaintiffs' condition described in the medical evidence is attributable to the tort complained of.

The amount of damages for which the defendants are jointly liable under paragraphs (ii) and (v) is £1,450. Cross notices have been served by each defendant on the other claiming a contribution or indemnity under the provisions of the Civil Liability Act 1961. I will consider these issues at a later part of this judgment. Before doing so I will consider the plaintiffs' claim for relief by way of injunction.

#### (b) *Injunction*

The defendants have submitted that even if an infringement of the plaintiffs' rights has been established the court has the discretion to award damages in lieu of an injunction and that it should do so in this case. I agree that relief by way of injunction is a discretionary remedy. There are, however, well established principles on which the court exercises this discretion. The relevant ones for the purposes of this case can be summarised as follows:

1. When an infringement of the plaintiffs' right and a threatened further infringement to a material extent has been established the plaintiff is *prima facie* entitled to an injunction. There may be circumstances however, depriving the plaintiff of this *prima facie* right but generally speaking the plaintiff will only be deprived of an injunction in very exceptional circumstances.

2. If the injury to the plaintiffs' rights is small, and is one capable of being

estimated in money, and is one which can be adequately compensated by a small money payment, and if the case is one in which it would be oppressive to the defendant to grant an injunction, then these are circumstances in which damages in lieu of an injunction may be granted.

3. The conduct of the plaintiff may be such as to disentitle him to an injunction. The conduct of the defendant may be such as to disentitle him from seeking the substitution of damages for an injunction.

4. The mere fact that a wrong-doer is able and willing to pay for the injury he has inflicted is not a ground for substituting damages. (See *Shelfer v City of London Electric Company* [1895] 1 Ch 287; and *Kerr on Injunctions* 6th Edition, pp. 656, 657).

I was referred to the judgment of Gannon J in *Halpin v Tara Mines Ltd* (unreported, 16 February 1976). It is however clear that that was a case in which an injunction was refused because of the improved working standards employed subsequent to the plaintiffs' original complaint, and was not one of the substitution of damages for an injunction.

In the present case there are no circumstances which can deprive the plaintiffs of the relief to which they are *prima facie* entitled. The infringement of their rights is a most serious one; the injury which they have suffered and will suffer if the nuisance is permitted to continue has been and will be a considerable one; damages would not adequately compensate them. I should add that whilst I am conscious of the financial consequences for the defendants of the granting of an injunction I do not think bearing in mind that the sale to the plaintiffs took place at a time when Mr Murphy was aware of the possibility that quarrying operations in the adjoining field might take place, and bearing in mind that both defendants must have fully appreciated the great inconvenience to the plaintiffs which the quarrying operations would cause, that relief by way of an injunction could be termed oppressive.

In the course of counsel's submissions I was referred to *Miller v Jackson* [1977] 1 QB 966, a case in which the plaintiff claimed an injunction to stop the playing of cricket. I do not think this is an authority which helps the defendants in the present case. The three Judges of the Court of Appeal took different views of the matter before them. Cumming-Bruce LJ took the view that the defendants were liable in negligence and nuisance to the plaintiffs but considered an injunction should not be granted, quoting with approval the following passage from *Spry on Equitable Remedies* (1971 Ed. p. 365).

... Where the plaintiff has *prima facie* a right to specific relief the Court of Equity will if occasion should arise weigh the disadvantage or hardship which he will suffer if relief were refused against any hardship or disadvantage which should be caused to third persons or to the public generally if relief were granted.

He held (as did the Master of the Rolls) that it was in the public interest on the facts which he was considering that damages rather than an injunction should be granted. In the present case no question of any hardship or disadvantage to the public arises if an injunction is granted.

I will now turn to the defendants' second line of defence on this part of the case:

to their submission that an injunction should not issue because the nuisance can be and will be remedied. It was clear from the evidence that serious consideration to remedial action was only given during the course of the hearing. It was unsupported by any professional opinion. As to the nuisance from noise from the quarry field, Mr Daragh proposed moving the crusher and screening plant about seventy yards further away from the plaintiffs' house, lowering the hopper so that the distance which the material had to fall was reduced, putting rubber lining on the chute, and putting another silencer on the machine to reduce engine noise. I regret to say that I have no doubt that these measures would have at best only a marginal effect on the noise levels at the plaintiffs' house and I accept Mr Tennyson's opinion in this regard that they would not abate the nuisance. I also accept his evidence on the proposals made to suppress the dust from the quarry field. Mr Magee a director of a Northern Ireland firm specialising in this work, gave evidence about a dust control system marketed by his firm. The system was based on the use of water to which a chemical wetting agent is added. The water is sprayed on to the material by means of nozzles attached to the machines. Spraying on waste material can also be undertaken. Whilst the system he proposed might be of assistance in reducing the level of dust to which the operatives at the site are exposed, I do not think that it would adequately deal with the nuisance in this case. In Mr Tennyson's opinion (which I accept) the spraying techniques are not, in practice, satisfactory and in the present case would not be adequate to deal with the many sources from which dust escapes from the quarry field. As to the nuisance from the lane way, Mr Daragh said that access to the quarry could be obtained by another route. No evidence was given by the Murphys in this connection and I am not satisfied that such an alternative route is feasible or readily available. Even if it was, however, in the absence of any undertaking to discontinue the present use of the lane way a proposal of an alternative route does not disentitle the plaintiffs to an injunction in relation to the present user of the lane way. It follows that the plaintiffs are entitled to injunctions to stop the nuisance complained of. I will make no order at present for a mandatory injunction as sought in paragraph (d) of the last paragraph of the Statement of Claim, but give liberty to apply in relation to it.

#### *Contribution between the defendants*

Each defendant has claimed against the other a contribution or indemnity under the Civil Liability Act 1961. By virtue of s.21 the amount of the contribution recoverable from a contributor is such as is just and equitable having regard to the degree of the contributor's fault, and the contribution to be recovered may amount to a complete indemnity of the other wrong-doer. The Supreme Court in *Carroll v Clare County Council* [1975] IR 221 considered the meaning of section 34 of the Civil Liability Act 1961 by which, in the case of contributory negligence, the damages recoverable by the plaintiff are to be reduced by such amount as 'the Court thinks just and equitable having regard to the degrees of fault of the plaintiff and the defendant'. It seems to me that I should interpret s.21 of the Act in the same way as the Supreme Court interpreted section 34. In the course of his judgment in

*Carroll v Clare County Council* Kenny J pointed out that s.34 did not require a reduction of damages by reference to degrees of *negligence* but by reference to degrees of *fault*, and, having referred to the Supreme Court's decision in *O'Sullivan v Dwyer* [1971] IR 275 he said:

I think 'fault' in s.34 of the Act of 1961 means a departure from a norm by a person who, as a result of such departure, has been found to have been negligent and that 'degrees of fault' expresses the extent of his departure from the standard of behaviour to be expected from a reasonable man or woman in the circumstances. The extent of that departure is not to be measured by moral considerations, for to do so would introduce a subjective element while the true view is that the test is objective only. It is the blameworthiness, by reference to what a reasonable man or woman would have done in the circumstances, of the contributions of the plaintiff and defendant to the happening of the accident which is to be the basis of the apportionment.

Following this test I should consider the blameworthiness of the contribution which each defendant made to the damages which the plaintiffs suffered by reason of the acts complained of — the test of blameworthiness being an objective one and applied by reference to what a reasonable man or woman would have done in the circumstances of the present case. Approaching the problem this way I conclude as follows. Trading Services actually committed the nuisance which emanated from the quarry field; they were in control of the operations and determined their intensity. Their's is the major share of fault. But Mrs Murphy authorised the nuisance (other than the nuisance resulting from the blast of 29 September) and must bear some blame. Both defendants authorised the nuisance which emanated from the lane way but the major blame must again attach to Trading Services who were responsible for the actual level of the activities from which the various nuisances resulted. I think the justice of this case would be met if I apportion damages which are jointly payable by the defendants on the basis that Trading Services bear 75% of them and Mrs Murphy 25%.

Judgment will be entered accordingly on the findings I have made.

#### *The Section 27 application*

The plaintiffs have brought a Motion pursuant to the provisions of s.27 of the Local Government (Planning and Development) Act 1976 for an order prohibiting the operation being carried out in the quarry field. As I have already pointed out the evidence heard in the nuisance action was directed to be treated as evidence on the hearing of the Motion. The defendants have resisted the application on a number of grounds, the first of which goes to the jurisdiction of the court to hear the application. Their submission is based on s.5 of the Act of 1963 which provides as follows:

5(1) If any question arises as to what, in any particular case, is or is not development or exempted development, the question shall be referred to and decided by the Minister.

2. Where a decision is given under this section, an appeal to the High Court from the decision may be taken at any time within the period of three months after the giving of the decision or such longer period as the High Court may in any particular case allow.

The defendants' contention is that the present application raises a question 'as to what . . . is or is not development'; that s.5 is mandatory and requires this question

to be referred under the section to the Minister; that until the s.5 procedures have been adopted the court lacks jurisdiction to hear the application under s.27.

The procedures enacted by s.27 were new ones and a completely new jurisdiction was given to the High Court. On the face of the section no restriction on the courts jurisdiction appears. The defendants' case is, however, based on the provisions of s.46(4) of the 1976 Act by virtue of which the 1976 Act and the 1963 Act are to be construed as one Act and claim the restriction becomes apparent when the two sections are read together. If the defendants are right then the effect of construing the two sections in the way suggested is that the efficient and expeditious machinery for stopping unauthorised development or use of land is not available in a case where a question arises as to what is or is not development or exempted development. In such cases the complainant (be it a Planning Authority or any other person) cannot avail of s.27 until the much slower and considerably more cumbersome procedures of a reference to An Bord Pleanala (substituted for the Minister by the 1976 Act) followed, possibly, by an Appeal to the High Court has been exhausted.

I think it is highly unlikely that the Oireachtas intended to produce the anomalous situation which would result from this interpretation of the two sections and I am satisfied that they can be reasonably interpreted without producing such a result. The key to the problem lies in considering the scope of s.5 of the 1963 Act. There are two possible ways of interpreting that section. The first is to regard it as meaning that whenever and in whatever circumstances a question arises, whether under the 1963 Act or otherwise, as to what is or is not development that the question must be referred to the Minister. Take, for example, the case of two individuals who enter into an agreement to carry out a scheme of development which is expressed to be 'development' within the meaning of the Act. If a dispute subsequently arose as to whether or not what was done amounted to such 'development' this question would, on the construction I am now considering, have to be referred to the Minister. This, however, must be incorrect as it would mean that the Legislature had intended that the Minister be appointed to arbitrate in every possible dispute, including disputes of a private nature — a construction which is manifestly wrong. The alternative construction, and I believe the correct one, is that s.5 means that if any question arises between a Planning Authority and another person *in the course of the procedures established by the Act of 1963* as to what is or is not development then this question must be referred to the Minister. If this is the correct construction then s.5 of the 1963 Act cannot in any circumstances bar an application under s.27 of the 1976 Act. The 1976 Act applications are not part of the 1963 Act procedures, and as s.5 only refers to a question arising under the procedures established under the earlier Act, the courts jurisdiction under the later Act is untrammelled and it is free to consider, if required, a question as to what is or is not 'development'. I reject, therefore, the submission that the court has no jurisdiction to determine the present application. In doing so I should make clear that I have not overlooked the judgments in *Readymix (Eire) Ltd v Dublin County Council* delivered in the Supreme Court on 30 July 1974, and unreported. I do not

think that they assist in the elucidation of the construction of the two sections I have been considering as they dealt with a case in which a reference had been made under the section by the Planning Authority and no question that the reference ousted the jurisdiction of the Court arose or could have arisen.

The respondents submission on the substance of the application is that, briefly put, no permission under the 1963 Act is required for what is being done in the quarry field, because the present 'development' was commenced before the 'appointed day' (which was 1 October 1964). Their submission involves an examination of the evidence relating to the user of the quarry field prior to 1 October 1964, but before making my findings of fact in this connection I should refer to the relevant sections of the two Acts by virtue of which the Courts power to make a prohibition order arises.

Turning firstly to section 27 itself it will be noted that it refers to two distinct and separate situations (a) where 'development' is being carried out without permission and (b) where an 'unauthorised use' is being made of land. For a definition of these terms it is necessary to refer back to the 1963 Act. It will then be seen that these words depend for their construction on the artificial meaning given to the word 'use' by s.2 of the 1963 Act.

The consequences of that meaning were pointed out by Finlay J in *In re Viscount Securities Ltd* 112 ILTR 17. As it does not include, when used in relation to land, the carrying out of 'works' on land, and as 'works' includes any act or operation of excavation, it follows that if the user of a field is changed from, say, tillage to quarrying this does not amount to a 'change of use' for the purposes of the 1963 Act. Such a change would, of course, amount to 'development' as defined by s.3; it would come within the first limb of the definition, as it would constitute the carrying out of 'works' on land. On the facts of the present case, therefore, it seems to me that because of this artificial definition it cannot be successfully contended that there has been an 'unauthorised use' in relation to the quarry field, and the applicants claim under s.27 falls to be considered under subsection (I)(a) rather than under subsection (I)(b) of the section.

Considering the case, then, under the first part of subsection (I) I must be satisfied that 'development' of land being development for which a permission under Part IV of the 1963 Act is required, is being carried on before I would be justified in making a prohibition order. The respondents admit that no permission of any sort has been obtained in respect of the present operations in the quarry field, and their case is that permission under Part IV of the 1963 Act is not required for what is now being done because under s.24(I) of the 1963 Act permission is not required for 'development' commenced before the appointed day, and the present 'development' was in fact commenced before that day. It is therefore of crucial importance to the issues which rise on this application to ascertain exactly what operations were carried out in the quarry field prior to the appointed day. When that has been done they can then be compared to the present day operations.

I am satisfied that from the evidence I have heard that I can reach the following conclusions. Before the appointed day Mr Murphy Sr. had for some years drawn

shale from the quarry field. As long ago as 1946 explosives were used to dislodge the material (an incident which was recalled by Mr Watkins, who as a young boy witnessed the blast), but apart from this one occasion no explosives were ever used in the field until 1974. There is definite evidence that in 1949 shale from the quarry field was used for the foundations of the Blue Gardenia public house, and that in 1962 shale was taken from the field for foundations for a roadway at a factory at Baldonnel. Mr Murphy senior employed a Mr Hudson in his business between 1962 and 1964, and I accept Mr Hudson's evidence that during this period he used a loading shovel in the quarry field from time to time to scrape off loose rock and to load it into lorries. But Mr Daragh, who also visited the field prior to 1964 satisfies me that the operations being carried on were primitive and haphazard. I conclude that the operations which were then being carried out amounted to 'development' as defined in the 1963 Act; and I find that this 'development' consisted in the loosening of shale with picks and bars, the scraping of portions of surface of the field with a mechanical shovel, and the loading of the shale into lorries with the help of a mechanical shovel. I find that these operations were carried out intermittently and on a small scale, and that they only constituted a small part of Mr Murphy's business as sand and gravel contractor.

The present operations differ materially from those carried on prior to 1 October 1964. I have reached this conclusion bearing in mind the following considerations. The *object* of the present operations is to produce a different product to that being produced in 1964. As stated in the parties agreement, the operations are designed to manufacture stone. The 4 inch stone now being produced is different to shale; it is used for a different purpose in the building industry, and it fetches a different price. The *method of production* is different to that obtaining in and before 1964. The raw material (rock) for the end product is now obtained by means of blasting and this is done on a regular basis. Large crushing and screening plant is used to produce stones of the correct dimension. Considerable ancillary equipment is used and a considerable labour force employed. Finally, the *scale of operations* is now a substantial one, and bears no relationship to the scale of operations carried on prior to the appointed day. In England it has been held that an intensification of use may amount to a material change of use (see *Guildford Rural District Council v Fortescue* [1959] 2 QB 112, 125 and *Brooks and Burton Ltd v Environment Secretary* [1977] 1 WLR 1294, 1306). It seems to me that this concept is a correct one and that it applies whether the court is considering 'development' under the second limb of the definition (*i.e.* material change of use) or under the first limb, (*i.e.* the carrying out of works on land), which was commenced prior to the appointed day. So, if it appears that the scale of operations has so intensified as to render contemporary operations materially different from those carried on before the appointed day, this fact can be taken into account in considering whether what is presently being done commenced prior to 1 October 1964.

If present-day 'development' differs materially from the 'development' being carried on prior to 1 October 1964 I do not think that it can be said that it was commenced prior to the appointed day. This is the situation in the present case. The

development, I am now considering was in fact, not commenced until the summer of last year. Thus, it was and is development which requires permission under Part IV of the 1963 Act and in my opinion I should prohibit its use under s.27. I should add that if the case fell to be considered as one of 'development' arising from the making of a material change in the use of land I would have reached the same conclusion.

*Addendum:*

After I had delivered judgment in this matter and before the perfection of the order in it the Supreme Court delivered on 5 May 1978 judgment in the appeal taken from the judgment of Finlay J in *Munnelly v Calcon Ltd* to which I had referred. Having considered the judgments delivered in the Supreme Court I am satisfied that it is not necessary for me to re-consider the views I expressed in relation to the damages recoverable for physical injury to the plaintiffs' property.

Noreen P. Mackey  
Barrister

**Beecham Group Ltd v Goodalls of Ireland Ltd:** High Court 1977 No. 4662P (McWilliam J) 1 June 1978

*Trade Mark—Soft Drink—Tango—Marketing of product ceasing—Application for removal of mark from register—Use resumed shortly before application—Whether resumed user bona fide—Trade Marks Act 1963, (No. 9) s.34(1)(3)—Trade Mark Rules 1963, Schedule 2 class 32*

**Facts** S.34 of the Trade Marks Act 1963 provides that a registered trade mark may be removed from the register on the application to the Court or to the Controller of Patents Designs and Trademarks of a person aggrieved on the ground (inter alia) that up to the date one month before the date of the application a continuous period of five years or longer elapsed during which there was no bona fide use of the said trade mark by the proprietor thereof. The plaintiff was the registered proprietor of the trade mark 'Tango', in respect of an aerated soft drink produced in two flavours, orange and lemon. The marketing of this product ceased around the year 1968. In 1974, the reintroduction of the product was under consideration, but various problems created a difficulty in so doing over the next three years. In June 1977, the defendant introduced onto the market a concentrated orange drink under the name 'Tang'. Before the end of July of the same year, the plaintiff had once again distributed its product 'Tango' throughout the country. The defendant lodged an application pursuant to s.34 of the Act. The plaintiff issued the instant proceedings claiming relief on the ground that its trademark had been infringed by the use of the word 'Tang' by the defendant—a word so closely resembling the plaintiff's trademark that it was likely to deceive or cause confusion in the course of trade.

The defendant emphasised the difference in the dictionary meaning of the two words. The defendant also claimed in the alternative that the plaintiff's trademark should be confined to aerated drinks, thus allowing the defendant to use the name 'Tang' in respect of concentrated fruit juices.

**Held** by McWilliam J in finding for the plaintiff:

(1) Where purchasers of a product are concerned, the appearance of a word, or its sound when spoken, are more important than its dictionary definition. The name used by the defendant would, in such circumstances, be likely to deceive or cause confusion with the plaintiff's trademark.

(2) The use of the plaintiff's trademark which recommenced in July 1977 was a genuine use for the purpose of marketing the plaintiff's goods, and was thus a bona fide use within the meaning of the 1963 Act, notwithstanding that the time of recommencement was expressly chosen for the purpose of protecting the mark and of causing disadvantage to the defendant. *Electrolux Ltd v Electrix Ltd* [1959] RPC 283 followed.

(3) In exercising its discretion as to whether to exclude from the protection of a trademark goods in respect of which it has not been used, the court must first decide whether the goods are of the same description as those in respect of which the trademark is being used. It would be unreal to differentiate between aerated mineral drinks and fruit juices of a concentrated variety, so as to exclude the latter from the protection of the trademark attaching to the former.

**Cases referred to in judgment**

*Carroll and Co Ltd v Philip Morris Incorporated* [1970] IR 115  
*Coca Cola v F. Cade and Sons Ltd* [1957] IR 196  
*Electrolux Ltd v Electrix Ltd* [1959] RPC 283  
*Application of J. Lyons and Co Ltd* [1959] RPC 120  
*'Phillips' Trade Mark* [1969] RPC 78

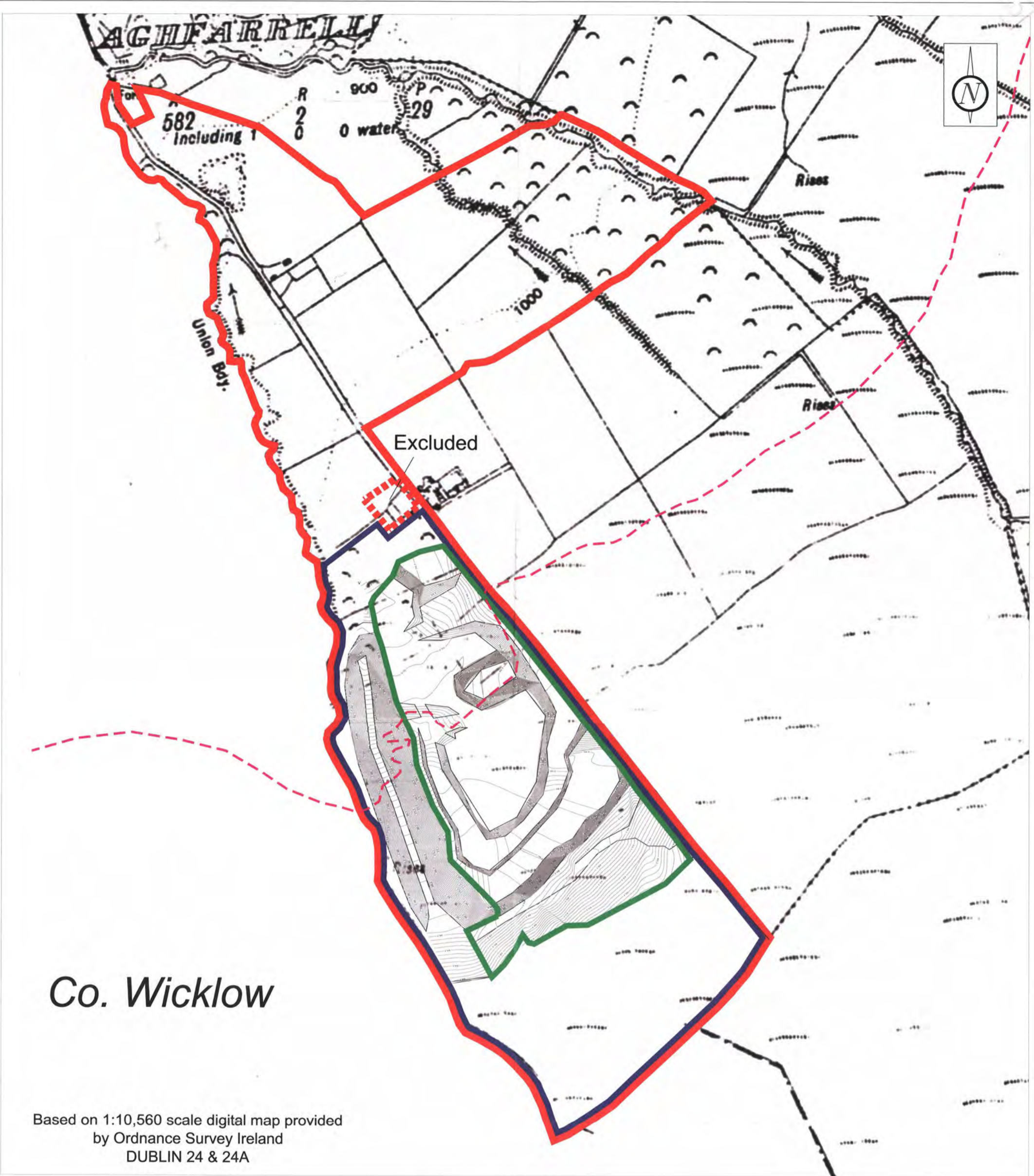
*Diarmuid P. Sheridan SC and Peter Kelly for the plaintiff*  
*Brian McCracken SC and John D. Cooke for the defendant*

**McWILLIAM J** delivered his judgment on 1 June 1978 saying: The plaintiff is the registered proprietor of the trade mark 'Tango', which was first registered on 10 September 1958, in respect of all goods named in Class 32 in Schedule II of the Trade Marks Rules 1963. This class is as follows: Beer, ale and porter; mineral and aerated waters and other non-alcoholic drinks; syrups and other preparations for making beverages.

The plaintiff or its subsidiaries originally launched an aerated drink called 'Tango' in 1960. It was manufactured in Dublin and sold in bottles and it appears that there were two main flavours, orange and lemon. In or about the year 1968 the manufacture and marketing in Ireland of these drinks was discontinued, apparently because of marketing difficulties. These drinks were produced in a form to be consumed without dilution or addition.

In or about the year 1973, Batchelors Ltd became part of the plaintiff's group

APPENDIX10  
DRAWING RFI 01 DATED SEPTEMBER 2005



**Legend**

- Land Ownership c. 48.5ha (c. 119.8 acres)
- Workable Area c. 27.0ha (c. 66.7 acres)
- Area Extracted to date c. 11.95ha (c. 29.53 acres)
- - - 350m Contour Line  
(taken from Ordnance Survey Discovery Series Map No.50)

Scale 1:2,500



**SHILLELAGH QUARRIES**  
Aghfarrell Townland,  
Brittas, Co. Dublin  
**SITE LAYOUT**

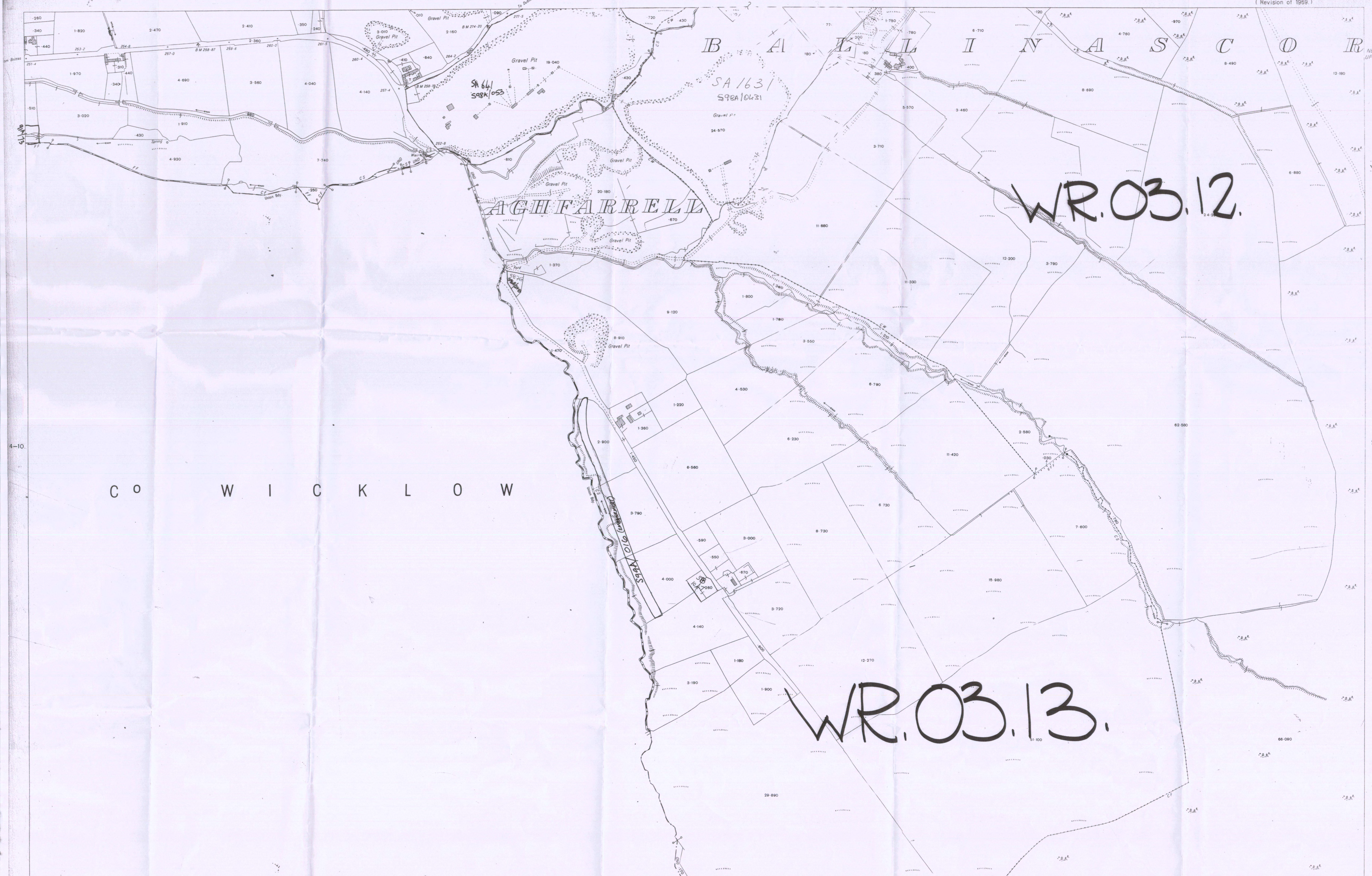
*Add info*

Author: tp/smcd  
Date: Sep 2005

Drawing RFI 01

**NOTE: Survey Updated in September 2005**

APPENDIX 11  
OS MAP REF. NO. 24-15, SCALE 1:2,500, REVISED 1969



CO. WICKLOW

DUBLIN UNION

AGHFARRELL

WR.03.12.

WR.03.13.

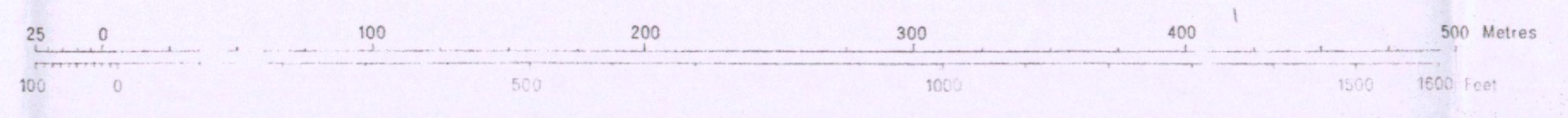
Surveyed in 1837. Revised in 1869. Levels raised in 1937.

CHARACTERISTICS AND SYMBOLS FOR BOUNDARIES &c.

County	County Borough, Borough, Urban District & Town	Area of land given in Statute Acres, this	4 3/10
Barony		Boundaries not included in the same area	
Parish		Boundaries not included in the same area	
Ward		Boundaries not included in the same area	
		Each Point Transmission Standard	2 1/2

24-15  
 Compiled and Printed by the Ordnance Survey and Published by the  
 Director at the Ordnance Survey Office, Phoenix Park, Dublin.  
 Altitudes are given in Metres and are referred to Ordnance Survey Datum - this Datum being 2.555 Metres below Mean Sea Level.  
 Altitudes indicated thus (B.M. 54.75) refer to Bench Marks; those marked thus (+34.21) to Surface Levels.  
 © Government of Ireland 1970

Scale - 1:2,500 being 25 Metres to One Centimetre or 208.33 Feet to One Inch



To convert Acres to Hectares multiply by 0.405  
Example - 5.42 Acres = 2.190 Hectares

ALL APPLICATIONS OF THIS MAP ARE BY THE DEPARTMENT OF AGRICULTURE

SCANNED

35136 2411

24-11

Appendix 12

Aerial photography

1972

1978

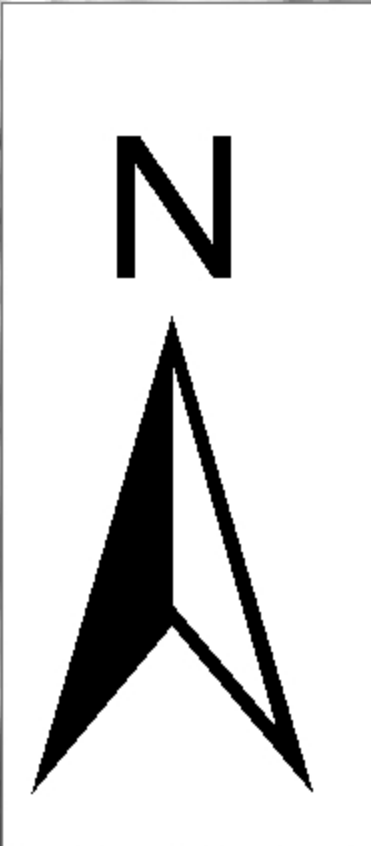
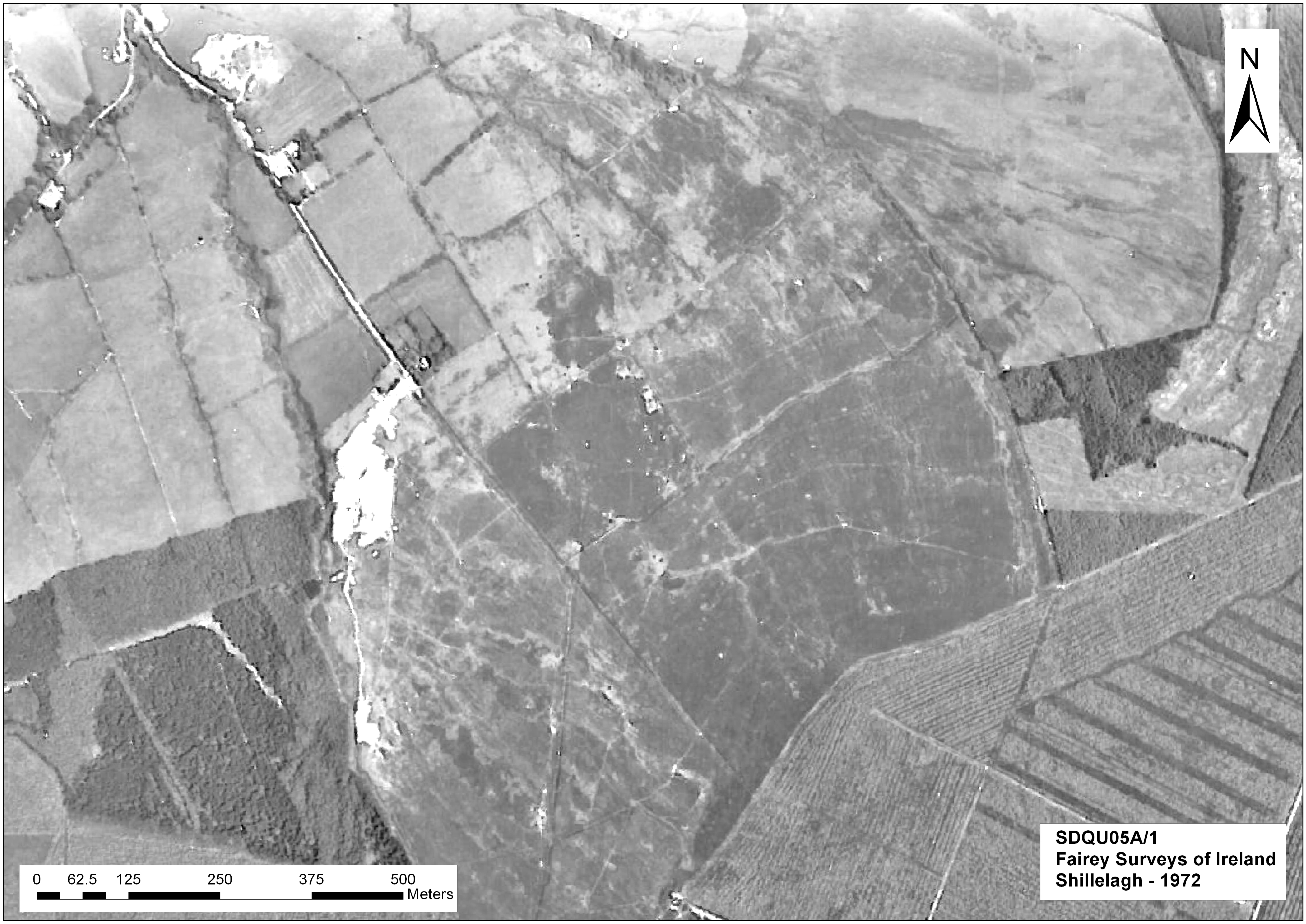
1986

1995

2000

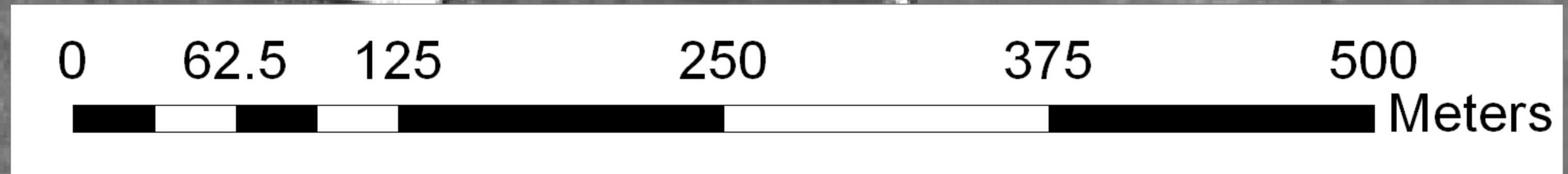
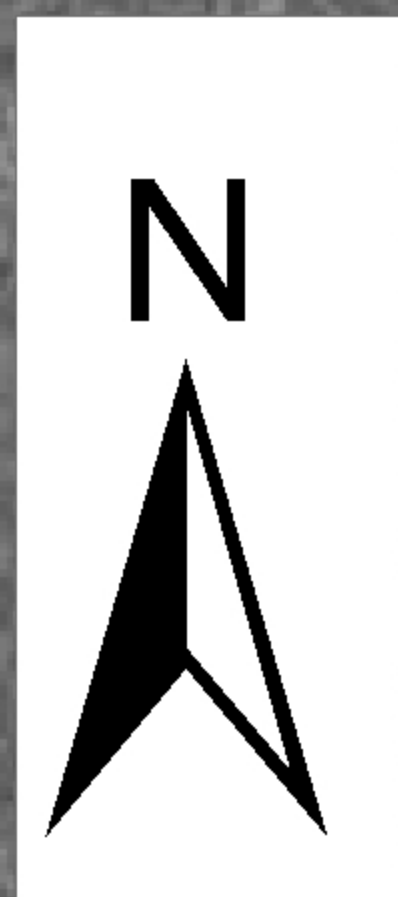
2005

2009

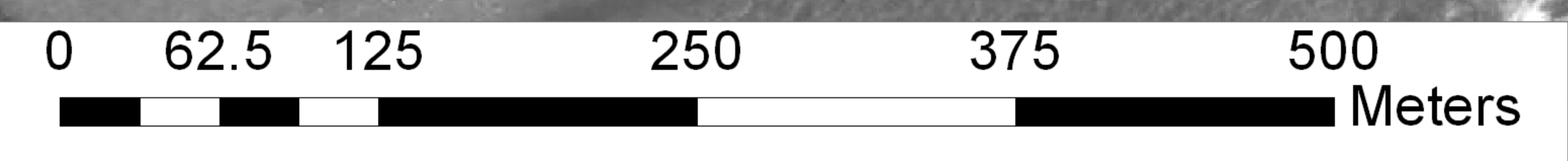


0 62.5 125 250 375 500  
Meters

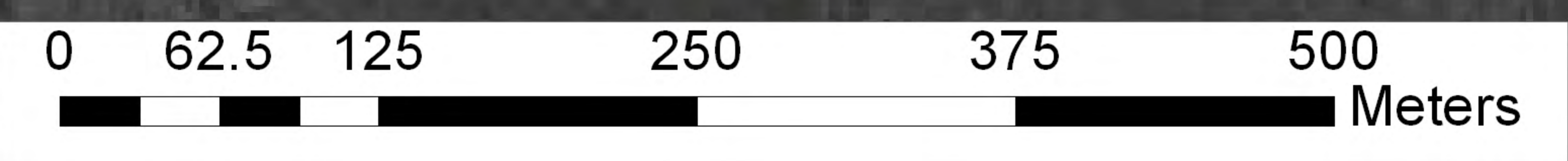
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**Fairey Surveys of Ireland**  
**Shillelagh - 1972**



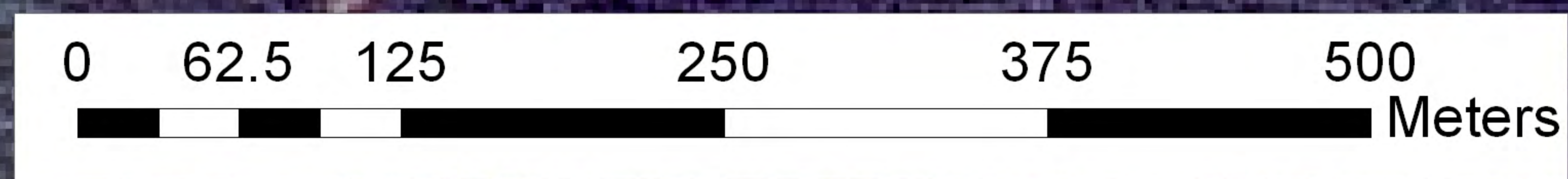
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**Ordnance Survey of Ireland**  
**Shillelagh - 1978**



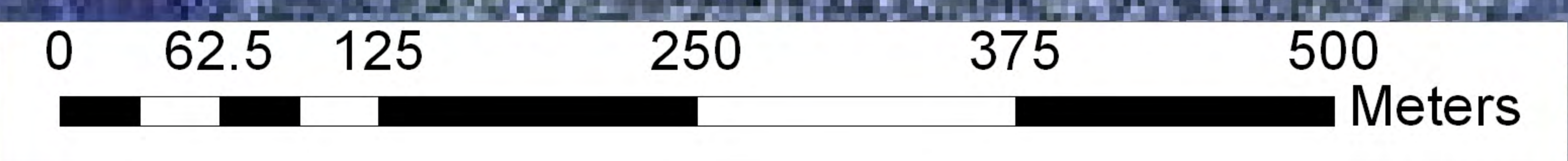
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**Ordnance Survey of Ireland**  
**Shillelagh - 1986**



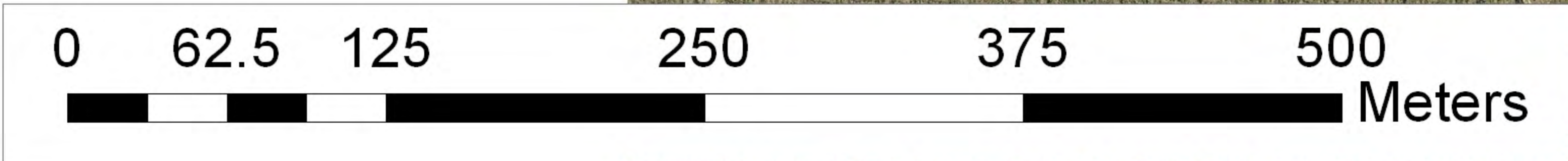
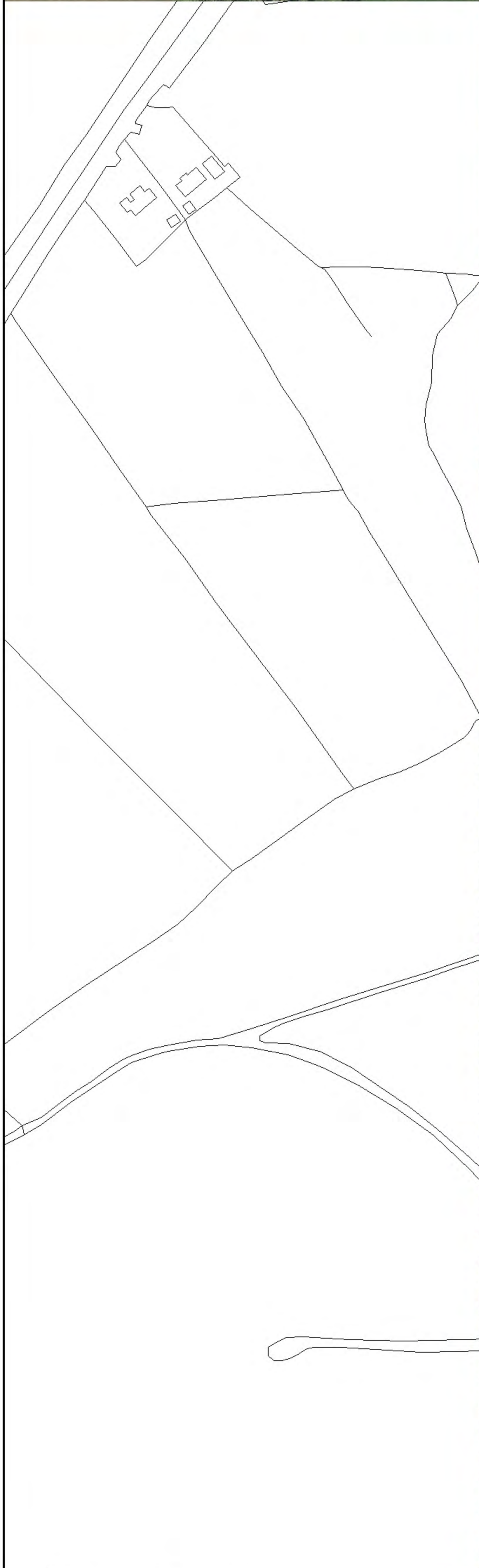
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**Shillelagh - 1995**



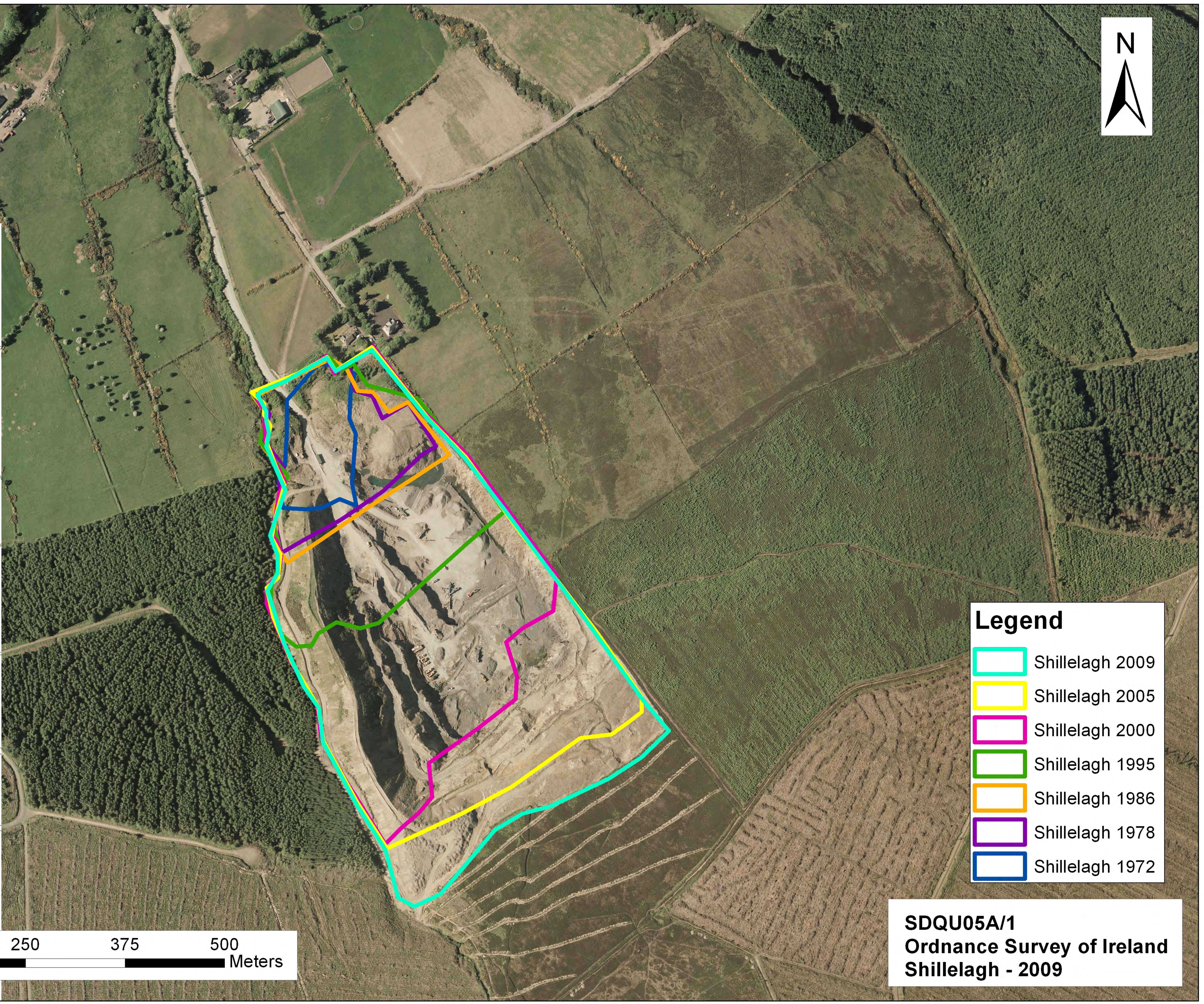
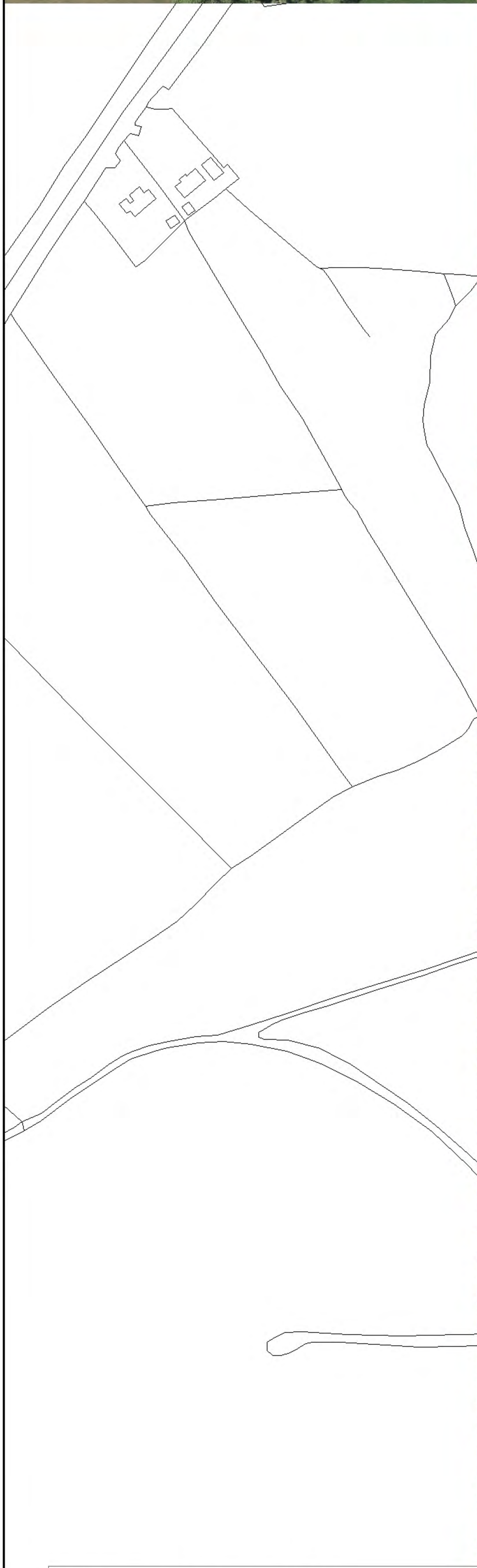
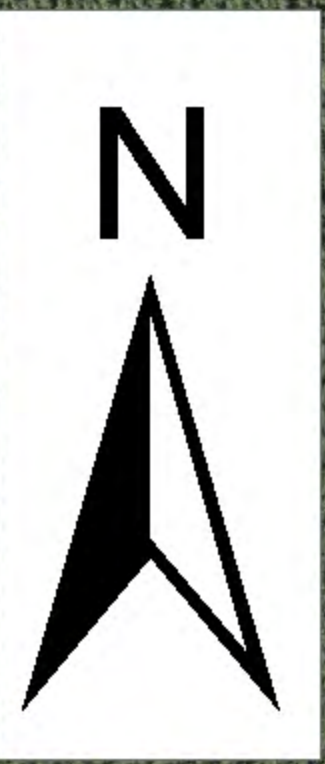
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**Ordnance Survey of Ireland**  
**Shillelagh - 2000**



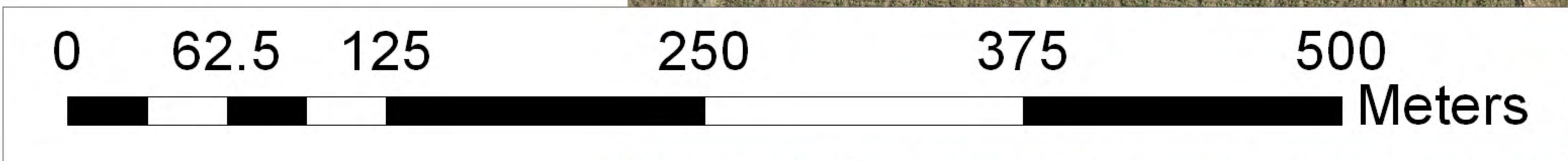
**SDQU05A/1**  
**Ordnance Survey of Ireland**  
**Shillelagh - 2005**



**SDQU05A/1**  
**Ordnance Survey of Ireland**  
**Shillelagh - 2009**



- Legend**
- Shillelagh 2009
  - Shillelagh 2005
  - Shillelagh 2000
  - Shillelagh 1995
  - Shillelagh 1986
  - Shillelagh 1978
  - Shillelagh 1972



**SDQU05A/1**  
**Ordnance Survey of Ireland**  
**Shillelagh - 2009**

APPENDIX 13

S. 261 MANAGER'S ORDER AND REGISTRATION APPLICATION

COMHAIRLE CHONTAE ATHA CLIATH THEAS  
SOUTH DUBLIN COUNTY COUNCIL

P/017/06

Record of Executive Business and Manager's Orders

Section 261(7) of the Planning & Development Act, 2000

Shillelagh Quarry located at Aghfarrell, Brittas

Having regard to the selection criteria prescribed by the Minister under Section 172(2)(e) of the Planning & Development Act 2000 and to the provisions of the South Dublin County Development Plan 2004-2010 it is considered that the quarry at Aghfarrell, Brittas operated by Shillelagh Quarries Limited would be likely to have significant adverse effects on the environment.

I therefore recommend that a Notice under Section 261(7) of the Planning & Development Act 2000 be served on Shillelagh Quarries Limited, Aghfarrell, Brittas, County Dublin, requiring the company to apply for planning permission and to submit an Environmental Impact Statement to the Planning Authority not later than 18<sup>th</sup> October 2006 or such other period as may be agreed in writing with the Planning Authority in respect of the continued operation of the aforementioned quarry.

DATED 18<sup>th</sup> April 2006

  
ADMINISTRATIVE OFFICER

DATED 18/4/2006.

  
SENIOR PLANNER

**ORDER:** The service of a Notice under Section 261(7) of the Planning & Development Act, 2000 on Shillelagh Quarries Limited, Aghfarrell, Brittas, County Dublin, requiring the company to apply for planning permission and to submit an Environmental Impact Statement to the Planning Authority not later than 18<sup>th</sup> October 2006 or such other period as may be agreed in writing with the Planning Authority in respect of the continued operation of the aforementioned quarry, is hereby authorised.

DATED 18/04/06

  
deputy COUNTY MANAGER

# SOUTH DUBLIN COUNTY COUNCIL



## INTERNAL MEMORANDUM

Report re QUARRY REGISTRATION APPLICATION - SDQU05A/1

### SUMMARY OF REGISTRATION APPLICATION

<b>Date of Registration</b>	20 April 2005
<b>Operator:</b>	Shillelagh Quarries Ltd.
<b>Location:</b>	Aghfarrell, Brittas
<b>Area of Site:</b>	48.5 ha.
<b>Extractable Area:</b>	27.0 ha.
<b>Extracted Material:</b>	Shale
<b>Extraction Method:</b>	Blasting , Crushing
<b>Extraction Rate:</b>	500,000 tonnes per year
<b>Operating Hours:</b>	08.00 - 20.00
<b>Vehicle Movements:</b>	190 per day
<b>Ancillary Operations:</b>	None
<b>IPC Licence:</b>	None
<b>Monitoring:</b>	No details available
<b>Planning Status:</b>	Pre-1964

### ZONING AND OTHER DEVELOPMENT PLAN OBJECTIVES

The area in which the site is located is zoned Objective 'H', "To Protect and Enhance the Outstanding Natural Character of the Dublin Mountain Area", in the Development Plan 2004-2010.

The land use activity 'Industry - Extractive' is 'open for consideration' in areas zoned Objective 'H'. However, such development is not permitted above the 350 metre contour line.

The relevant Development Plan Policies and Objectives are:-

- 2.3.17 Policy EE17: Extractive Industry
- 9.3.1 Policy LHA 1: Preservation of Landscape Character
- 9.3.2 Policy LHA 2: Views and Prospects
- 9.5.1 Policy LHA 15: Dublin Mountain and High Amenity Zones
- 12.3.4 Extractive Industry
- 12.12.7 Upland Mountain Areas/High Amenity Areas
- 13.5.1 Landscape.

### PLANNING HISTORY:

**Reg. Ref. S99A/0016** Planning Permission refused for retention of an earth embankment at Shillelagh Quarries.

**ENFORCEMENT:** There is a history of enforcement action relating to this quarry. The planning report relating to S99A/0016 states:

*"While it appears that there has been some quarrying activity at this site since prior to 1st October 1964 a High Court judgement delivered in May 1978 stated that development being carried on at that time differed materially from the development being carried on prior to 1st October 1964 and that, therefore, planning permission was required for the intensified quarrying operation (Ref. Patterson v. Murphy and Trading Services Ltd. 1978, ILRM 85)."*

## **ISSUES ARISING:**

### **General**

No planning permission exists for this quarry. Information submitted with the registration application states that quarrying operations commenced on the site in the 1930's. The quarry has therefore been in operation since prior to 1<sup>st</sup> October 1964.

### **Traffic**

The quarry site is located in the vicinity of the Kilsaran Concrete quarry at Ballinascorney, previously operated by Tracey Enterprises (Dundrum) Limited, and is accessed on the same road network. The combined impact of the two quarries on the local road network therefore requires to be assessed.

### **Visual Impact**

The quarry site is located in an area in relation to which it is an objective of the Council "To Protect and Enhance the Outstanding Natural Character of the Dublin Mountain Area" (Zoning Objective 'H'). The quarry workings at this location are visible as a significant scar on the landscape in the panoramic views looking south eastwards from Mountseskin Road (the minor road linking the N81 at Kiltalown to Brittas village), and from the R114 (Brittas to Bohernabreena) Road. It is an objective of the Council to protect these views as indicated on Development Plan maps.

No details are available of any landscaping or reinstatement works carried out to date. It is appropriate that such measures be put in place in order to mitigate the adverse impact of the quarry operations on the landscape, having regard to the zoning objective for the area, and in particular to the location of much of the site and workings above the 350 metre contour line.

### **Noise and Vibration**

No details were provided in the registration application of any monitoring of noise and vibration.

### **Dust Deposition and Air Quality**

No details were provided in the registration application of any monitoring of dust deposition and air quality.

### **Further Information**

In accordance with Section 261(3) the applicant was requested to submit a revised site map to a scale of not less than 1:2,500 indicating (a) the site boundary outlined in red, (b) the extractable area outlined in blue, (c) the total area extracted to date outlined in green, and (d) the location of the 350 metre contour line as shown on the Ordnance Survey map by letter dated 30<sup>th</sup> August 2005. Further Information received 28 September 2005 provides a revised site map as requested.

It is apparent from the revised map submitted by way of additional information that the major portion of the extractable area of the quarry is located on lands above the 350 metre contour. As noted above the land use activity 'Industry - Extractive' is not permitted above the 350 metre contour line in areas covered by zoning objective 'H'.

## **ACTION OPEN TO THE COUNCIL UNDER SECTION 261:**

### **Section 261(6)(i)**

In relation to a quarry which commenced operation before 1<sup>st</sup> October 1964, a planning authority may impose conditions on the operation of the quarry, having regard to the development plan and submissions or observations made pursuant to a notice under subsection (4) or (5), not later than 2 years from the registration of the quarry.

A letter accompanying the application states that the operating company consider that the local authority should impose conditions on the operation of the quarry as provided under Section 261 of the Planning & Development Act 2000.

### **Section 261(7)(a)**

Where the continued operation of a quarry, the extracted area of which is greater than 5 hectares and that commenced operation before 1<sup>st</sup> October 1964, would be likely to have significant effects on the environment ( having regard to any selection criteria prescribed by the Minister under Section 172(2)(e) ) a planning authority shall not impose conditions on the operation of a quarry under subsection (6) but shall, not later than one year after the date of the registration of the quarry, require, by notice in writing, the owner or operator of the quarry to apply for planning permission and to submit an environmental impact statement to the planning authority not later than 6 months from the date of the service of the notice, or such other period as may be agreed with the planning authority.

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

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

*The characteristics of proposed development,*  
in particular:

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

*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,
  - landscapes of historical, cultural or archaeological significance.

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

- the extent of the impact (geographical area),
- the probability of the impact,
- the duration and reversibility of the impact.

In considering an application made pursuant to Section 261(7)(a) a planning authority and An Bord Pleanála shall have regard to the existing use of the land as a quarry.

**Public Consultation - Statutory Public Notice**

In accordance with Section 261(4) a public notice was published on the 19<sup>th</sup> October 2005 inviting submissions in relation to the quarry registration applications received by the Council. The notice stated in respect of the registered quarry at Aghfarrell, Brittas, that the planning Authority was considering requiring Shillelagh Quarries Limited to submit a planning application and EIS.

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

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

A copy of a letter addressed to the County Manager dated 27-10-03 enclosed with the above submission refers to a High Court determination (Patterson v Murphy) that the quarrying operation was unauthorised, and details intensification of operations since 1999, including the extension of quarrying well above the 350 metre contour. The letter contends that this has totally destroyed the high amenity of this mountainous area, that the quarry is visible for many miles and that this was not the case prior to 1999.

#### **Consultation with Quarry Owner**

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

- (1) *the policies and objectives included in the South Dublin County Development Plan 2004-2010, including land use zoning, extractive industry, views and prospects, landscape protection, natural and built heritage, pollution, traffic, and amenities; and*
- (2) *to the extent of quarrying carried out to date, the nature scale and extent of the existing quarrying operation, and the potential for further quarrying; and*
- (3) *to the selection criteria prescribed by the Minister under Section 176(2)(e).*

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

In support of its contention that the continued operation of the quarry would not be likely to have 'significant effects on the environment' the submission comments on each of the numbered items cited in the council's letter of 21<sup>st</sup> February, 2006, and refers to the results of noise and dust monitoring carried out on the site as set out in Appendix A to the submission.

In summary the submission contends that with regard to Item (1):

- In relation to Land Use Zoning; while the subject quarry is operating above the 350 metre OD contour level extraction processes have been in operation since c.1930's which pre-dates the introduction of county development plans and the introduction of the 350 metre contour restriction introduced in the County Development Plan 1998.
- In relation to Extractive Industry; the subject quarry is an existing quarry and the extraction of shale is a long established land use in the area. Quarries by their nature are tied to aggregate resource locations, and the aggregate products of the quarry

are supplied to the local and regional market. Shillelagh quarries has implemented an Environmental Management Programme at the quarry, which includes best practice mitigation measures and an environmental monitoring programme (dust deposition, noise, and blasting). The quarry operates within the Quarries and Ancillary Activities - Guidelines for Planning Authorities, and the future environmental management / monitoring at the quarry can be adequately addressed by way of imposing conditions on the development, as provided for under section 261(6).

- In relation to Views and Prospects / Landscape Protection; the subject quarry, by virtue of its location / elevation / method and direction of working does not and will not impact on any of the Prospects listed in Table 13.9 of the County Development Plan from viewing points at Blessington Road (Killinarden Area), Ballinascorney Road or the Eastern and Western sides of Glenasmole Valley. On this basis the continued operation of the quarry will not result in any significant environmental (visual / landscape) effects.
- In relation to Natural and Built Environment; the quarry is not located within any designated ecological area, Natural Heritage Area or Special Area of Conservation, and the nearest proposed NHA is located approximately 2 km. From the site boundary. There are no features of archaeological interest on or surrounding the site. On this basis the continued operation of the quarry will not result in any significant effects on the natural or built environment.
- In relation to Traffic; the existing road network has adequate capacity to accommodate the traffic from the quarry, and there is and will be no significant traffic impact from the continued operation of the quarry.

In summary the submission contends that with regard to Item (2):

- In relation to the extent of quarrying carried out to date, the nature scale and extent of the existing quarrying operation and the potential for further quarrying; the existing quarry comprises approximately 48.5 hectares (119.8 acres), with a workable area of approximately 27 hectares (66.7 acres). The area extracted to date is approximately 12 hectares (29.5 acres). The existing topography in the vicinity varies in level from approximately 330 metres OD to 390 metres OD.

The existing quarry can be considered small to medium scale by its nature and extent when compared to other quarries located within the Greater Dublin Area. Shale is extracted using industry standard blasting techniques. Blasting is carried out approximately 1 to 2 times per month. The fragmented rock is crushed and screened using mobile processing plant located within the quarry floor to produce a range of aggregate products. No aggregate washing is carried out.

Future quarrying will be carried out in accordance with current operational practice. Where a material change is to occur (in terms of introducing value added manufacturing activities (concrete or asphalt), or an increase in the scale of the operations) then such a change will require planning permission.

In summary the submission contends the following with regard to the selection criteria prescribed by the Minister under Section 176(2)(e):

1. *The characteristics of the proposed development, in particular:*
  - In relation to the Size of the Proposed Development; a preliminary extraction scheme for the quarry indicates an extractable reserve within the quarry lands of approximately 16 million tonnes. There is no evidence to indicate that the size of the quarry has resulted in any significant environmental effects. The environmental management practice and mitigation measures in place at the quarry ensure that quarry operations do not impact significantly on the environment.

- In relation to the Cumulation with Other Proposed Development; There is one other quarry in the vicinity of the quarry at Aghfarrell but it is of sufficient distance away as not to have cumulative effects on the environment.
- In relation to the Use of Natural Resources; The shale is extracted and processed in an efficient sustainable manner thereby ensuring that there are sufficient extractable shale reserves for future generations whilst ensuring adequate security of supply for present development in the Greater Dublin Area. The operational life of the quarry will be 40 years.
- In relation to the Production of Waste; no waste is produced during extraction / processing of shale into aggregate products at the quarry. The environmental monitoring programme implemented at the quarry provides for the management of any man-made waste arising on the site. All recyclable materials are segregated on site to facilitate economic and safe recycling or disposal prior to being collected by licensed waste contractors. On this basis the waste management procedures in place at the quarry will not result in any significant effect on the environment.
- In relation to Pollution And Nuisances; No significant pollution or nuisances arise from the quarry. Noise monitoring carried out at the quarry indicates that the development complies with the DOEHLG recommended threshold limits of <55 dB(A)<sub>Leq 1 hour</sub> measured at the nearest noise sensitive location. Records of noise monitoring are kept as part of the environmental monitoring programme implemented at the quarry. Best environmental management practice mitigation measures as recommended in the DOEHLG (2004) guidelines are implemented at the quarry. These include;
  - Use of screening berms
  - Location of mobile stone processing plant on the quarry floor
  - Minimising drop heights of material from plant and machinery
  - Regular maintenance of plant and machinery
  - Internal traffic routing and using haul roads with as low a gradient as possible

The environmental noise results demonstrate the effectiveness of the existing mitigation measures at the quarry to minimise noise levels.

- Dust Monitoring carried out at the quarry indicates that the development complies with the DoEHLG (2004) threshold limits of <350 mg/m<sup>2</sup>/day (averaged over 30 days) measured at the site boundary. Records of dust monitoring are kept as part of the environmental monitoring programme implemented at the quarry. Best environmental management practice mitigation measures as recommended in the DOEHLG (2004) guidelines are implemented at the quarry. These include;
  - Screening berms are vegetated to eliminate wind blown dust
  - Use of water bowser to suppress dust on internal haul roads during dry weather
  - Location of mobile stone processing plant on the quarry floor
  - Minimising drop heights of material from plant and machinery
  - Regular maintenance of plant and machinery
  - Regular cleaning of entrance area if necessary

The dust deposition results demonstrate the effectiveness of the existing mitigation measures at the quarry to minimise dust deposition levels.

- **Blasting:** Blast monitoring carried out at the quarry indicates that the development complies with the DoEHLG (2004) recommended threshold limits for groundbourne vibration of 12 mm/sec (peak particle velocity), and for air overpressure of 125 dB (Lin) – 95% confidence limit, measured at the nearest noise sensitive location. Records of blasts are kept as part of the environmental monitoring programme implemented at the quarry. Best environmental management practice mitigation measures as recommended in the DoEHLG (2004) guidelines are implemented at the quarry. These include;
  - Experienced professionals are used to design and carry out blasting operations
  - Use of time delays to limit maximum instantaneous charge
  - Use of appropriate stemming
 The blast monitoring results demonstrate the effectiveness of the existing mitigation measures at the quarry to minimise the impact of blasting operations.
- **Water:** The quarry extracts shale from below the groundwater table and groundwater inflows are controlled by sump pumping. The following best environmental management practice mitigation measures as recommended in the DOEHLG (2004) guidelines are implemented at the quarry;
  - Fuel storage tank is bunded
  - Fill point is located within the bunded area
  - A spill kit is provided on site, in the unlikely event of an accidental spillage.
- **Waste Management;** As stated previously.
- **Traffic / Transport;** The following measures are in place to ensure that traffic does not result in any significant environmental effects;
  - specific traffic routing
  - Ensuring all trucks are not over-loaded
  - Provision of car parking on site
  - Provision of truck parking on site
  - Maintenance of internal haul roads

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

- In relation to the existing land use; The quarry at Aghfarrell is an existing quarry, not a proposed development. The existing land use within the site is shale extraction and processing. Quarry operations have been carried out on the lands since the 1930's and have been operated by Shillelagh Quarries Ltd. Since that time. This submission confirms that the quarry will not result in significant environmental effects.
- The relative abundance, quality and regenerative capacity of natural resources in the area; The quarry is developed in a shale resource. The quarry rock faces will recolonise and regenerate resulting in ideal nesting habitats for bird species. Quarries are recognised as contributing significantly to the biodiversity of local areas, and the subject quarry is no exception.
- The absorption capacity of the natural environment, paying particular attention to the following areas; (a) mountain and forest areas, and (b) landscapes of historical, cultural or archaeological significance; The subject quarry is not located within any designated ecological area, Natural Heritage Area or Special Area of Conservation as defined by the South Dublin County Development Plan.

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

- In relation to the extent of the impact (geographical area); The best practice environmental mitigation measures implemented at the subject quarry ensure that the extent of any potential impacts is effectively limited to within the Shillelagh

Quarries Ltd. Land interest. Environmental monitoring results indicate that the quarry is operated within the environmental threshold limit values for noise, dust deposition and blasting recommended by the DoEHLG (2004) guidelines.

In relation to the probability of the impact;

- Environmental monitoring results indicate that the quarry is operated within the environmental threshold limit values for noise, dust deposition and blasting recommended by the DOEHLG Guidelines (2004).

In relation to the duration and reversibility of the impact;

- Extraction operations are in effect a temporary land-use with the lands being restored to beneficial long-term after-use on cessation of quarrying activities. A restoration and after-use plan is currently being prepared for the quarry, and Shillelagh Quarries Limited would be pleased to accept imposition of a condition in this regard.

The submission concludes that based on the responses outlined above to each of the criteria stated in Schedule 7 and considering the:

- i) results of the ongoing environmental monitoring programme
- ii) implementation of current best practice mitigation measures
- iii) long-term nature of the existing quarrying operations on the site (since before 1<sup>st</sup> October 1964
- iv) small scale nature of the operation
- v) location of the quarry

it is clear that the extraction operations at the Aghfarrell quarry will not result in significant environmental effects.

### **Departmental Reports**

Environmental Health Officer: The report states that the submission received 7<sup>th</sup> April 2006 in relation to Shillelagh Quarries Limited quarry at Aghfarrell demonstrates compliance with the standards contained in the "Environmental Management Guidelines for the Extractive Industry (Non Scheduled Minerals)" (Draft), published by the Environmental Protection Agency. Accordingly there is no evidence to suggest that any pollution effects of the Quarry could not be mitigated. The report recommends that conditions to ensure the application of these standards should be attached to this operation.

Roads Department: A verbal report indicates that the existing road network is adequate to accommodate the traffic generated by the existing quarry operation at Aghfarrell, subject to an appropriate financial contribution being levied as part of any conditions to be imposed on the quarry operation to ensure that adequate maintenance of the road network is carried out to sustain the level of HGV traffic generated.

### **Assessment**

As noted earlier the quarry site is located in an area in relation to which it is an objective of the Council "To Protect and Enhance the Outstanding Natural Character of the Dublin Mountain Area" (Zoning Objective 'H'). The quarry workings at this location are visible as a significant scar on the landscape in the panoramic views looking south eastwards from Mountseskin Road (the minor road linking the N81 at Kiltalown to Brittas village), and from the R114 (Brittas to Bohernabreena) Road. It is an objective of the Council to protect these views as indicated on Development Plan maps.

It is noted that the consideration of the visual impact of the existing quarry operation in the submission by Barnett and Associates does not take account of the Development Plan objectives to protect views of the area in the vicinity of the quarry from public roads in the area.

### **Recommendation**

Having regard to the characteristics of the subject quarry operation and in particular to the visual prominence of the quarry workings, the environmental sensitivity of the geographical area in which the quarry is located as determined by the zoning objective for the area and the designation of views in the vicinity of the site to be protected and the location of much of the site and workings above the 350 metre contour line, and the potential significant effects of the quarry operation in relation to the criteria set out above having regard to the current rate of extraction and to the potential operational life of 40 years, it is considered that the quarry operation would be likely to have significant adverse effects on the environment.

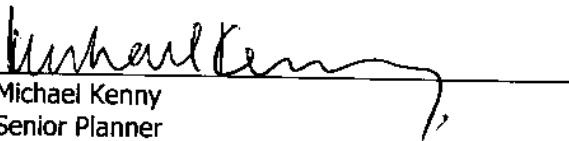
It is therefore appropriate that, in accordance with Section 261(7)(a), the owner / operator of the quarry be required to apply for planning permission and to submit an environmental impact statement to the planning authority not later than 6 months from the date of the service of the notice, or such other period as may be agreed with the planning authority.

It should be noted that in accordance with section 261(10)(b) any quarry in respect of which a notification under subsection (7) applies shall, unless a planning application in respect of the quarry is submitted to the planning authority within the specified period, be unauthorised development.



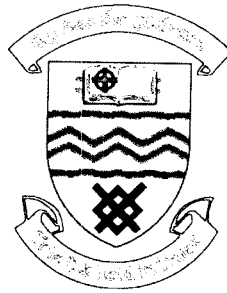
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Robert Matthews  
Senior Executive Planner



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Michael Kenny  
Senior Planner



**SOUTH DUBLIN COUNTY COUNCIL**

**APPLICATION FORM FOR REGISTRATION OF A QUARRY UNDER SECTION 261 OF THE PLANNING AND DEVELOPMENT ACT, 2000**

Please answer all questions on the application form

***Details of Quarry Owner / Operator***

Name of Owner / Operator of Quarry		SHILLELAGH QUARRIES LTD	
Address for correspondence:		ARHFARRELL BRITTAS Co. DUBLIN	
Telephone number	4582606	Mobile Telephone No	n/a
Fax No	4582614	E-mail Address (if any)	n/a

***If owner/operator is a company, please state:-***

Name of Company	SHILLELAGH QUARRIES LTD
Names of Company Directors	SANDRA MURPHY THOMAS JOSEPH MURPHY DECLAN MURPHY JOHN MURPHY
Registered Address of Company	ARHFARRELL BRITTAS Co. DUBLIN
Companies Office Registration Number	171551

**Landowner and Location details**

Name and address of landowner (if different from owner / operator)	SANDRA MURPHY THOMAS JOESPH MURPHY DECLAN MURPHY JOHN MURPHY	
Location, townland or postal address of quarry	ARHFARRELL BRITTAS Co. DUBLIN	O.S. MAP DUBLIN 24 +24A GRID REF: 306050E, 220225N

**A site location map to a scale of not less than 1:2500 should be submitted with the application for registration.** The map should indicate

- (a) the current site boundary (outlined in red) and
- (b) the current workable area (outlined in blue)

State the Ordnance Survey Map Ref No. and the Grid Reference if available

Folio No(s). of lands on which Quarry is located	3636 R
When were the lands in each Folio acquired for Quarrying purposes.	1936

**Planning History of Quarry**

Was planning permission granted for the Quarry under Part IV of the Local Government (Planning and Development) Act, 1963 or Part III of the Planning and Development Act 2000?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
(If yes, please quote the reference number of the permission and include a copy if possible)	Planning Register Reference Numbers.
Did the quarry commence operation before 1 October 1964 If YES, supporting documentary evidence should be submitted with your application.	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
If YES, what date did the Quarry operation commence on the land? If the operation of the quarry was only periodic, please give details of dates of operation if known (See Chapter 5 of Guidelines)	e. 1930's

**Details of Quarry Operation**

Are quarry operations currently being carried out on the site?	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Is the site normally used for quarry operations on a seasonal or occasional basis?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Are quarry operations temporarily suspended?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
If YES when were quarry operations last carried out on the site?		
Total area of Quarry (hectares) including extracted area	48.5	hectares
Type of material being extracted	SHALE	
Annual extraction rate (tonnes)	500,000 TONNES	
Method of extraction	BLASTING CRUSHING + SCREENING	
Please give details of any ancillary processing or manufacturing operations on the site (e.g. concrete blocks, asphalt, etc.)	N/A	

**Quarry Operational Details**

Plant operating hours	(a) Weekdays	08.00 - 20.00 HRS
	(b) Saturdays	08.30 - 16.00 HRS
Loading/Off-site Haulage Hours (if different from above)	(a) Weekdays	07.00 - 20.00 HRS
	(b) Saturdays	07.00 - 16.00 HRS
Operating hours (outside normal Opening hours) to service exceptional customer requirements:	(a) Weekdays	} EMERGENCY SUPPLY
	(b) Saturdays	
Give details of the traffic generated by the operation of the quarry?	MAXIM OF 95 TRUCKS IN/95 TRUCKS OUT PER DAY	
Give type and frequency of vehicles entering and leaving the quarry.	AS ABOVE.	
Please give details of emissions (noise, dust, water, etc) from the quarry where measurements are available.	N/A	

**Please note that any changes to the particulars set out above must be brought to the attention of the Planning Authority as soon as possible.**

Full Name (BLOCK CAPITALS) SANDRA Murphy	
Signature Sandra Murphy	
Position with firm / company (if applicable) <sup>2</sup> DIRECTOR	
Date 12 / 04 / 2005.	

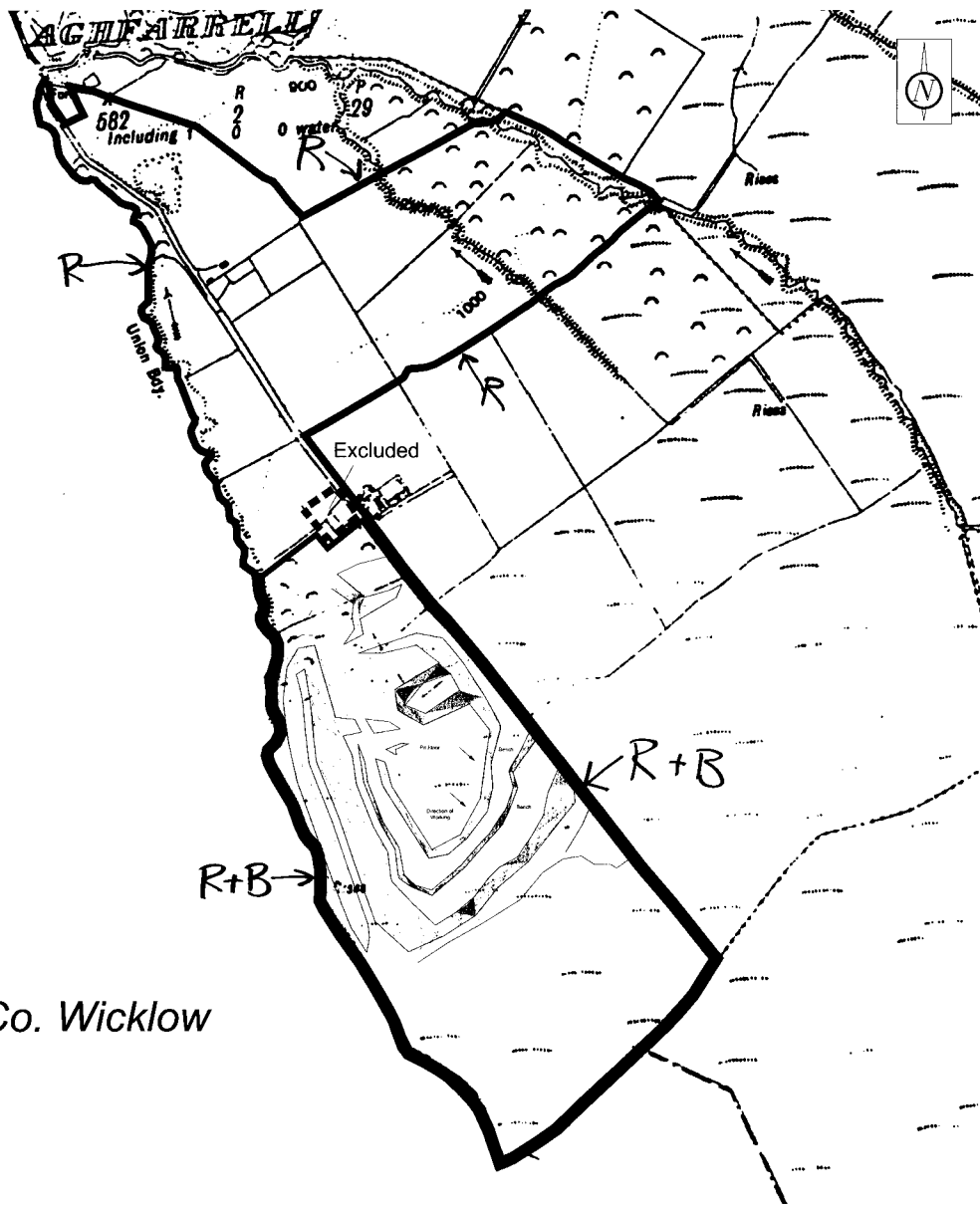
<sup>2</sup>Where registration is on behalf of a company, the form must be signed by a company director/secretary

*(Note: You are advised that additional details can be submitted in separate sheets where the Application Form does not give adequate space.)*

**This application for registration when completed should be forwarded on or before 27<sup>th</sup> April 2005 to -**

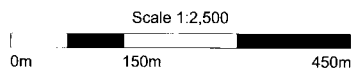
**Planning Department,  
South Dublin County Council,  
County Hall,  
Town Centre,  
Tallaght,  
Dublin**



**24.**




Co. Wicklow

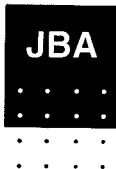
Based on 1:10,560 scale digital map provided  
by Ordnance Survey Ireland  
DUBLIN 24 & 24A



Legend	
	Land Ownership c. 48.5ha (c. 119.8 acres)
	Workable Area c. 27.0ha (c. 66.7 acres)
<b>NOTE: Site Survey Carried out February 2005</b>	

Ordnance Survey Ireland Licence No. SU 0000705 (C) Government of Ireland

	<b>SHILLELAGH QUARRIES</b> Aghfarrell Townland, Brittas, Co. Dublin <b>SITE LAYOUT</b>	
	Author: tp/smod Date: April 2005	<b>Drawing D01</b>



John Barnett & Associates

SDQUOSA/1

CSA House  
7 Dundrum Business Park  
Windy Arbour, Dublin 14, Ireland

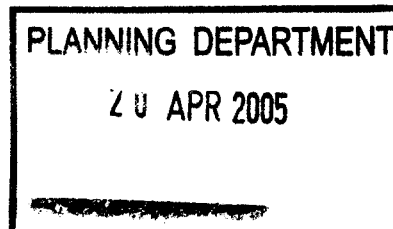
Tel: +353-1-296 4667  
Fax: +353-1-296 4676  
email: tpaul@csa.ie  
www.jba.ie

**By Registered Post**

18<sup>th</sup> April 2005  
JBA3251/L02/tp

Planning Department  
South Dublin County Council  
County Hall,  
Tallaght,  
Dublin 24

J.B.



Dear Sir/Madam,

**Re: Registration of a Quarry under Section 261 of the Planning & Development Act, 2000. – Shillelagh Quarries Ltd., Aghfarrell, Brittas, Co. Dublin**

Please find attached complete registration documentation for the quarry at Aghfarrell, Brittas, Co. Dublin.

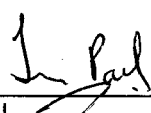
- Completed Registration Form
- 1:2500 Map – Site Layout: Drawing D01
- Copy of evidence of pre-1963 status

The quarry commenced operations before 1<sup>st</sup> October 1964. The company consider that the local authority should impose conditions on the operation of the quarry, as provided for under Section 261 of the Planning & Development Act, 2000.

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Please confirm receipt of this quarry registration. Any future correspondence in relation to this matter should be addressed to the undersigned at the address stated above.

Yours Faithfully,  
For John Barnett & Associates Ltd.

  
\_\_\_\_\_  
Tim Paul  
Managing Director

Enc. Copy of Registration Documentation

Cc. + Enc. Ms. S. Murphy (Shillelagh Quarries Ltd.)

## STATUTORY DECLARATION

I, JAMES WATKINS of "The Laurels", Saggart in the County of Dublin, Veterinary Surgeon aged 18 years and upwards DO SOLEMNLY AND SINCERELY as follows:-

1. I was born in 1932. I am familiar with the quarry belonging to Michael (otherwise Sonny) Murphy situated at Aughfarrell, Brittas in the County of Dublin at present being operated by Ballyboden Stone Quarries Limited (the Treacy Family) under Licence from the said Michael Murphy. This quarry was previously operated by Michael Murphy's father Thomas Murphy and after his death by his mother Martha Murphy. I have always lived in this area.
2. The reason that I am familiar with the quarry is that my father Thomas Watkins did any necessary blasting for the Murphys at the quarry and set the charges and I frequently accompanied him both as a school boy and subsequently as a veterinary student, particularly during the holiday periods. I can recall being there as far back as the late 30s' when the operation was fairly primitive and dealt mainly with surface material and there was no grading. The operation became a bit more sophisticated through the 50s and in the early 1960s with the introduction of automatic shovels and other machinery. There were a big number of quarries around the place at the time including one owned by my father which stopped quarrying about 1965 but Murphys' quarry carried on all the time.
3. I make this Declaration from facts within my own knowledge save where otherwise stated and where so stated I believe same to be true and accurate in all respects and for the benefit of the said Michael Murphy and Dublin Corporation and by virtue of the Statutory Declarations Act, 1938.

James T. Watkins

DECLARED before me by the  
said JAMES WATKINS at *St*  
*Fitzwilliam Square*  
this *26<sup>th</sup>* day of *March*  
1991 before a Commissioner  
for Oaths in and for said  
County and I know the  
Deponent.

*John J. Coffey*  
COMMISSIONER FOR OATHS.

STATUTORY DECLARATION

I, NICHOLAS CUNNINGHAM, B.E. aged 71 years and upwards of Kilmashogue, Rathfarnham, Dublin 16 retired Dublin County Council Engineer do solemnly and sincerely declare as follows:-

1. I was employed by Dublin County Council as an Engineer in charge of road construction and maintenance from the year 1955 to the year 1971. I recall quite clearly getting road materials from a quarry at Aughfarrell, Brittas in the County of Dublin from Michael (otherwise Sonny) Murphy on many occasions for road construction between the years 1955 and 1971. I recall quite distinctly signing dockets for receipt of deliveries of road materials from Murphys' quarry during that particular period and indeed for some years later delivered to Newcastle, Rathcoole and the Naas Dual Carriageway.

2. I make this solemn Declaration ~~solemn Declaration~~ from facts within my own knowledge save where otherwise stated and where so stated I believe same to be true and accurate in all respects and for the benefit of the said Michael (otherwise Sonny) Murphy and Dublin County Council and by virtue of the Statutory Declarations Act, 1938.

DECLARED before me by the  
said NICHOLAS CUNNINGHAM

*Nicholas Cunningham* at *58 Fitzwilliam Square*

this *26<sup>th</sup>* day of *November*  
1991 before a Commissioner  
for Oaths in and for said  
County and I know the  
Deponent.

*Alan J. O'Flynn*  
COMMISSIONER FOR OATHS.

STATUTORY DECLARATION.

I, KEVIN MCGUIRK of Aughfarrell, Brittas in the County of Dublin aged 18 years and upwards do solemnly and sincerely declare as follows:-

1. I am familiar with the quarry owned by Michael Murphy at Aughfarrell aforesaid over many years. From early in the nineteen-fifties until 1972 I was manufacturing concrete blocks and had a plant and yard for this purpose at Baldonnell which I sold in 1972. I got all the stone which I required for the making of a roadway at Baldonnell aforesaid and for surfacing the yard at my plant from the said Michael Murphy and his father Thomas Murphy commencing in 1961 and going on at irregular intervals until about 1970. At that time I was also employed drawing stone from the said Michael Murphy's quarry for Dublin County Council at constant intervals from 1961 up to 1972 and I can verify that there was blasting going on constantly under the directions of a Mr. Thomas Watkins up until 1968. From approximately 1960 the operation became quite a bit more sophisticated with mechanical shovels and loaders and face shovels and larger lorries began to be used for transporting same.

2. I can also recall getting sand from the northside of Murphys' quarry as far back as the mid nineteen-forties when the Murphys were also in the sand and gravel business but this was quite a separate activity from that in the quarry and in a different location at which a considerable amount of repairwork to vehicles and welding and other such activities were also carried out in the large shed there.

3. I am 62 years of age and have resided in the vicinity of Aughfarrell all my life.

4. I make this Declaration from facts within my own knowledge save where otherwise stated and where so stated I believe same to be true and accurate in all respects and for the benefit of the said Michael Murphy and Dublin Corporation and by virtue of the Statutory Declarations Act, 1938.

DECLARED before me by the  
said KEVIN MCGUIRK at 58

*St William Avenue*

this *26<sup>th</sup>* day of *November*  
1991 before a Commissioner  
for Oaths in and for said  
County and I know the  
Deponent.

*Kevin McGuirk*

*Glen J. Coffey*  
\_\_\_\_\_  
COMMISSIONER FOR OATHS.

SOUTH DUBLIN COUNTY COUNCIL  
COMHAIRLE CHONTAE ÁTHA CLIATH THEAS

Halla an Chontae, Lár an Bhaile  
Tamhlacht, Baile Átha Cliath 24  
Telefon: 01-4149000  
Facs: 01-4149104



*Planning Department*  
County Hall, Town Centre  
Tallaght, Dublin 24  
Telephone: 01-4149000  
Fax: 01-4149104

[www.southdublin.ie](http://www.southdublin.ie)

Shillelagh Quarries Ltd.  
Aghfarrell,  
Brittas,  
Co. Dublin.

13-May-2005

**SECTION 261 - PLANNING & DEVELOPMENT ACT, 2000**


**REGISTRATION OF QUARRIES**

**Register Reference:** SDQU05A/1  
**Location:** Aghfarrell, Brittas, Co. Dublin.  
**Applicant:** Shillelagh Quarries Ltd.

Dear Sir/Madam,

With reference to the above, I acknowledge receipt of your application received on 20-Apr-2005.

Yours sincerely,

  
Gerry Ryan  
Senior Staff Officer



Excellence Through People  
Awarded 2004

Chambers of Commerce of  
Ireland Excellence in Local Government  
Economic Development Award 2004

## Comhairle Chontae Atha Cliath Theas

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

**Reg. Reference:** SDQU05A/1      **Application Date:** 20-Apr-2005  
**Submission Type:**                      **Registration Date:** 20-Apr-2005

**Correspondence Name and Address:** Shillelagh Quarries Ltd. Aghfarrell, Brittas, Co. Dublin

**Proposed Development:** Application for registration of a quarry under Section 261 of Planning & Development Act 2000.

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

**Applicant Name:** Shillelagh Quarries Ltd.

**Application Type:** Quarry Registration

(BM/AOS)

I recommend that **ADDITIONAL INFORMATION** be requested from the applicant with regard to the following:

1. A revised site map to a scale of not less than 1:2,500 indicating (a) the site boundary outlined in red, (b) the extractable area outlined in blue, (c) the total area extracted to date outlined in green, and (d) the location of the 350 metre contour line as shown on the Ordnance Survey map.

Applicant to submit the above further information on or before 28th September, 2005.

# Comhairle Chontae Atha Cliath Theas

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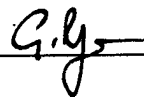
## Record of Executive Business and Manager's Order

REG. REF. SDQU05A/1  
LOCATION: Aghfarrell, Brittas, Co. Dublin.



Senior Executive Planner

Endorsed: \_\_\_\_\_

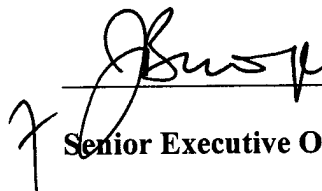


Administrative Officer

**ORDER:** I direct that **ADDITIONAL INFORMATION** be requested from the applicant as set out in the above report and that notice thereof be served on the applicant.

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

30/8/05



Senior Executive Officer

SOUTH DUBLIN COUNTY COUNCIL  
COMHAIRLE CONTAE ÁTHA CLIATH THEAS

AN ROINN PLEANÁLA  
An Rannóg Chlárlainne,  
Halla an Chontae, Lár an Bhaile,  
Tamhlacht, Baile Átha Cliath 24.

Telefon: 01 - 414 9000  
Facs: 01 - 414 9104  
[www.sdublincoco.ie](http://www.sdublincoco.ie)



PLANNING DEPARTMENT  
Registry Section  
County Hall, Town Centre,  
Tallaght, Dublin 24.

Telephone 01 - 414 9000  
Fax : 01 - 414 9104  
[www.sdublincoco.ie](http://www.sdublincoco.ie)

**Tim Paul,**  
**John Barrett & Associates**  
**CSA House**  
**7, Dundrum Business Park**  
**Windy Harbour**  
**Dublin 14**

**PLANNING & DEVELOPMENT ACT, 2000 AND PLANNING REGULATIONS THEREUNDER**

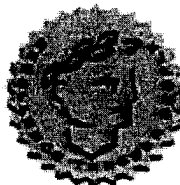
<b>Decision Order Number</b>	<b>1949</b>	<b>Date of Decision</b>	<b>30-Aug-2005</b>
<b>Register Reference</b>	<b>SDQU05A/1</b>	<b>Registration Date</b>	<b>20-Apr-2005</b>

**Applicant:** Shillelagh Quarries Ltd.  
**Development:** Application for registration of a quarry under Section 261 of Planning & Development Act 2000.  
**Location:** Aghfarrell, Brittas, Co. Dublin.  
**Application Type:** Quarry Registration

Dear Sir /Madam,

With reference to your planning application, received on 20-Apr-2005 in connection with the above, I wish to inform you that before the application can be considered under Section 261 of the Planning & Development Act 2000, six copies of the following **ADDITIONAL INFORMATION** must be submitted.

1. A revised site map to a scale of not less than 1:2,500 indicating (a) the site boundary outlined in red, (b) the extractable area outlined in blue, (c) the total area extracted to date outlined in green, and (d) the location of the 350 metre contour line as shown on the Ordnance Survey map.



SOUTH DUBLIN COUNTY COUNCIL  
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Applicant to submit the above further information on or before 28th September, 2005.

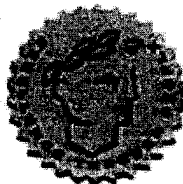
Please mark your reply "ADDITIONAL INFORMATION" and quote the Planning Register Reference Number given above.

**Register Reference:** SDQU05A/1

Current Date: 31-Aug-2005

Yours faithfully,

*G. Ly*  
.....  
for **Senior Executive Officer**



SOUTH DUBLIN COUNTY COUNCIL  
COMHAIRLE CONTAE ÁTHA CLIATH THEAS

Halla an Chontae, Lár an Bhaile,  
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Telephone: 01-414 9000  
Fax: 01-414 9104  
[www.sdublincocp.ie](http://www.sdublincocp.ie)

**Tim Paul,**  
**John Barrett & Associates**  
**CSA House**  
**7, Dundrum Business Park**  
**Windy Arbour**  
**Dublin 14**

**Date:** 29-Sep-2005

**PLANNING & DEVELOPMENT ACT, 2000 AND PLANNING REGULATIONS  
THEREUNDER**

**Register Reference:** SDQU05A/1

**Development:** Application for registration of a quarry under Section 261 of Planning & Development Act 2000.

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

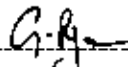
**Applicant:** Shillelagh Quarries Ltd. Aghfarrell, Brittas, Co. Dublin

**Submission Type:** **Additional Information**

Dear Sir/Madam,

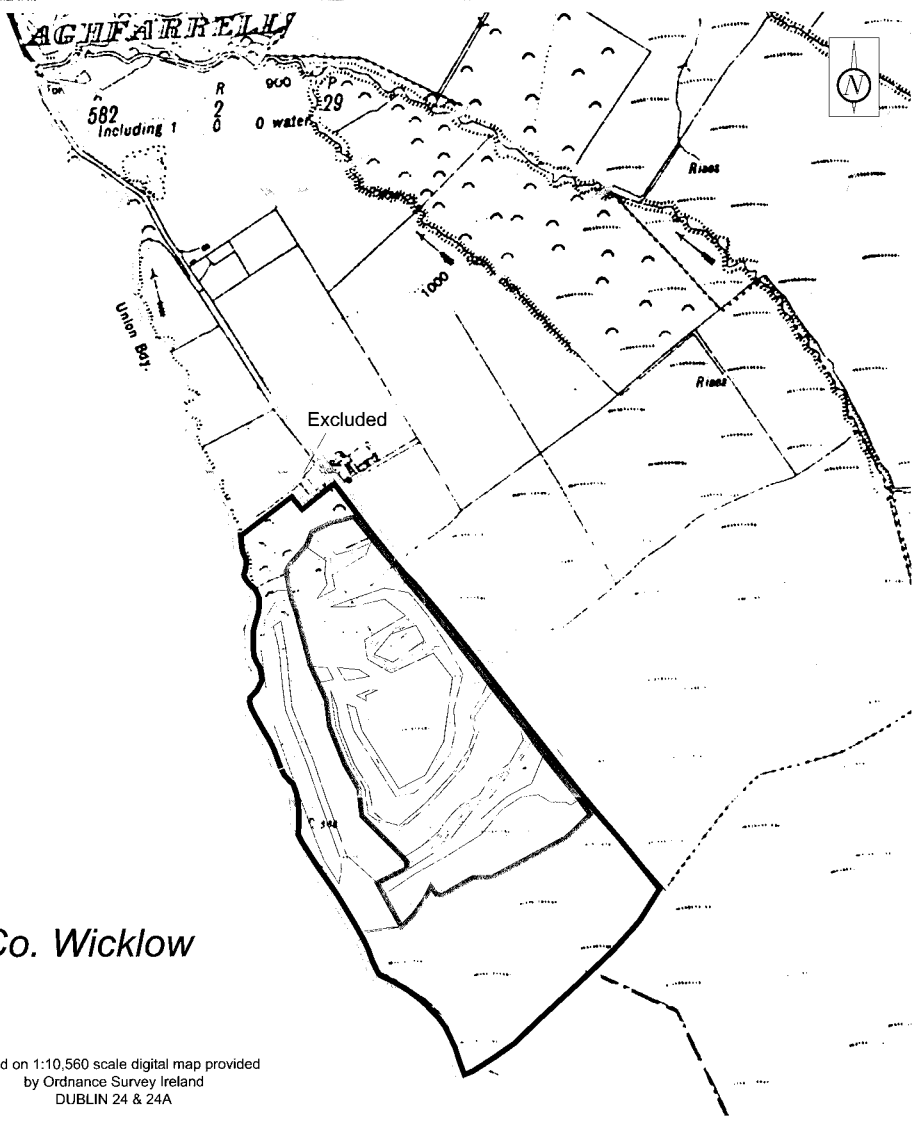
With reference to the above, I acknowledge receipt of Additional Information received 27-Sep-2005.

Yours faithfully,

  
for **Senior Executive Officer**









Co. Wicklow


Based on 1:10,560 scale digital map provided  
by Ordnance Survey Ireland  
DUBLIN 24 & 24A

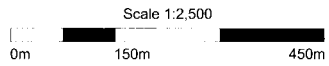
**Legend**

Land Ownership c. 48.5ha (c. 119.8 acres)

 Workable Area c. 27.0ha (c. 66.7 acres)

 Area Extracted to date c. 11.95ha (c. 29.53 acres)

 350m Contour Line  
(taken from Ordnance Survey Discovery Series Map No.50)



**SHILLELAGH QUARRIES**  
Aghfarrell Townland,  
Brittas, Co. Dublin  
**SITE LAYOUT**

Author: tp/smcd  
Date: Sep 2005

Drawing RFI 01

REG REF  
SDQU05A/1

Ballinascorey Upr.,  
Brittas,  
Co. Dublin.  
2-11-05.

QU-03

Re:- Shillelagh Quarries  
Aghfarrell,  
Co. Dublin.

Dear Sir/ Ms,

We are writing to you in connection with an application by the above company for registration of quarries (Reg. no. SDQU05A/1). We would like to reiterate that Shillelagh Quarries have carried out a massive intensification of works since 1999, (We enclose a copy of the letter sent on the 27-10-03). This development has been an unauthorised illegal activity and we now request:-

- (1) That Shillelagh Quarries apply for full planning permission.
- (2) That a full Environmental Impact Statement be submitted.
- (3) That all quarrying above the 350 metre contour line be prohibited.

We look forward to hearing from you in the near future.

Yours sincerely

*Michael McCoy*  
Michael McCoy  
Secretary D.M.C&E.G.

*Received 14/11/05*

Ballinascorney Upr.,  
Brittas,  
Co. Dublin.  
27-10-03.

GM-02

Re:- Shillelagh Quarries  
Aghfarrell,  
Brittas,  
Co. Dublin.

Dear Mr Horan,

We are writing to you in connection with a letter from South Dublin County Council dated 16<sup>th</sup> September 03 about the above mentioned company. I would like to state that I am willing to swear an affidavit as evidence in court. We would like to state that Mr Frank Patterson had issued court proceedings against Mr Murphy ( Ref :- Patterson v Murphy which the plaintiff Mr Patterson sought orders under section 27(1) of the 1976 Act to prohibit quarrying. The High Court held that the development being carried out was unauthorized development. We would like to state that the quarry was contained in a much smaller area during the time Mr Patterson was alive . During 1999 and subsequent years the quarry extended at a rapid rate. We would like to state that from 1999 onwards Shillelagh Quarries ( Murphy's) worked for 7 days a week and from early morning to late at night over long periods. We would also like to state that the volume of traffic from this quarry has increased dramatically since 1999. We would also state that the entire ridge of stone on the right hand side as you enter the quarry has been created since 1999. We believe that there has been a massive intensification of works since 1999. Shillelagh Quarries are now quarrying well above the 350 metre contour line and have totally destroyed the high amenity of this mountainous area. This Quarry is now visible for many miles and this was not the case prior to 1999.

We look forward to hearing from you in the near future.

Yours Sincerely

*Michael McCoy*  
Michael McCoy  
Secretary D.M.C.&F.G.

SOUTH DUBLIN COUNTY COUNCIL  
COMHAIRLE CONTAE ÁTHA CLIATH THEAS

*An Roinn Pleanála*

Halla an Chontae, Lár an Bhaile  
Tamhlacht, Baile Átha Cliath 24  
Telefon: 01-4149260  
Facs: 01-4149104



Planning Department  
County Hall, Town Centre  
Tallaght, Dublin 24  
Telephone: 01-4149260  
Fax: 01-4149104

Email: [planning.dept@sdublincoco.ie](mailto:planning.dept@sdublincoco.ie)

Website: [www.southdublin.ie](http://www.southdublin.ie)

## **Planning & Development Acts 2000-2004 (as amended)**

### **Notice Under Section 261(5) Planning & Development Act 2000 (as amended)**

The Managing Director  
Shillelagh Quarries Ltd.,  
Aghfarrell,  
Brittas,  
County Dublin.

21/Feb/2006

A Chara

#### **Re Quarry at Ballinascorney, Brittas. - Register Reference No. SDQU05A/1**

In accordance with Section 261(5) of the Planning & Development Act 2000 (as amended) notice is hereby given that South Dublin County Council as the Planning Authority for the area proposes to require that a planning application and an Environmental Impact Statement be submitted in respect of the quarry operation at the above location.

Section 261(7) of the Planning & Development Act 2000 (as amended) provides that where the continued operation of a quarry, the extracted area of which is greater than 5 hectares and that commenced operation before 1<sup>st</sup> October 1964, would be likely to have significant effects on the environment, having regard to any selection criteria prescribed by the Minister for the Environment, Heritage and Local Government under Section 176(2)(e), a planning authority shall not impose conditions on the operation of a quarry under Section 261(6) but shall, not later than one year after the date of the registration of the quarry, require, by notice in writing, the owner or operator of the quarry to apply for planning permission and to submit an environmental impact statement to the planning authority not later than 6 months from the date of the service of the notice, or such other period as may be agreed with the Planning Authority.

The selection criteria prescribed by the Minister under Section 176(2)(e) of the Planning & Development Act 2000 (as amended) for determining whether a development would or would not be likely to have significant effects on the environment are set out in Schedule 7 of the Planning & Development Regulations 2001 (S.I. No. 600). The following criteria included in the prescribed selection criteria are considered most relevant to the determination as to whether the operation of the subject quarry would be likely to have significant effects on the environment:-

1. *The characteristics of the 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,

1/2

2. *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 mountain and forest areas, and landscapes of cultural significance.

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

- the extent of the impact (geographical area),
- the probability of the impact,
- the duration and reversibility of the impact.

It is considered that the subject quarry operation would be likely to have significant effects on the environment having regard to:

- (1) the policies and objectives included in the South Dublin County Development Plan 2004-2010, including land use zoning, extractive industry, views and prospects, landscape protection, natural and built heritage, pollution, traffic, and amenities; and
- (2) to the extent of quarrying carried out to date, the nature scale and extent of the existing quarrying operation, and the potential for further quarrying; and
- (3) to the selection criteria prescribed by the Minister under Section 176(2)(e).

Submissions or observations regarding the proposal may be made by the owner or operator of the quarry to the Planning Authority **by 7<sup>th</sup> April 2006**.

Submissions or observations submitted to:

Paddy Mc Namara, Planning Department, South Dublin County Council, County Hall, Tallaght Dublin 24 or

by email to [pmcnamara@sdblincoco.ie](mailto:pmcnamara@sdblincoco.ie)

and made pursuant to this notice will be taken into consideration by the planning authority when performing its functions under Section 261(7) of the Planning & Development Act 2000 (as amended).

Mise le meas

*Paddy Mc Namara*

Paddy Mc Namara  
Administrative Officer

2/2



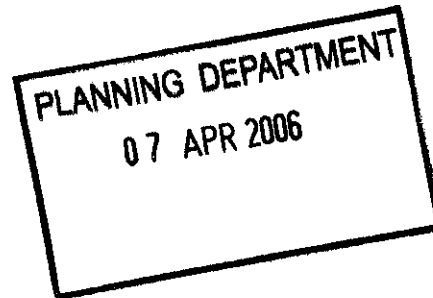
**John Barnett & Associates**

CSA House  
6/7 Dundrum Business Park  
Windy Arbour  
Dublin 14, Ireland

Tel: +353-1-296 4667  
Fax: +353-1-296 4676  
email: tpaul@csa.ie  
www.csa.ie

By Hand

7th April 2006  
JBA3251/L01/tp/gf



Paddy McNamara  
Planning Department,  
County Hall, Town Centre,  
Tallaght,  
Dublin 24

Dear Mr. McNamara,

Re: **Section 261 – Planning & Development Act, 2000**  
**Shillelagh Quarries Ltd. – Quarry at Aghfarrell, Brittas**  
**Register Reference No. SDQU05A/1**

We refer to the above Section 261 quarry registration and letter dated 21<sup>st</sup> February 2006. Shillelagh Quarries Ltd. and their advisors – John Barnett & Associates Ltd. have reviewed the letter and make the following submission to South Dublin County Council.

South Dublin County Council 'proposes to require that a planning application and an Environmental Impact Statement be submitted in respect of the quarry operation at the above location' in accordance with Section 261 (7) of the Planning & Development Act.

**Reason for submission**

*'Section 261(7) of the Planning and Development Act 2000 (as amended) provides that where the continued operation of a quarry, the extracted area of which is greater than 5 hectares and that commenced operation before 1<sup>st</sup> October 1964, would be likely to have significant effects on the environment, having regard to the selection criteria prescribed by the Minister for the Environment, Heritage and Local Government under Section 176(2)(e), a planning authority shall not impose conditions on the operation of a quarry under Section 261 (6), but shall, not later than one year after the date of registration of the quarry, require, by notice in writing, the owner or operator of the quarry to apply for planning permission and to submit an environmental impact statement to the planning authority not later than 6 months from the date of service of the notice, or such other period as may be agreed with the Planning Authority.*

South Dublin Co. Council have stated that *'it is considered that the subject quarry operation would be likely to have significant effects on the environment having regard to:*

- (1) The policies and objectives, included in the South Dublin County Development Plan 2004-2010, including land use zoning, extractive industry, views and prospects, landscape protection, natural and built heritage, pollution, traffic and amenities;*
- (2) The extent of quarrying carried out to date, the nature scale and extent of the existing quarrying operation, and the potential for future quarrying;*
- (3) The selection criteria prescribed by the Minister under Section 176(2)(e)'.*

Shillelagh Quarries Ltd. does not agree with South Dublin County Council's proposal in respect of this quarry. The continued operation of the quarry would not be likely to have *'significant effects on the environment'*, as evidenced by the submission below. In addition it should be noted that Section 261(7) requires the planning authority to consider the development only *'having regard to the selection criteria prescribed by the Minister for the Environment, Heritage and Local Government under Section 176(2)(e)'*, i.e. Item (3) above. Notwithstanding this, a full response to each of the three items has been provided below.

The Planning Authority is requested to reconsider its proposal and to impose conditions on the operation of the quarry in accordance with Section 261 (6) (a) (i) of the Planning & Development Act, 2000. Other planning authorities (Clare Co. Council; Meath Co. Council and Galway Co. Council) have taken such decisions in relation to Pre – 1963 quarries with an extraction area greater than 5 hectares.

## **1. THE POLICIES AND OBJECTIVES, INCLUDED IN THE SOUTH DUBLIN COUNTY DEVELOPMENT PLAN (CDP) 2004-2010.**

The quarry located at Aghfarrell and operated by Shillelagh Quarries Ltd. has been reviewed in the context of the CDP policies and objectives listed under Item 1 above.

### **1.1 Land Use Zoning**

The subject quarry is located in the townland of Aghfarrell approximately 3 km south east of Brittas village, Co. Dublin (refer to Figure 1). Under the 2004 – 2010 CDP, the quarry is located within land use zone H, refer to Figure 2. Land Use Zoning and Local Zoning Objectives Table No. 10.13 defines Zoning Objective 'H' : *to protect, provide for and enhance the outstanding natural character of the Dublin Mountain Area.* Quarrying (Industry – Extractive) is Open for Consideration below the 350 m OD contour level. While the subject quarry is operating above the 350 m OD contour level, extraction processes have been in operation since c.1930's, which pre-dates the introduction of county development plans and the introduction of the 350 m contour restriction, introduced in the South Dublin Co. Council CDP of 1998.

## 1.2 Extractive Industry

The relevant Extractive Industry policy and objectives contained in the CDP 2004 - 2010 are as follows:

### Section 2.3.17 Policy EE16: Extractive Industry

#### 2.3.17i

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

#### 2.3.17ii

*'The Council recognises the importance of the extractive industry in providing the aggregates and building materials required for all forms of construction and will facilitate its operation in suitable locations, having taken into account the continued reduction in demand with the increased re-cycling of construction and demolition waste. However, such an industry can have severely damaging environmental effects and permission will only be granted where the Council is satisfied that residential and natural amenities will be protected, pollution will be prevented and aquifers and ground water will be safeguarded. In addition all development proposals must make appropriate provision for the reinstatement of the landscape. Details of proposed reinstatement should accompany planning applications for extractive developments.'*

#### 2.3.17iii

*'The Council will seek to ensure that significant aggregate resources in the County are appropriately protected and in this regard will restrict the siting of incompatible developments that would interfere with the efficient development of such resources.'*

The subject quarry is an existing quarry and the extraction of shale lands is long established land use in the area. Quarries by their nature are tied to aggregate resource locations. The aggregate products produced by the quarry at Aghfarrell are supplied to the local and regional construction market.

Shillelagh Quarries Ltd. has implemented an Environmental Monitoring Programme at the quarry. This includes 'best practice' mitigation measures and environmental monitoring programme (dust deposition, noise and blasting), refer to Appendix A and Section 4 below.

It is clear from the above that the subject quarry operates within the DoEHLG (2004) Quarries & Ancillary Activities – Guidelines for Planning Authorities, and that future environmental management/ monitoring at the quarry can be adequately addressed by way of imposing conditions on the development, as provided for under Section 261 (6).

### Development Control Section 12.3.4: Extractive Industry

#### 12.3.4i

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

#### 12.3.4ii

*'It will be a requirement that applications for development within this category will be accompanied by an Environmental Impact Statement and a detailed landscaping plan. The plan should indicate proposed screening for the operational life of the site and set out a programme for the reinstatement of the landscape.'*

#### 12.3.4iii

*'The Council will have regard to the Quarries and Ancillary Activities Guidelines for Planning Authorities, April 2004 published by the Department of the Environment, Heritage and Local Government, or as may be amended from time to time. Any restriction arising as a consequence of the application by the Council of the Guidelines shall not be prejudicial to the provision of rural housing to qualifying applicants nor to any activity permitted under the zoning objective.'*

As stated previously, the quarry at Aghfarrell is an existing quarry and shale extraction is a long established land use in the area. An Environmental Monitoring Programme is in place at the quarry. Development control issues can be addressed by imposing conditions on the development, as provided for under Section 261 (6).

### **1.3 Views and Prospects/ Landscape Protection**

Schedule 7 of the CDP defines Landscape Character Areas for South Dublin. The subject quarry is located within Area 7 – Ballinascorney. In the Landcover description, reference is made *'Also to the north there is a quarry and scrubland'*. There is a number of quarries located in this area, and the quarry at Aghfarrell, is located in the southern part of this area is operated by Shillelagh Quarries Ltd. There are no strategic requirements related to the Extractive Industry identified for this area.

Table 13.9 of the CDP identifies *'Prospects for which it is an Objective to Protect'*. The subject quarry by virtue of its location/ elevation/ method and direction of working does not and will not impact on any of the Prospects from Viewing Points at Blessington Road (Killinarden Area), Ballinascorney Road or the Eastern and Western sides of Glenasmole Valley.

On this basis, it is clear that the continued operation of the quarry will not result in any significant environmental (visual/ landscape) effects.

### **1.4 Natural & Built Environment**

Table 13.10 of the CDP lists Natural Heritage Areas. The subject quarry is not located within any such designated ecological areas, National Heritage Area or Special Area of Conservation. The nearest pNHA is located approximately 2 km from the site boundary. The site is also located approximately 2 km from the Glenasmole Study Area.

There are also no features of archaeological interest on or surrounding the site.

On this basis, it is clear that the continued operation of the quarry will not result in any significant environmental effects on the natural or built environment.

### **1.5 Pollution**

The issue of 'Pollution' is addressed in Section 3.2 below.

### **1.6 Traffic**

The quarry at Aghfarrell is an existing quarry. The traffic generated by the quarry was stated on the Section 261 Registration submission: A maximum of fifteen (16) trucks (HGV's) per hour, that is eight (8) entering and eight (8) leaving the quarry per hour. These truck movements arise during the quarry operating hours: Weekdays 08.00 to 20.00 hrs. and Saturdays 08.00 to 16.00 hrs. Operating hours to service exceptional customer requirements are described in the Section 261 Registration submission as being 'emergency supply'.

The haulage route from the site will be via the existing county road onto the national N81 secondary road (Dublin to Baltinglass), turning off at Brittas onto the R114, refer to Figure 2. The distance to the N81 is approximately 2 kms. The existing road network has adequate capacity to accommodate the traffic from the quarry

There is and will be no significant traffic impact from the continued operation of the quarry. Notwithstanding this, Shillelagh Quarries Ltd. will liaise with the Area Engineer to ensure adequate signage is provided to inform road users of the quarry entrance etc., and would be happy to accept an imposed condition in this regard.

## **1 THE EXTENT OF QUARRYING CARRIED OUT TO DATE, THE NATURE SCALE AND EXTENT OF THE EXISTING QUARRYING OPERATION, AND THE POTENTIAL FOR FUTURE QUARRYING**

### **1.1 The Existing Quarry**

The landholding at Aghfarrell comprises of approximately 48.5 hectares (119.8 acres), with a workable area of approximately 27 hectares (66.7 acres). The area extracted to date is approximately 12 hectares (29.53 acres). The existing topography in the vicinity varies in level from approximately 330m to 390m OD.

The existing quarry can be considered small to medium scale by its nature and extent when compared to other quarries located within the Greater Dublin Area. Shale is extracted using industry standard blasting techniques. Blasting is carried out approximately 1 to 2 times per month. The fragmented rock is crushed and screened using mobile processing plant located within the quarry floor, to produce a range of aggregate products. No aggregate washing is carried out.

## 1.2 Future Quarrying

Future quarrying will continue in accordance with current operational practice. Where a material change is to occur (in terms of introducing value added manufacturing activities (concrete or asphalt), or an increase in the scale of the operations) then such a change will require planning permission. In such cases Shillelagh Quarries Ltd. will submit a planning application for consideration and decision by South Dublin Co. Council.

## 2 CRITERIA FOR DETERMINING WHETHER A DEVELOPMENT WOULD OR WOULD NOT BE LIKELY TO HAVE SIGNIFICANT EFFECTS ON THE ENVIRONMENT

The 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 of the Planning & Development Regulations, 2001 (S.I. No. 600 of 2001).

Each of these criteria has been addressed below to demonstrate that the quarry at Aghfarrell would not be likely to have significant effects on the environment.

### 3.1 Characteristics of the Proposed Development

#### - *Size of the Proposed Development*

The subject quarry is an existing shale quarry. The current extraction area is approximately 12 hectares, with potential future extension of 11.8 hectares towards the south of the landholding. A preliminary extraction scheme for the quarry has been completed and this indicates an extractable reserve within the quarry lands of approximately 16 million tonnes.

Quarrying operations have been carried out at Aghfarrell since c. 1930s and has always been operated by Shillelagh Quarries Ltd. There is no evidence to indicate that the size of the quarry has resulted in any significant environmental effects.

The environmental management practice and mitigation measures in place at the quarry ensure that quarry operations do not impact significantly on the environment.

#### - *The cumulation with other proposed development*

There is one other quarry in the vicinity of the quarry at Aghfarrell but are of significant enough distance away as not to have cumulative effects on the environment.

#### - *The use of natural resources*

Quarrying is a resource based industry. The quarry at Aghfarrell works shale deposits. Shillelagh Quarries Ltd. recognises that the shale deposits are a finite resource and extraction is managed in a sustainable manner.

The shale is extracted and processed in an efficient sustainable manner thereby ensuring that there are sufficient extractable shale reserves for future generations whilst ensuring adequate security of supply for present development of the Greater Dublin Area. The operational life of the quarry will be 40 years.

### - **The production of waste**

No waste is produced during extraction / processing of shale into aggregate products at the quarry.

The environmental monitoring program implemented at the quarry provides for the management of any man-made waste arising on site. All recyclable materials are segregated on site to facilitate economic and safe recycling or disposal prior to being collected by licensed waste contractors.

On this basis, the waste management procedures in place at the quarry will not result in any significant effect on the environment.

### - **Pollution & nuisances**

No significant pollution or nuisance arises from the quarry. In this regard the Planning Authority should note:

#### Noise:

Noise monitoring carried out at the quarry indicates that the development complies with the DoEHLG (2004) recommended threshold limits of < 55 dB(A) <sub>LAeq 1 hour</sub>, measured at the nearest noise sensitive location, refer to Figure 4 and Appendix A. Records of noise monitoring are kept as part of the environmental monitoring programme implemented at the quarry.

Best environmental management practice mitigation measures as recommended in the DoEHLG (2004) guidelines are implemented at the quarry. These include:

- Use of screening berms
- Location of mobile stone processing plant on the quarry floor.
- Minimising drop heights of material from plant & machinery.
- Regular maintenance of plant & machinery
- Internal traffic routing and using haul roads with as low a gradient as possible

The environmental noise results demonstrate the effectiveness of the existing mitigation measures at the quarry to minimise noise levels.

#### Dust

Dust monitoring carried out at the quarry indicates that the development complies with the DoEHLG (2004) recommended threshold limits of < 350 mg/m<sup>2</sup>/day (averaged over 30 days), measured at the site boundary, refer to Figure 4 and Appendix B. Records of dust monitoring are kept as part of the environmental monitoring programme implemented at the quarry.

Best environmental management practice mitigation measures as recommended in the DoEHLG (2004) guidelines are implemented at the quarry. These include:

- Screening berms are vegetated to eliminate wind blown dust
- Use of water bowser to suppress dust on internal haul roads during dry weather
- Location of mobile stone processing plant on the quarry floor.
- Minimising drop heights of material from plant & machinery.
- Regular maintenance of plant & machinery
- Regular cleaning of entrance area, if necessary.

The dust deposition results demonstrate the effectiveness of the existing mitigation measures at the quarry to minimise dust deposition levels.

### Blasting

Blast monitoring carried out at the quarry indicates that the development complies with the DoEHLG (2004) recommended threshold limits for groundborne vibration of 12 mm/sec (peak particle velocity), and for air overpressure of 125 dB (Lin) – 95% confidence limit, measured at the nearest noise sensitive location. Records of blasts are kept as part of the environmental monitoring programme implemented at the quarry.

Best environmental management practice mitigation measures as recommended in the DoEHLG (2004) guidelines are implemented at the quarry. These include:

- Experienced professional are used to design and carry out all blasting operations.
- Use of time delays to limit maximum instantaneous charge (MIC)
- Use of appropriate stemming

The blast monitoring results demonstrate the effectiveness of the existing mitigation measures at the quarry to minimise the impact of blasting operations.

### Water

The quarry extracts shale from below the groundwater table and groundwater inflows are controlled by sump pumping

The following best environmental management practice measures as recommended in the DoEHLG (2004) guidelines are implemented at the quarry:

- Fuel storage tank is bunded
- Fill point is located within the bunded area
- A spill kit is provided on site, in the unlikely event of an accidental spillage.

These measures ensure that the quarry does not result in any significant effect on surface water or groundwater.

### Waste Management

As stated above any waste materials are segregated on site to facilitate economic and safe recycling or disposal prior to being collected by licensed waste contractors. All waste is recycled or disposed of off site. A record of all waste collections is kept as part of the environmental monitoring programme implemented at the quarry.

### Traffic / Transport

The following measures are in place at the quarry to ensure that traffic does not result in any significant environmental effects:

- Specific traffic routing
- Ensuring all trucks are not over-loaded
- Provision of car parking on site
- Provision of truck parking on site
- Maintenance of internal haul roads

### **3.2 Location of the Proposed Development**

#### **- *The existing land-use.***

The quarry at Aghfarrell is an existing quarry, not a proposed development. The existing land-use within the site is shale extraction and processing. Quarry operations have been carried out on the lands since the 1930's and have been operated by Shillelagh Quarries Ltd. since that time. This submission confirms that the quarry will not result in significant environmental effects.

#### **- *The relative abundance, quality and regenerative capacity of natural resources in the area.***

The quarry is developed in a shale resource. The quarry rock faces will recolonise and regenerate resulting in ideal nesting habitats for bird species. Quarries are recognised as contributing significantly to the biodiversity of local areas, and the subject quarry is no exception.

#### **- *The absorption capacity of the natural environment, paying particular attention to the following areas:***

**(a) *mountain and forest areas***

**(b) *landscapes of historical, cultural or archaeological significance.***

As stated previously, the subject quarry is not located within any designated ecological area, Natural Heritage Area or Special Area of Conservation as defined by South Dublin Co. Council CDP 2004 – 2010. The nearest pNHA is located approximately 2 km from the site boundary. The site is also located approximately 2 km from the CDP 2004 - 2010 designated Study Area of Glenasmole.

**3.3 The potential significant effects of the proposed development in relation to criteria set out under paragraphs 1 and 2 above and having regard in particular to the following**

**- *The extent of the impact (geographical area).***

The best practice environmental mitigation measures implemented at the subject quarry ensure that the extent of any potential impacts is effectively limited to within the Shillelagh Quarries Ltd. land interest.

Environmental monitoring results indicate that the quarry is operated within the environmental threshold limit values for noise, dust deposition and blasting recommended by the DoEHLG (2004).

**- *The probability of the impact.***

Shillelagh Quarries Ltd. have implemented an environmental monitoring programme at the quarry. This monitoring programme provides for ongoing environmental management and monitoring of quarry operations at the site.

Environmental monitoring results indicate that the quarry is operated within the environmental threshold limit values for noise, dust deposition and blasting recommended by the DoEHLG (2004).

On this basis, and considering this overall submission, it is clear that quarrying operations at Aghfarrell will not have any significant effect on the environment.

**- *The duration and reversibility of the impact.***

Extraction operations are in effect a temporary land-use with the lands being restored to beneficial long-term afteruse on cessation of quarrying activities. A restoration and after-use plan is currently being prepared for the quarry, and Shillelagh Quarries Ltd. would be pleased to accept imposition of a condition in this regard.

### **3 ENVIRONMENTAL MONITORING PROGRAMME**

As referred to above, Shillelagh Quarries Ltd. has implemented an ongoing environmental monitoring programme at the quarry, refer to Appendix A.

#### 4 CONCLUSIONS

Based on the responses above to each of the criteria stated in Schedule 7, and considering the:

- i) results of the ongoing environmental monitoring programme
- ii) implementation of current 'best' practice mitigation measures
- iii) long term nature of the existing quarrying operations on the site (since before 1<sup>st</sup> October 1964)
- iv) small scale nature operation of the quarry
- v) location of the quarry

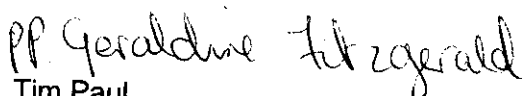
It is clear that the extraction operations at the Aghfarrell quarry will not result in significant environmental effects.

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The Planning Authority is requested to reconsider its proposal and to impose conditions on the operation of the quarry in accordance with Section 261 (6) (a) (i) of the Planning & Development Act, 2000.

We would request a meeting with you to discuss the above submission, before South Dublin County Council make a final determination on this matter. It would be beneficial to have this meeting, and we would ask that you contact John Barnett & Associates (Tel: 01 2964667) in relation to meeting arrangements.

Yours Faithfully,  
On behalf of Shillelagh Quarries Ltd.



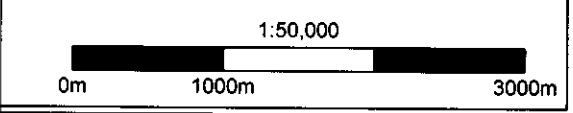
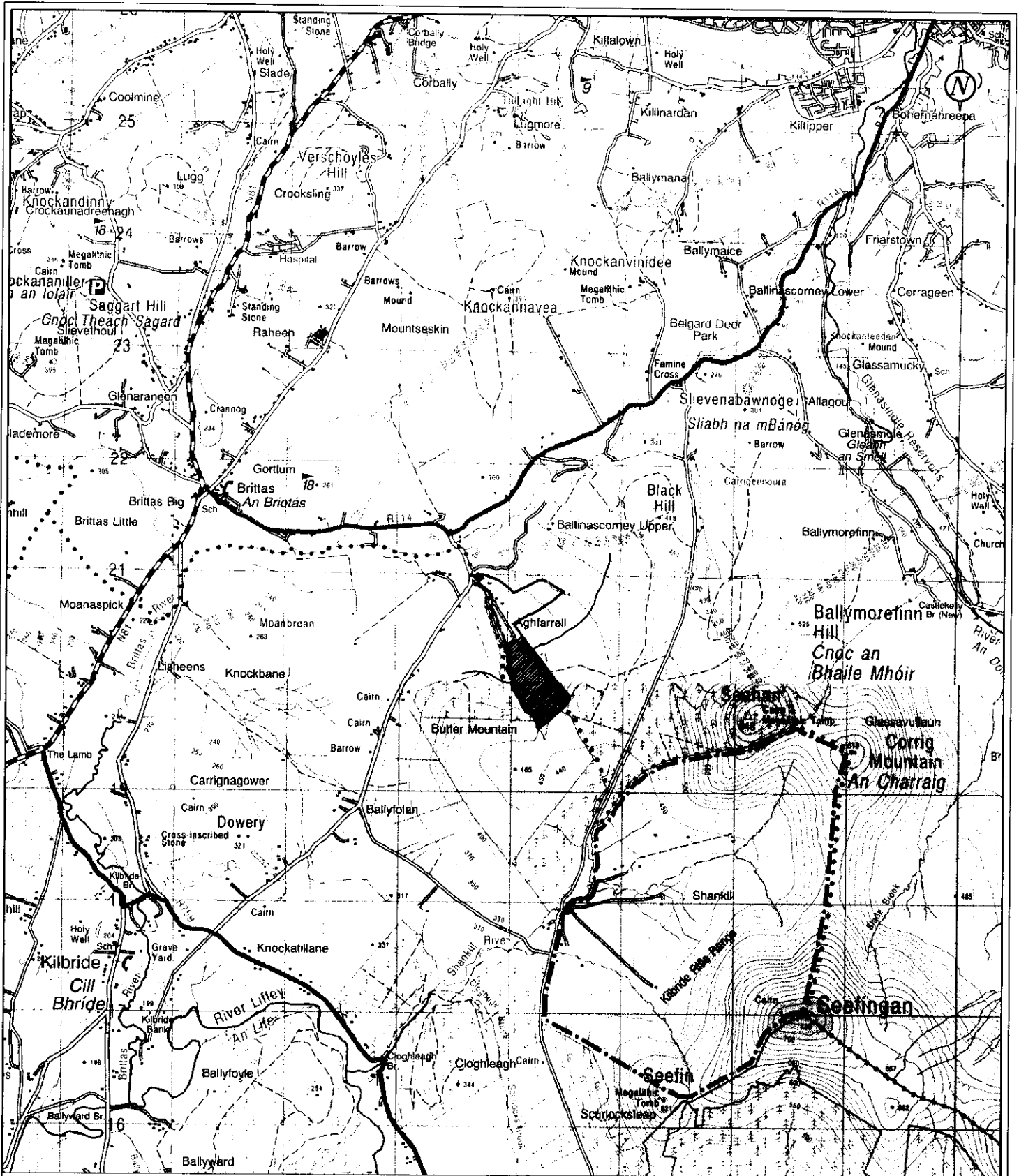
Tim Paul.

John Barnett & Associates Ltd.

Enc.

Cc. + Enc. Ms. Sandra Murphy (Shillelagh Quarries Ltd.)

## FIGURES



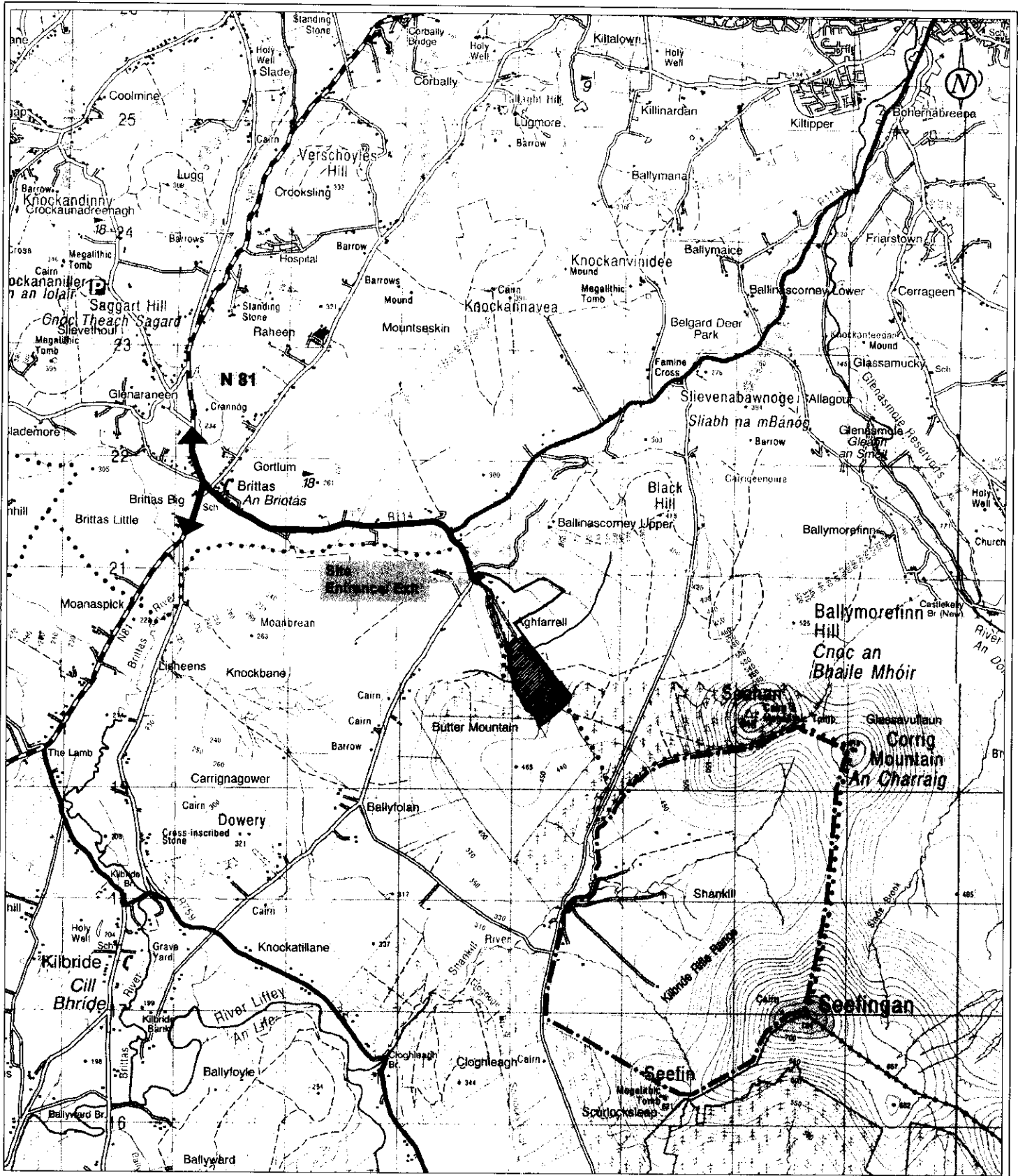
**LEGEND**

	Land Ownership
	Quarry (Existing & Future): 26.8 Ha




**JBA**  
 John Barnett & Associates  
 Chartered Minerals Surveyors  
 Environmental, Planning &  
 Geotechnical Consultants

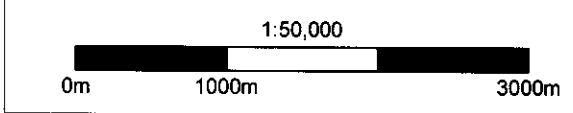
Extract from 1:50,000 O.S. Discovery Series Map No. 50 & 56 (OS)  
 Ordnance Survey Ireland Licence No. SU 0000704 (C) Government of Ireland


Project: <b>Shillelagh Quarries Ltd. Aghfarrell Quarry Brittas, Co. Dublin</b>	
Title: <b>Site Location Map</b>	
Figure 1	
Author: smcd	Ref: 3251
Date: November 2005	



**LEGEND**

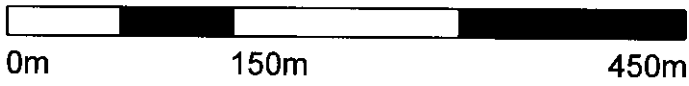
-  Land Ownership
-  Quarry (Existing & Future): 26.8 Ha
-  Traffic Route



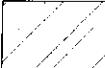
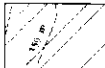


	John Barnett & Associates Chartered Minerals Surveyors Environmental, Planning & Geotechnical Consultants		Project: <b>Shillelagh Quarries Ltd.          Aghfarrell Quarry          Brittas, Co. Dublin</b>
	Extract from 1:50,000 O.S. Discovery Series Map No. 50 & 56 (OS) <small>Ordnance Survey Ireland Licence No. SU 0000706          (C) Ordnance Survey Ireland Government of Ireland</small>		Title: <b>Traffic Routes Map</b>  Figure 2
		Author: gf Date: April 2006	Ref: 3251



Scale 1:5,000



**LEGEND**

-  Zoning Objective 'H' (SDCC CDP)
-  Contour Line
-  Quarry Area
-  SDCC Boundary

**JBA**  
 John Barnett & Associates  
 Chartered Minerals Surveyors  
 Environmental, Planning &  
 Geotechnical Consultants

Extract from South Dublin County Council CDP 2004 - 2010 Map No.8  
 Ordnance Survey Ireland Licence No. SU 0000704 (C) Government of Ireland

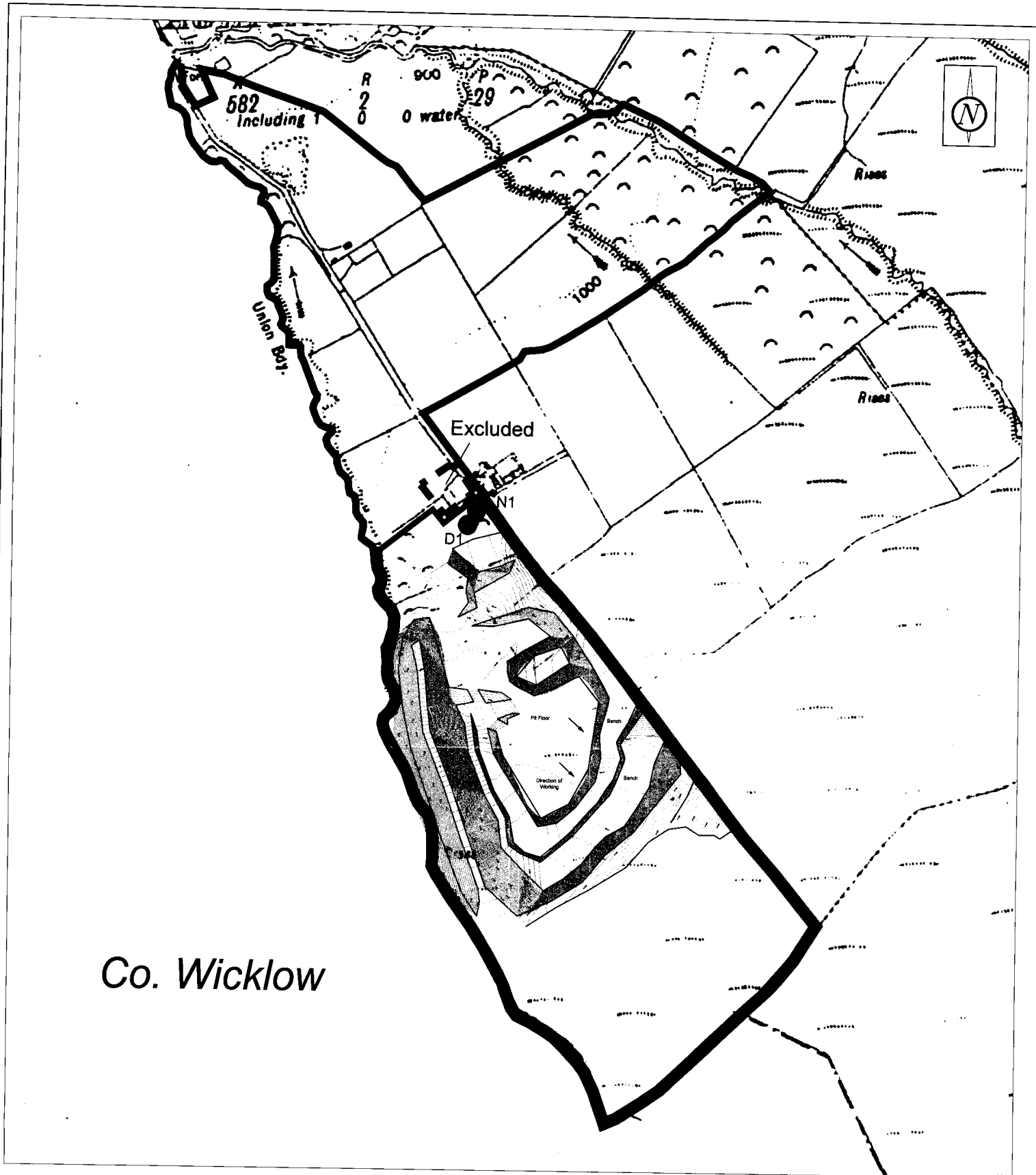
Project: **Shillelagh Quarries Ltd.  
 Aghfarrell Quarry  
 Brittas, Co. Dublin**

Title: **Extract from South Dublin Co.  
 Council CDP 2004 - 2010**

**Figure 3**

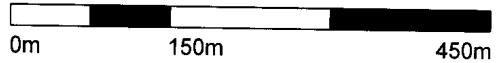
Author: gf  
 Date: November 2005

Ref: 3251







Based on 1:10,560 scale digital map provided  
by Ordnance Survey Ireland  
DUBLIN 24 & 24A

Scale 1:5,000



**Legend**

-  Land Ownership c. 48.5ha (c. 119.8 acres)
-  Workable Area c. 27.0ha (c. 66.7 acres)
-  N1 Noise Monitoring Location
-  D1 Dust Monitoring Location



**SHILLELAGH QUARRIES**

Aghfarrell Townland,  
Brittas, Co. Dublin

**Environmental Monitoring  
Locations**

Author:gf  
Date: April 2006

**Figure 4**

## **APPENDIX A**

### **ENVIRONMENTAL MONITORING PROGRAMME (Refer to Figure 4 for Monitoring Locations)**

- **Dust Deposition**
- **Noise**

## By Post

3<sup>rd</sup> November, 2005  
JBA/Shillelagh Quarries/3400/L02/AB

Ms. Sandra Murphy,  
Shillelagh Quarries Ltd.,  
Aghfarrell,  
Brittas,  
Co. Dublin.

Dear Sandra,

**Re: Environmental Monitoring at Shillelagh Quarries, Aghfarrell, Brittas, Co.Dublin**

The following are results of dust and noise monitoring for 2005.

### Noise Monitoring

Continuous noise monitoring was carried out at one location (N1) on the following date using a Larson Davis Model 824 Sound Level Meter, which was calibrated using a Larson Davis Acoustic Calibrator CAL 200. The results obtained were as follows:-

**Table 1                      Noise Monitoring Results (22nd June 2005)**

<b>Date</b>	<b>Period</b>	<b>Station</b>	<b>dBL<sub>Aeq,1hr</sub></b>	<b>dBL<sub>A90,1hr</sub></b>
22/06/05	15:47 to 16:17	N1	46.8	41.6

*Weather Conditions:                      22/06/05: Dry, sunny, moderate winds.*

### Discussion

The Development complies with the noise threshold limits recommended in Quarries and Ancillary Activities: Guidelines for Planning Authorities (DoEHLG, 2004):

- (a) an  $L_{Aeq,1hr}$  Value of 55 dB(A)- Daytime, at the nearest noise sensitive location.
- (b) an  $L_{Aeq,15min}$  Value of 45 dB(A)- Nighttime, at the nearest sensitive location.

### Dust Monitoring

A dust monitoring station has been established at one location (D1). A standard Bergerhoff dust gauge is being used to record monthly dust levels. The results to date are as follows:

**Table 2**                      **Dust Monitoring Results**

<b>Station</b>	<b>Recording Period</b>	<b>Result</b>
D1	09/08/05 to 08/09/05	45
D1	08/09/05 to 7/10/05	80

**Discussion**

Monitoring to date shows that the development complies with the dust threshold limits recommended in Quarries and Ancillary Activities: Guidelines for Planning Authorities (DoEHLG, 2004) of 350 mg/m<sup>2</sup>/day.

---

We have now completed our monitoring programme for year 2005. We propose to recommence the monitoring programme in May through to September 2006 . This period corresponds to the driest and busiest period at the site when fugitive dust and increased site activity requires monitoring.

Yours Sincerely,  
For John Barnett & Associates Ltd.

---

Aldona Binchy  
Environmental Scientist

Inspector Jeremiah Keohane,  
An Garda Siochana,  
Tallaght,  
Dublin 24.

11<sup>th</sup> May 2007

Your Reference: 52/124M/07

Re: Shillelagh Quarries, Aghfarrell, Brittas.

Dear Inspector,

I refer to your letter dated 3<sup>rd</sup> May 2007 regarding the above quarry.

This quarry has been registered under Section 261 of the Planning and Development Act 2000.

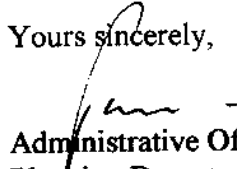
Following registration of the quarry a Statutory Notice was served by this Council under Section 261(7) of the Act on the owner / operator of the quarry requiring that a planning application and Environmental Impact Statement (EIS) be submitted to the planning authority in respect of the continued operation of the quarry.

A planning application and EIS in respect of the quarry was received on 18<sup>th</sup> April 2007 and is currently under consideration.

The relevant Planning Register Reference number is SD07A/0276.

I trust the above information is of assistance to you.

Yours sincerely,

  
Administrative Officer  
Planning Department.

tel No. 4149260

# AN GARDA SÍOCHÁNA

Oifig an Chigire,  
An Garda Síochána,  
Tamhlacht,  
Baile Átha Cliath 24



Inspector's Office,  
An Garda Síochána,  
Tallaght,  
Dublin 24

Tel/Teileafón: (01) 6666017

Fax / Facs: (01) 6666024

Please quote the following Ref. Number

Web site: [www.garda.ie](http://www.garda.ie)

52/124M/07

Planning Section,  
South Dublin County Council,  
Government Buildings,  
Tallaght.

*B.W.L.*  
*W.H.H.*

PLANNING DEPARTMENT  
10 MAY 2007

**Re: Shillelagh Quarries, Aughfarrell, Brittas.**

Dear Sir/Madam,

Superintendent Coburn, Tallaght has received the attached letter, the contents of which are self-explanatory.

I would be obliged to know of the current Planning Status of this quarry so that a response may issue to Mr. McCoy.

*Semy Keohane*. Inspector.  
(JEREMIAH KEOHANE)

3<sup>rd</sup> May 2007.

Mission Statement:

To achieve the highest attainable level of Personal Protection, Community Commitment and State Security

Ballinascorney Upr.,  
Brittas,  
Co. Dublin.  
1-5-07.

52/1247/07

Re:- Shillelagh Quarries  
Aughfarrell,  
Brittas,  
Co. Dublin.

Dear Superintendent Coburn,

We are writing to you in connection with the above quarry. This is an illegal quarry ( ie Having no planning permission ). We now request that all explosions cease forthwith as the Murphy family are in breach of planning and environmental law.

We enclose a copy of the letter sent to Superintendent Byrne Tallaght Garda Station on the 13-4-00 which should be on file .

We look forward to hearing from you in the near future.

Yours sincerely

*Michael McCoy*

Michael McCoy  
Secretary D.M.C&E.G.

Ballinascorney Upr.,  
Brittas,  
Co. Dublin.  
13-4-00.

Re:- Mr Michael Murphy  
Aghfarrell,  
Brittas,  
Co. Dublin.

Dear Superintendent Byrne,

We are writing to you in connection with a quarry owned by Mr Murphy at Aghfarrell, Brittas, Co. Dublin. It is our contention that this quarry is operating without valid planning permission, and is in breach of Planning & Environmental Law. We object in the strongest manner to explosives being used at this quarry.

We look forward to hearing from you in the near future.

Yours Faithfully

*Michael McCoy*  
Michael McCoy  
Secretary D.M.C&E.G.

John Barnett & Associates,  
CSA House,  
7 Dundrum Business Park,  
Windy Arbour,  
Dublin 14.

For the attention of Mr Shane McDermot

31 January 2007

Dear Mr. McDermot,

Re Section 261 Planning and Development Act 2000  
Shillelagh Quarries Ltd., Aghfarrell, Brittas, Register Reference No. SDQU05A/1

I refer to your letter dated 12 January 2007 requesting comments in regard to the pre-planning / EIS scoping document enclosed with your letter.

I note that a meeting to discuss the scoping of the EIS was held on 10<sup>th</sup> August 2006 in the Planning Department at County Hall, attended on behalf of Shillelagh Quarries Limited by Tim Paul, Geraldine Fitzgerald, Sandra Murphy and Thomas Murphy, and on behalf of the Planning Authority by Bob Matthews and Louise McGauran – Senior Executive Planners.

As previously outlined at the above meeting it is recommended that the EIS should generally follow the relevant guidelines (in particular *Guidelines on the Information to be Contained in EIS*, and the *Environmental Management Guidelines*, published by the EPA), and have regard to the *Quarries and Ancillary Activities Guidelines for Planning Authorities DEHLG (2004)*. It is recommended, in particular, that the planning application should address the issues set out in Appendix A to this letter, and should be supported by appropriately detailed plans, particulars and specifications.

It is considered that the following Policies and Objectives of the South Dublin County Development Plan 2004-2010 are particularly relevant:

Policies

- Policy EE17: Extractive Industry
- Policy AA1: Protection of Archaeological Heritage
- Policy AA2: Historical & Archaeological Sites
- Policy AA4: Conservation of Buildings, Structures and Sites
- Policy LHA 1: Preservation of Landscape Character
- Policy LHA 2: Views and Prospects
- Policy LHA 15: Dublin Mountain and High Amenity Zones.

Development Management Objectives:

- 12.3.4 Extractive Industry
- 12.11.1 Areas of Archaeological Potential
- 12.12.7 Upland Mountain / High Amenity Areas

Specific Objective:

- 13.5.1 Views and Prospects

The information submitted should be adequately detailed to enable the significant effects of the quarry operations on the environment, and the proposals to avoid, reduce or ameliorate

the effects, to be readily identified by all parties that may have an interest in the planning application.

It should be noted that examination of the planning application and EIS may give rise to further issues which may require clarification by way of a request for additional information. However, by providing the information outlined at Appendix A any requirement for such clarification may be reduced or avoided.

Further information or guidance may be obtained by directly contacting the technical officers of the Council included on the attached list of personnel.

Finally, I note that the time period within which you are required to submit a planning application and environmental impact statement in respect of the above quarry, in accordance with Section 261(7) of the Planning and Development Act 2000, has been extended up to 18 April 2007 as advised to you previously in our letter of 22 September 2006.

Your sincerely,

Michael Kenny,  
Senior Planner

## **South Dublin County Council Personnel**

Tom O'Neill, Senior Executive Engineer <a href="mailto:tom.oneill@sdblincoco.ie">tom.oneill@sdblincoco.ie</a>	Roads & Traffic
John Kearney, Senior Executive Engineer <a href="mailto:jkearney@sdblincoco.ie">jkearney@sdblincoco.ie</a>	Environmental Services Waste Management
Brendan Curran, Senior Engineer, <a href="mailto:bcurran@sdblincoco.ie">bcurran@sdblincoco.ie</a>	Environmental Services – Drainage
Joanna Troughton, EHO <a href="mailto:joanna.troughton@mailm.hse.ie">joanna.troughton@mailm.hse.ie</a>	Environmental Health
Bob Matthews, Senior Executive Planner <a href="mailto:bmatthews@sdblincoco.ie">bmatthews@sdblincoco.ie</a>	Forward Planning
Irenie McLoughlin <a href="mailto:imcloughlin@sdblincoco.ie">imcloughlin@sdblincoco.ie</a>	Conservation Officer
Brian Sheehan, Senior Executive Parks Supt <a href="mailto:bsheehan@sdblincoco.ie">bsheehan@sdblincoco.ie</a>	Parks Department
Bridget Treacy, Executive Parks Supt <a href="mailto:btreacy@sdblincoco.ie">btreacy@sdblincoco.ie</a>	Parks Department

## **APPENDIX A**

### **TOPOGRAPHICAL SURVEY**

A full topographical survey of the entire lands within the site boundary, including a map surveyed against established perimeter beacons the form and location of which to be detailed, showing all areas, a) that have been excavated to date, b) that have been prepared for excavation, and c) that have been restored, and a comprehensive photographic record of the quarry workings, including an aerial view, and views of the quarry from public roads in the vicinity of the site the viewing positions of which to be shown on a map to a suitable scale.

### **NOISE**

Details of a noise survey, and a monitoring programme to assess the impact of noise emissions arising from the quarrying operations. The scope and methodology of the survey and monitoring programme to be agreed with the Environmental Health Officer.

### **VIBRATION AND AIR OVERPRESSURE**

Details of a suitable monitoring programme to assess the impact of quarry blasts. The programme to provide for monitoring to be carried out whenever a blast occurs, and an annual review of all blast monitoring data to be undertaken by a competent person. The scope and methodology of the monitoring programme to be agreed with the Environmental Health Officer.

### **SUPPRESSION AND CONTROL OF DUST**

Details of a monitoring programme of dust and particulate emissions, including daily monitoring, a monthly survey of dust deposition, and an annual review of all dust monitoring data to be undertaken by a competent person and the results to be submitted to the planning authority. Details of the programme to include the location of dust monitoring stations.

Details of appropriate arrangements for the suppression and control of dust arising from the open working, processing and the handling and transportation of mineral and / or product, and stripping of overburden. The stripping of overburden to be carried out only during favourable weather conditions, and the area of excavated land not covered by vegetation to be kept to a minimum. The location of sensitive receptors and prevailing wind directions to be taken into account when locating haul roads, tips, stockpiles and processing plant. Also details to be provided of the proposed use and handling of the silt removed from settlement ponds. Silt to be immediately removed and periodically covered with topsoil and seeded with grass to prevent subsequent dispersal.

### **CONTROL OF EXTERNAL LIGHTING**

Details of a scheme of external lighting for the entire site, to be designed, installed and operated so as to prevent nuisance and to avoid over-lighting.

### **TRAFFIC IMPACT.**

A full traffic impact assessment to be carried out. This should assess the cumulative impact of traffic arising from all quarries using the local road network, with particular regard to measures to minimise the impact of HGV traffic on the amenity of Brittas Village.

### **MAINTENANCE OF PUBLIC ROADWAY**

Details of arrangements to ensure that no waste, debris, excavated materials or dust caused by the haulage of material either to or from the site be deposited on the public roads, footpaths, margins etc., and for maintaining the public roadways in the vicinity of the site entrances / exits free from mud and other debris caused by the haulage of such material. These arrangements to include a concrete apron at the site exit to the public road, and a wheel washing facility provided with a continuous water supply facility together with a suitable sump arrangement for the drawing off of waste waters arising. All vehicles exiting the site to use the wheel washing facility, and to travel only on the apron to the exit.

## **DETAILS OF DRAINAGE ARRANGEMENTS**

Full details of all existing and proposed foul and surface water drainage arrangements on the entire site to be submitted, including detailed drawings and specifications, providing for the following:

All surface water run-off from roofs, entrances, driveways, parking areas etc. to be collected and disposed of within the site to soak pits, drains or adjacent watercourses. No surface water run-off to be allowed to flow on to the public roadway or adjoining properties, nor to discharge to any effluent disposal system.

No effluent from the site to discharge to surface or ground waters other than in accordance with the terms of a current licence granted under the relevant provisions of the Local Government (Water Pollution) Acts, 1977 – 1990 or as may be amended from time to time.

Only clean uncontaminated storm water to be discharged to surface waters. Interceptor traps to be fitted to the storm water drainage system where appropriate, to prevent accidental spillages of oils, greases, solvents or other contaminated matter entering the watercourses or soak ways or groundwater.

Discharges to surface water from impermeable surfaces (roads, roofs etc) to existing drains or watercourses to be limited to 6 litres per second per hectare of impermeable surface to reduce the risk of downstream flooding, to be achieved by constructing attenuation storage, preferably a pond, and restricting the outflow discharge by means of a 'Hydobrake' or equivalent device. Details of the design to be submitted

Adequate precautions to be taken to prevent surface water run-off from open cut areas flowing directly to any stream or watercourse. All such water to be trapped and held in settling lagoons until such time as the suspended solids are deposited and the colour of the discharge water indicates that it will not cause any discolouration of the receiving waters. Where possible appropriate measures to be taken to prevent water from entering excavations. Adequate clearance to be maintained from watercourses and wells.

All surface water from the plant area, quarry floor and internal haul roads to be directed to sumps and discharged from there to settling lagoons. The settling lagoons to be of an adequate size and properly maintained to ensure the efficient removal of suspended solids. Site roads and approaches to river crossings shall be regularly brushed or scraped and kept free from dust and mud deposits.

## **GROUND WATER LEVELS**

Details of water table levels and proposed excavation working depth relative to water table levels. The water table level to be determined before any stripping or excavation takes place. A record of ground water levels to be taken at monthly intervals. The highest water table level to be used to determine the depth to which excavation may be taken. No excavation to take place within 1.5m of the highest water table level, nor below water table level.

## **PREVENTION OF POLLUTION**

Details of measures to prevent pollution to include the following:

All over-ground oil or other chemical storage tanks to be adequately bunded to protect against spillage. Bunding to be impermeable and capable of retaining a volume in excess of 110% of the capacity of the largest tank.

Bunds to be tested at intervals of not more than three years and documentation of tests to be available for inspection by the Planning Authority.

✓ All refueling to take place on impermeable areas that drain through an interceptor from tanks that are bunded or double skinned.

All waste oil and chemicals to be removed from the site and disposed of to the satisfaction of the Water Pollution Control Section of the Local Authority.

A spill kit to be maintained on site with adequate supply of containment booms and absorbent materials to deal with any spillage.

Measures to ensure that blasting practice minimises the risk of occurrence of nitrate/ammonia residues by proper blast design and implementation, appropriate disposal of any excess explosives, and selection of the appropriate type of explosives.

#### **PHASING OF DEVELOPMENT**

A suitable site plan to be submitted showing the proposed phasing of the development indicating the areas that have been worked, the proposed phasing of extraction for the remaining areas, and the proposed timing of, and proposals for, the rehabilitation of all the areas.

#### **REHABILITATION AND LANDSCAPING**

A comprehensive plan for the restoration of the entire quarry following the cessation of quarrying works, to include detailed proposals for the rehabilitation and landscaping of existing worked out portions of the quarry and measures to ensure public safety therein.

The proposals to provide, inter alia, for the phased carrying out of rehabilitation and landscaping operations within a definite period or periods related to the anticipated pace of extraction operations, and to provide for the grading of surface levels, seeding and planting works, surface and sub-surface drainage and attenuation as per the Greater Dublin Strategic Drainage Study guidelines, planting and seeding works and details of future maintenance. The proposals to be prepared by landscape architects with experience in the remediation / rehabilitation of quarries.

The source of all material proposed to be used in respect of all rehabilitation works, together with full details of the type of material and the quantities involved, to be submitted as part of the rehabilitation and landscaping proposals.

#### **LANDSCAPING AND BOUNDARY TREATMENT**

A comprehensive landscaping scheme prepared by landscape architects showing how it is proposed to screen or otherwise ameliorate the visual impact on views from surrounding areas of the quarry workings, the scheme to include detailed drawings and specifications of proposals for appropriate landscaping and boundary treatment, including tree planting and mounding, and a satisfactory time frame for the implementation of the scheme. A survey of all trees and hedgerows on the lands carried out by a competent professional to B.S. 5837 to be submitted as part of the scheme.

All topsoil removed in the course of quarrying operations to be separately retained from waste materials (including sub-soil and overburden) so that it can readily be re-used by spreading evenly over the worked surface or backfilled. Topsoil to be stockpiled in mounds not greater than one metre in height to ensure that the soil flora and fauna are not destroyed.

#### **STORAGE AND USE OF UNUSABLE/WASTE MATERIALS**

Full details of suitable arrangements for the disposal of unusable materials accruing from current working, providing for such materials to be stored separately, thereafter to be deposited in excavated areas as rehabilitation proceeds and not to be deposited above the general level of the ground. Such material to have occurred naturally on the site and not as a result of previous filling. Any material which is classed as waste to be disposed of at an

authorised facility by authorised waste carriers. Any proposed treatment / disposal of waste to be in compliance with the Waste Management Act 1996 – 2006, or as may be amended from time to time.

**SAFETY MEASURES**

Details of the safety measures, including adequate fencing, to prevent access to the edge of all slopes and vertical faces within the quarry lands, including details of any grading and/or stepping of the sides of the excavation adjacent to land not in use or required for quarrying operations.



**John Barnett & Associates**

PLANNING DEPARTMENT  
11 JAN 2007

CSA House  
7 Dundrum Business Park  
Windy Arbour  
Dublin 14, Ireland  
Tel: +353-1-296 4667  
Fax: +353-1-296 4676  
email: tpaul@csa.ie  
www.csa.ie

By Post

11<sup>th</sup> January 2007  
JBA 3251

Environment Section,  
South Dublin County Council,  
County Hall, Tallagh,  
Dublin 24

*B.M.*

PLANNING DEPARTMENT  
12 JAN 2007

Dear Sir / Madam,

**Re: Existing Rock Quarry at Aghfarrell, Brittas, Co. Dublin.  
(Quarry Ref. No. SDQU05A/1)  
Pre Planning Document / EIS Scoping**

John Barnett & Associates have been appointed by Shillelagh Quarries to prepare a planning application and accompanying EIS for the existing rock quarry at Aghfarrell, Brittas, Co. Dublin. This application is required under Section 261 of the Planning & Development Act, 2000.

We are currently carrying out a scoping study for the EIS. As part of this process we have prepared a Pre-Planning EIS Scoping Document. A copy of this document has been sent to statutory Consultees for review and comment.

Can you and your organisation kindly review this document and send us your comments by 8<sup>th</sup> February 2007. If you can not meet this deadline can you please let us know by what date you can respond to us on this matter.

We are available to meet with you to discuss any issues in further detail. If you have any queries in relation to the scoping document please contact Tim Paul or myself.

Yours Sincerely,  
For John Barnett & Associates.

Shane McDermott

Enc. Pre-Planning Consultation Document - Existing Rock Quarry at Aghfarrell,  
Brittas, Co. Dublin

Cc. + Enc. Sandra Murphy (Shillelagh Quarries)



**John Barnett & Associates**

PLANNING DEPARTMENT  
11 JAN 2007

CSA House  
7 Dundrum Business Park  
Windy Harbour  
Dublin 14, Ireland

Tel: +353-1-296 4667  
Fax: +353-1-296 4676  
email: tpaul@csa.ie  
www.csa.ie

**SCANNED**

By Post

11<sup>th</sup> January 2007  
JBA 3251

Environment Section,  
South Dublin County Council,  
County Hall, Tallagh,  
Dublin 24

*B.M.*

PLANNING DEPARTMENT  
12 JAN 2007

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Yours Sincerely,  
For John Barnett & Associates.

Shane McDermott

Enc. Pre-Planning Consultation Document - Existing Rock Quarry at Aghfarrell, Brittas, Co. Dublin

Cc. + Enc. Sandra Murphy (Shillelagh Quarries)



**John Barnett & Associates**

CSA House  
6/7 Dundrum Business Park  
Windy Arbour  
Dublin 14, Ireland

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## **Shillelagh Quarries Ltd.**

### **Pre-Planning Consultation Document**

**Quarry Development – Continued Use under Section 261**

**at**

**Aghfarrell, Brittas, Co. Dublin**

**January 2007**

Directors: J. Barnett MSc FRICS MIMinE. T. Paul CEng MIEI MICE MRICS  
Secretary: R. O'Dowd  
Registered in Ireland, Number 210583

A member of the CSA Group

## INTRODUCTION

This report is a pre-planning consultation document for the continued use and development of a shale quarry at Aghfarrell, Brittas, Co. Dublin. It has been prepared by John Barnett & Associates for Shillelagh Quarries Ltd., Aghfarrell, Brittas, Co. Dublin, in compliance with the notice received from South Dublin County Council under Section 261, Planning and Development Act, 2000.

The Applicant Shillelagh Quarries Ltd., whose principal business is the extracting and processing of shale for supply to the construction industry. The business provides employment for c.12 people directly.

The purpose of the report is to provide a document for pre-planning and environmental impact statement scoping consultations for South Dublin County Council, and other relevant stakeholders.

## DEVELOPMENT PROPOSAL

Shillelagh Quarries Ltd. currently operates a shale quarry. The proposed development application is for continued use under Section 261.

## SITE LOCATION

The quarry comprises approximately 26.8 hectares (c. 66.2 acres). Access to the site will be from the existing county road, the R114, from the national road, the N81, refer to Figure 1 attached.

The existing topography in the vicinity of the site varies in level from approximately 325m to 395m OD.

## COUNTY DEVELOPMENT PLAN (CDP)

The current county development plan (South Dublin County Council, 2004-2010) sets out the planning authority's policy for the extractive industry, as follows:

### Section 2.3.17 Policy EE16: Extractive Industry

#### 2.3.17.i

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

#### 2.3.17.ii

*'The Council recognizes the importance of the extractive industry in providing the aggregates and building materials required for all forms of construction and will facilitate its operation in suitable locations, having taken into account the continued reduction in demand with the increased re-cycling of construction and demolition waste.'*

*However, such industry can have severely damaging environmental effects and permission will only be granted where the Council is satisfied that residential and natural amenities will be protected, pollution will be prevented, and aquifers and ground water will be safeguarded. In addition all development proposals must make appropriate provision for the reinstatement of the landscape. Details of proposed reinstatement should accompany planning applications for extractive developments.'*

#### 2.3.17.iii

*'The Council will seek to ensure that significant aggregate resources in the County are appropriately protected and in this regard will restrict the siting of'*

*incompatible developments that would interfere with the efficient development of such resources.'*

Development Control Section 12.3.4: Extractive Industry

12.3.4.i

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

12.3.4.ii

*'It will be a requirement that applications for development within this category will be accompanied by an Environmental Impact Statement and a detailed landscaping plan. The plan should indicate proposed screening for the operational life of the site and set out a programme for the reinstatement of the landscape.'*

12.3.4.iii

*'The Council will have regard to the Quarries and Ancillary Activities Guidelines for Planning Authorities, April 2004 published by the Department of the Environment, Heritage and Local Government, or as may be amended from time to time. Any restriction arising as a consequence of the application by the Council of the Guidelines shall not be prejudicial to the provision of rural housing to qualifying applicants nor to any activity permitted under the zoning objective.'*

Land Use Zoning and Local Zoning Objectives Table No. 10.13 Zoning Objective 'H' *to protect, provide for and enhance the outstanding natural character of the Dublin Mountain Area.*

*Open for Consideration – Industry-Extractive (Not permitted above 350m contour)*

**Comment**

It is noted in the development plan that extraction is "open for consideration" within lands having a zoning objective "H, where it is an objective of the Planning Authority to " *to protect, provide for and enhance the outstanding natural character of the Dublin Mountain Area*". Such proposals will only be open for consideration where such activities are below the 350 meters contour.

The operation at Aghfarrell has been ongoing since the 1930's and prior to the appointed day (1st October 1964) within the landholding that has been in family ownership since prior to then.

Section 261 of the Planning and Development Act 2000, Section 7 (a) (2) (c), which states that;

"A planning authority, or the Board on appeal, shall, in considering an application for planning permission made pursuant to a requirement under paragraph (a), have regard to the existing use of the land as a quarry"

The lands, the subject of the current application under Section 261, are currently in use as a quarry and therefore the development does not contravene the zoning objective for the site.

**GEOLOGY**

The regional bedrock geology indicates that the site is located on the boundary of the Butter Mountain formation, which consists of dark slate – schist, quartzite and coticule and the Aghfarrell Formation which consists of greywacke siltstone, slate and quartzite. (Geological Survey of Ireland 1:100,000 Geology of Kildare-Wicklow, Sheet 16). The regional

geological map indicates that there are no major faults or changes in lithology in the vicinity of the site.

### **Quarry Extension**

The existing quarry covers an area of approximately 15 hectares. Future quarry development will extend south into approximately 11.8 hectares.

A preliminary extraction scheme for the quarry has been completed and this indicates an extractable reserve within the quarry lands of approximately 16 million tonnes.

### **Extraction Rate & Operational Life**

The current extraction rate at the facility is approximately c.450,000 tonnes per year. It is proposed to maintain extraction at the current level. At this rate of extraction the operational life of the proposed development will be 35 years.

### **WORKING HOURS & EMPLOYMENT**

The quarry operates during the hours from 08:00 to 20:00 hrs. Monday to Friday, and on Saturday, from 08:00 to 16:00 hrs. Loading of trucks is carried out between 07.00 to 08.00 hrs. The quarry does not operate on Sundays or Bank Holidays.

Continued operation of the quarry will secure employment for a work force of c.12 personnel including direct employees, sub-contractors, hauliers and services.

### **OFFICES & FACILITIES**

There is a portakabin office and storage container within the quarry.

### **RESTORATION AND AFTERCARE**

A restoration scheme will be prepared and submitted with the planning application. Redundant structures, plant equipment and stockpiles will be removed from site on permanent cessation of quarry activity.

### **TRANSPORT**

The haulage route from the site will be via the existing county road onto the N81 National Secondary road (Dublin to Baltinglass), turning off at Brittas onto the R114, refer to Figure 1. The distance to the N81 is approximately 2 kms.

The existing access onto the county road is provided with a dust free surface for a distance of c.700 metres into the site to prevent carryout of material onto the public road.

The expected traffic generated by the development equates to approximately 95 truck movements per day leaving and returning to the site.

A roads & traffic impact assessment will be undertaken as part of the EIS.

### **ENVIRONMENTAL CONSIDERATIONS**

The extraction area is greater than 5 hectares, and therefore an Environmental Impact Statement will be required to accompany the planning application.

In preparing the planning application and EIS the current environmental management practice and future mitigation measures to address potential impacts will be assessed and documented. This will

reference and incorporate the guidance set out in Quarries & Ancillary Activities: Guidelines for Planning Authorities (DoEHLG, 2004) and "Environmental Management in the Extractive Industry" (2006) to be published by the Environmental Protection Agency. A preliminary assessment of key environmental issues, for EIS scoping purposes, is provided below. Consultations will be held with relevant statutory consultees and other stakeholders as listed previously.

#### **HUMAN BEINGS**

There are a small number of dwellings within the vicinity of the existing quarry. The EIS will assess the impact, if any, on these dwellings and consider the wider socio – economic issues such as employment.

#### **FLORA & FAUNA**

The site is not located within any designated ecological area, National Heritage Area or Special Area of Conservation. The nearest pNHA is located approximately 2 km from the site boundary. The site is also located approximately 2 km from the Glenasmole Study Area.

Notwithstanding the above, an ecological assessment will be undertaken (as part of the EIS) to assess the ecological value of the lands and whether there are any protected species or habitats worthy of protection. The quarry development will incorporate landscaping and restoration proposals to reduce the impact of the proposed development on the ecology of the area.

#### **WATER**

Based on experience to date within the existing quarry any surface water run-off or groundwater inflows are controlled by the existing water management system.

A hydrogeological assessment will be carried out as part of the EIS to determine the current surface water and groundwater regime within the site, and to assess the potential impacts, if any, on water resources. Where required, mitigation measures will be specified within the EIS and implemented by the operator.

#### **AIR QUALITY - DUST**

Quarrying activities and ancillary facilities, by their nature, generate dust. The dust arises predominantly from inert soil and rock materials.

The main potential sources of dust include processing plant, stockpiles, traffic on internal haul roads, stripping and overburden storage. They are generally

dispersed sources rather than specific point sources, and this dictates the measures required to mitigate potential dust related impacts.

Dust deposition monitoring is currently carried out at the quarry.

Monitoring results indicate that the quarry development can comply with the recommended DoEHLG (2004) / EPA (2006) dust deposition limits (for insoluble and soluble matter) at site boundaries of:

Dust deposition (total): 350 mg/m<sup>2</sup>/day (when averaged over a 30 day period).

A number of standard mitigation measures have and will be put in place to aid fugitive dust reduction and ensure that the operations comply with the recognised dust deposition thresholds (DoEHLG, 2004).

NOTE: DoEHLG recommended threshold is total dust 350mg/m<sup>2</sup>/day (averaged over 30 days)

## NOISE & VIBRATION

### Noise

Noise monitoring is currently carried out at the quarry. Monitoring results at the quarry indicate that it can comply with the recommended DoEHLG (2004) / EPA (2006) noise limit of 55dB(A) L<sub>aeq</sub> (1 hour) by daytime and 45dB(A) L<sub>aeq</sub> (15 minutes) by nighttime at the nearest sensitive location.

A number of further mitigation measures will be put in place, where required, to ensure that emissions are within accepted thresholds for this type of development (refer to DoEHLG, 2004 and EPA, 2006).

### Blasting

Blasting is currently used within the shale quarry to fragment the shale prior to processing (crushing / screening etc.).

The proposed development complies with the recommended vibration and air overpressure emission limit values applied at the nearest vibration sensitive location (e.g. a residential property) Blasts are always monitored, that being approximately x times per month.

Monitoring results indicate that the proposed development can comply with threshold limit values.

**Groundborne vibration:** Peak particle velocity = 12 mm per second (mm/sec), measured in any of the three mutually orthogonal directions at the receiving location (for vibration with a frequency of less than 40 hertz).

**Air overpressure:** 125 dB (Linear maximum peak value), with a 95% confidence limit.

Normal hours of blasting will be restricted (e.g. 10.00 – 18.00 hrs Monday to Friday).

Blasting is typically carried c.1-2 times per month. All blasts are monitored and blasting practice is strictly adhered to, so as to ensure full compliance with recognised threshold limits.

Advance notification of blasting will be provided to nearby residents through use of written notes, signage at site entrance, telephone, or warning sirens (or a combination of these methods).

## LANDSCAPE

Within the South Dublin County Development Plan, 2004 – 2010, Schedule 7, Landscape and Character Areas, the Aghfarrell area is classified under Area 7 – Ballinascomey, the strategy for which is as follows :

- Archaeological features to be conserved
- Forestry – careful development is needed to ensure minimal negative impacts on the landscape

Shillelagh Quarries Ltd. are aware of the quarry visibility and will continue to quarry in a manner which will minimise the visual impact, such as phasing the extraction and minimising stripping in advance.

The quarry design (direction of working / phasing of extraction etc.) and operational landscaping will mitigate any visual impact, including any light pollution issues, arising at these distant locations.

At the end of the quarry's life all site infrastructure shall be removed. A detailed landscaping and restoration scheme shall be prepared and submitted as part of any planning application / EIS. The restoration scheme will be kept under review during the life of the operation.

### **CULTURAL HERITAGE**

There are no features of archaeological interest within the site indicated on the 1:50,000 or 1:2,500 scale Ordnance Survey maps. Notwithstanding this an archaeological assessment will be carried out as part of the EIS.

### **CONTACT**

If you have any queries in relation to this pre-planning consultation / EIS scoping document please contact:

Shane McDermott  
John Barnett & Associates  
Unit 7, Dundrum Business Pk.  
Windy Arbour, Dublin 14

Tel. 01 – 296 4667  
Email: [smcdermott@csa.ie](mailto:smcdermott@csa.ie)

### **REFERENCES**

DoEHLG (2004) Quarries and Ancillary Activities :  
Guidelines for Planning Authorities (DoEHLG, 2004)

Environmental Protection Agency (2006),  
"Environmental Management Guidelines for the  
Extractive Industry"

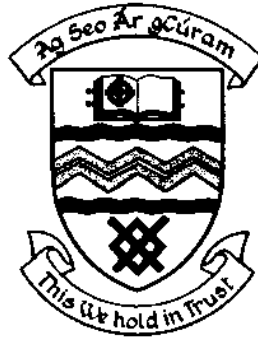
South Dublin (2004), "South Dublin County Council  
Development Plan 2004-2010".

Planning and Development Act 2000

SOUTH DUBLIN COUNTY COUNCIL  
COMHAIRLE CHONTAE ÁTHA CLIATH THEAS

Bosca 4122  
Lár an Bhaile, Tamhlacht  
Baile Átha Cliath 24

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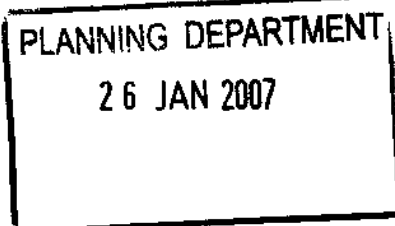


ENVIRONMENTAL  
HEALTH OFFICERS'  
DEPARTMENT  
P.O. Box 4122  
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Dublin 24

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Fax: 01-414 9117

Mr Shane McDermot  
John Barnett & Associates  
CSA House  
7 Dundrum Business Park  
Windy Arbour  
Dublin 14

B.M.



26<sup>th</sup> January 2007

Re : Shillelagh Quarry, Aghfarrell Brittas

Dear Sir

I refer to your letter of the 11<sup>th</sup> January enclosing a pre planning scoping document for an EIS on the above Quarry.

I write to confirm that the Environmental controls enforced by the Environmental Health Department of South Dublin County Council, namely noise, dust and vibration have been covered in the document.

Should you have any queries on these matters, please do not hesitate to contact me.

Yours Sincerely

Joanna Troughton  
Environmental Health Officer

c.c Bob Matthews Senior Executive Planner



**John Barnett & Associates**

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BY Post

JBA3215/L04/tp

Mr. Paddy McNamara  
Administrative Officer,  
Planning Department,  
County Hall, Town Centre,  
Tallaght  
Dublin 24

*P. M. McNamara*  
*MK/Bnz*

PLANNING DEPARTMENT  
16 AUG 2006

14<sup>th</sup> August 2006

Dear Mr. McNamara,

**Re: Section 261 Planning & Development Act 2000 : Shillelagh Quarries Ltd.  
Quarry at Aghfarrell, Brittas (Register Reference No. SDQU05A/1)**

We refer to your recent letter dated 8th August 2006 in relation to the above, and our recent Pre-Planning meeting in your offices.

We have requested an extension of time from 6 months to 12 months to submit the planning application and accompanying EIS in order to have an adequate time period to complete scoping and baseline environmental studies for the EIS. In this regard we would note that scoping with the relevant consultees can take over 2 months, particularly where the annual holiday period falls within the 6 month period.

This extension request is particularly relevant to baseline studies for topics such as Water, Air Quality and Landscape where a longer period of time is required to capture seasonal variations. We trust this provides an adequate justification for our request and that you can now confirm acceptance of the extension of time from 6 to 12 months on this basis.

If you have any further queries on this matter please contact Tim Paul or myself.

Yours Sincerely  
For John Barnett & Associates Ltd.

*Geraldine Fitzgerald*  
Geraldine Fitzgerald

Cc. Ms Sandra Murphy Shillelagh Quarries Ltd.

Messrs John Barnett & Associates,  
CSA House,  
7 Dundrum Business Park,  
Windy Arbour,  
Dublin 14.

22<sup>nd</sup> September 2006.

FAO Ms. Geraldine Fitzgerald

**Re Section 261 Planning and Development Act 2000  
Shillelagh Quarries Ltd., Aghfarrell, Brittas.  
Register Reference No. SDQU05A/1**

Dear Ms. Fitzgerald,

I refer to your letter dated 14<sup>th</sup> August 2006 in regard to your request for an extension of the time period for submission of a planning application and environmental impact statement in respect of the above quarry.

I confirm that the Planning Authority has agreed to extend the time period for submission of a planning application and environmental impact statement in respect of the above quarry to 18<sup>th</sup> April 2007.

Your sincerely,

P. McNamara,  
Administrative Officer



**John Barnett & Associates**

*B Matthews*

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**BY Post**

JBA3215/L01/tp/gf

PLANNING DEPARTMENT

25 AUG 2006

Mr. Robert Matthews  
Senior Executive Planner,  
Planning Department,  
County Hall, Town Centre,  
Tallaght  
Dublin 24

23rd August 2006

Dear Mr. Matthews,

**Re: Section 261 Planning & Development Act 2000 : Shillelagh Quarries Ltd.  
Quarry at Aghfarrell, Brittas (Register Reference No. SDQU05A/1)**

Further to the meeting on the 10<sup>th</sup> April 2006, Shillelagh Quarries Ltd. and their advisors John Barnett and Associates Ltd. have provided below their proposed list of statutory consultees to be consulted during the preparation of the planning application and EIS required for the existing quarry at Aghfarrell, Brittas, Co. Dublin.

- South Dublin County Council: Planning, Environmental and Roads Sections
- DoEHLG: National Monuments Section
- DoEHLG: National Parks and Wildlife Service
- Eastern Regional Fisheries Board
- Eastern Health Board
- An Taisce
- Heritage Council
- Bord Failte

Can you please review the above list and confirm your approval of same.

If you have any further queries on this matter please contact Tim Paul or myself.

Yours Sincerely  
For John Barnett & Associates Ltd.

  
Geraldine Fitzgerald

Cc. Ms Sandra Murphy Shillelagh Quarries Ltd.

**IN THE MATTER OF THE PLANNING AND DEVELOPMENT ACT, 2000**

**NOTICE PURSUANT TO SECTION 261(7) OF  
THE PLANNING AND DEVELOPMENT ACT, 2000**

**TAKE NOTICE** that for the purpose of the exercise of its functions under the Planning and Development Act, 2000, South Dublin County Council as the planning authority for the area hereby requires you, being the registered owner of lands situated in the Townland of Aghfarrell, Brittas in the County of South Dublin and registered as a quarry in accordance with Section 261(1) of the Planning and Development Act 2000 under Register Reference Number SDQU05A/1, not later than 18<sup>th</sup> October 2006, or such other period as may be agreed in writing with the Planning Authority, to apply for planning permission and submit an Environmental Impact Statement in respect of the continued operation of the aforementioned quarry.

**AND FURTHER TAKE NOTICE** that if you fail to apply for planning permission and submit an Environmental Impact Statement in respect of the continued operation of the aforementioned quarry not later than 18<sup>th</sup> October 2006 or such other period as may be agreed in writing with the Planning Authority the quarry shall be unauthorised development.

Dated the 19<sup>th</sup> day of April 2006.

Signed:

Paddy McNamee  
South Dublin County Council  
County Hall  
Town Centre  
Tallaght  
Dublin 24.

To: Shillelagh Quarries Limited,  
Aghfarrell,  
Brittas,  
County Dublin.

SOUTH DUBLIN COUNTY COUNCIL  
COMHAIRLE CHONTAE ÁTHA CLIATH THEAS

**An Roinn Pleanála**

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Email: [planning.dept@sdblincoco.ie](mailto:planning.dept@sdblincoco.ie)

Messrs Shillelagh Quarries Limited,  
Aghfarrell,  
Brittas,  
County Dublin.

Website: [www.southdublin.ie](http://www.southdublin.ie)

18<sup>th</sup> April, 2006

**Re Section 261 Planning And Development Act 2000**  
**Quarry at Aghfarrell, Brittas, County Dublin - Register Reference No. SDQU05A/1**  
**Registration Date: 20 April 2005.**

Dear Sirs,

Section 261(7) of the Planning & Development Act 2000 provides that where the continued operation of a quarry, the extracted area of which is greater than 5 hectares and that commenced operation before 1<sup>st</sup> October 1964, would be likely to have significant effects on the environment, having regard to any selection criteria prescribed by the Minister for the Environment, Heritage and Local Government under Section 176(2)(e) of the Planning & Development Act 2000, a planning authority shall not impose conditions on the operation of the quarry under Section 261(6) but shall, not later than one year after the date of the registration of the quarry, require, by notice in writing, the owner or operator of the quarry to apply for planning permission and to submit an environmental impact statement to the planning authority not later than 6 months from the date of the service of the notice, or such other period as may be agreed with the planning authority.

Having considered the information provided in the registration application submitted, including the additional information received on 27<sup>th</sup> September 2005, and the correspondence received from John Barnett & Associates dated 7<sup>th</sup> April 2006 submitted by way of response to the Council's letter to you dated 21<sup>st</sup> February 2006, and having regard in particular to the selection criteria prescribed by the Minister for the Environment, Heritage and Local Government under Section 176(2)(e) as set out in Appendix A herewith, and to the policies and objectives included in the South Dublin County Development Plan 2004-2010 as set out in Appendix B herewith, the Planning Authority is satisfied that the extracted area of the subject quarry exceeds 5 hectares, and that the subject quarry commenced operation before 1<sup>st</sup> October 1964, and considers that the continued operation of the subject quarry would be likely to have significant effects on the environment, for the reasons set out below.

The subject quarry is located in an area in relation to which it is an objective of the Council "To Protect and Enhance the Outstanding Natural Character of the Dublin Mountain Area" (Zoning Objective 'H') as designated in the South Dublin County Development Plan 2004-2010.

The quarry workings at this location are visible as a significant scar on the landscape in the views looking south eastwards from the County road linking the N81 at Kiltalown to Brittas Village, and from the R114 (Brittas to Bohernabreena) Road. It is an objective of the Council to protect these views as indicated on Development Plan maps.


A substantial portion of the land on which the subject quarry is located lies above the 350 metre OD contour level. As indicated in relation to Table 10.13 of the South Dublin County Development Plan 2004-2010, the land use activity 'Industry - Extractive' is not permitted above the 350 metre OD contour level in areas subject to Zoning Objective 'H'.

Having regard to the characteristics of the subject quarry operation, to the environmental sensitivity of the geographical area in which the quarry is located, and to the potential significant effects of the quarry operation, it is considered that the quarry operation would be likely to have significant adverse effects on the environment, having regard to the criteria prescribed by the Minister for the Environment, Heritage and Local Government under Section 176(2)(e) of the Planning & Development Act 2000, and to the provisions of the South Dublin County Development Plan 2004-2010.

In accordance with Section 261(7) of the Planning & Development Act 2000 South Dublin County Council as the Planning Authority for the area is serving a Notice requiring Shillelagh Quarries Limited to submit a planning application and an Environmental Impact Statement in respect of the subject registered quarry situated in the Townland of Aghfarrell, Brittas, County Dublin, not later than 18<sup>th</sup> October, 2006, or such other period as may be agreed in writing with the Planning Authority.

In accordance with section 261(10)(b) any quarry in respect of which a notification under subsection (7) applies shall, unless a planning application in respect of the quarry is submitted to the planning authority within the specified period, be unauthorised development.

Yours faithfully



P. McNamara  
Administrative Officer

## Appendix A

### **Selected Criteria Prescribed by the Minister for the Environment, Heritage and Local Government under Section 176(2)(e) of the Planning & Development Act 2000**

The selection criteria prescribed by the Minister under Section 176(2)(e) of the Planning & Development Act 2000 for determining whether a development would or would not be likely to have significant effects on the environment are set out in Schedule 7 of the Planning & Development Regulations 2001 (S.I. No. 600). The following criteria included in the prescribed selection criteria are considered most relevant to the determination as to whether the operation of the subject quarry would be likely to have significant effects on the environment:-

1. *The characteristics of the 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,
  
2. *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 mountain and forest areas, and landscapes of cultural significance.
  
3. *The potential significant effects of the proposed development in relation to criteria set out under paragraphs 1 and 2 above and having regard in particular to:*
  - the extent of the impact (geographical area),
  - the probability of the impact,
  - the duration and reversibility of the impact.

## **Appendix B**

### **Selected Extracts from the South Dublin County Development Plan 2004-2010**

#### **Development Plan Policies**

##### **9.3.1 Policy LHA 1: Preservation of Landscape Character**

9.3.1.i

*It is the policy of the Council to protect the character of the landscape in the County in accordance with the policies and objectives of the Development Plan and with the "Draft Guidelines for Landscape and Landscape Assessment, 2000" as issued by the Department of the Environment and Local Government or any finalised Guidelines issued by the Department.*

##### **9.3.2 Policy LHA 2: Views and Prospects**

9.3.2.i

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

9.3.2.ii

The County contains many scenic areas and vantage points from which views of great natural beauty may be obtained, over adjoining counties and the rural landscape in general. In addition to scenic views, the County also contains important "prospects" i.e. prominent landscapes or areas of special amenity value or special interest, which are visible from the surrounding area. Views and prospects for protection have been identified in the Plan. Views and prospects are shown on the Development Plan Maps and prospects are listed in Chapter 13 - Specific Objectives.

Table 13.9 Prospects for which it is an Objective to Protect

<b>Viewing Points</b>	<b>Prospects</b>
Blessington Road (Killinarden area)	Knockannavea, Tallaght Hill
Naas Road	Tallaght Hill
Garter Lane(Saggart)	Knockannavea, Tallaght Hill

##### **9.5.1 Policy LHA 15: Dublin Mountain and High Amenity Zones**

9.5.1.i

*It is the policy of the Council to conserve the character of the Dublin Mountain and High Amenity Zones.*

9.5.1.ii

In the implementation of this policy it is the intention of the Council to designate and conserve areas of outstanding natural beauty and/or recreational value. Such areas include the Dublin Mountains and the Liffey and Dodder Valleys, and are covered by the zoning objectives 'G' - "To protect and improve High Amenity Areas" and 'H' - "To protect and enhance the outstanding natural character of the Dublin Mountain Area".

9.5.1.iii

These areas play a crucial role in recreation and amenity terms, in addition to serving as valuable wildlife habitats.

##### **9.5.3 Policy LHA 17: Preservation of Major Natural Amenities**

9.5.3.i

*It is the policy of the Council to preserve the major natural amenities of the County (i.e. Dublin Mountains and River Valleys) and to provide parks and open spaces in association with them.*

##### **9.5.4 Policy LHA 18: National Park**

9.5.4.i

*It is the policy of the Council to facilitate and assist in the establishment of a National Park in the Dublin/Wicklow Mountains.*

### **2.3.17 Policy EE17: Extractive Industry**

#### **2.3.17.i**

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

#### **2.3.17.ii**

The Council recognises the importance of the extractive industry in providing the aggregates and building materials required for all forms of construction, and will facilitate its operation in suitable locations, having taken into account the continued reduction in demand with the increased re-cycling of construction and demolition waste. However such industry can have severely damaging environmental effects and permission will only be granted where the Council is satisfied that residential and natural amenities will be protected, pollution will be prevented, and aquifers and ground water will be safeguarded. In addition all development proposals must make appropriate provision for the reinstatement of the landscape. Details of proposed reinstatement should accompany planning applications for extractive developments.

#### **2.3.17.iii**

The Council will seek to ensure that significant aggregate resources in the County are appropriately protected and in this regard will restrict the siting of incompatible developments that would interfere with the efficient development of such resources.

#### **2.3.17.iv**

It is an objective to carry out a comprehensive study of aggregate resources in the County with a view to the preparation of a strategy for their sustainable exploitation, having regard to relevant legislation and guidelines, and to the views of all interested parties.

## **Development Control Objectives**

### **12.3.4 Extractive Industry**

#### **12.3.4.i**

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

#### **12.3.4.ii**

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

#### **12.3.4.iii**

The Council will have regard to the Quarries and Ancillary Activities Guidelines for Planning Authorities, April 2004 published by the Department of the Environment, Heritage and Local Government, or as may be amended from time to time. Any restriction arising as a consequence of the application by the Council of the Guidelines shall not be prejudicial to the provision of rural housing to qualifying applicants nor to any activity permitted under the zoning objective.

### **12.12.7 Upland Mountain Areas/High Amenity Areas**

#### **12.12.7.i**

Within that part of the Dublin Mountains area, which is generally above the 350 metre contour, the Council shall, in the control of development, seek to retain the open natural character of mountain heaths and mountain blanket bogs. In order to preserve the unique character of the Dublin Mountain zone new buildings should be low-rise, generally single-storey structures. Sensitivity in the siting and design of new developments in general will be required in both the High Amenity and Dublin Mountain zones

#### **12.12.7.ii**

No advertisement or advertisement structure will normally be permitted in upland areas above the 350m contour. The control of development shall also be exercised with the objective of enhancing the outdoor recreational potential of the area while protecting and sustaining the environmental capacity of the upland landscape.

12.12.7.iii

Within zoned High Amenity Areas or Mountain areas, any new development not related directly to the area's amenity potential or to its use for agriculture, mountain or hill farming will not be permitted.

12.12.7.iv

It is an objective of the Council to limit the development of residential, commercial or industrial clusters to areas below the 120 metre contour in the Dublin Mountains area, (except where A1 zones are shown in this Plan above the 120 metre contour and also where specific objectives so permit in this Plan), in the interest of pursuing the policy of sustainability in both high amenity and rural areas.

#### **Table No. 10.13 Zoning Objective 'H'**

**“TO PROTECT AND ENHANCE THE OUTSTANDING NATURAL CHARACTER OF THE DUBLIN MOUNTAIN AREA”**

#### **USE CLASSES RELATED TO ZONING OBJECTIVE**

**PERMITTED IN PRINCIPLE** Open Space

#### **OPEN FOR CONSIDERATION**

Aerodrome/Airfield<sup>d</sup>, Agricultural buildings, Bed & Breakfast<sup>a d</sup>, Boarding Kennels<sup>d</sup>, Carpark<sup>d</sup>, Caravan Park-Holiday<sup>d</sup>, Cemetery<sup>d</sup>, Church<sup>d</sup>, Community Centre<sup>d</sup>, Concrete/Asphalt (etc.) Plant in or adjacent to a Quarry<sup>d</sup>, Crèche/Nursery School<sup>a</sup>, Cultural Use, Doctor/Dentist<sup>a d</sup>, Education, Garden Centre<sup>d</sup>, Guest House<sup>a d</sup>, Halting Site/Group Housing<sup>d</sup>, Health Centre<sup>a</sup>, Home Based Economic Activities<sup>a d</sup>, Hospital<sup>a d</sup>, Hotel<sup>a d</sup>, Motel<sup>a d</sup>, Industry-Extractive<sup>d</sup>, Nursing Home<sup>a d</sup>, Public Services, Recreational Facility/Sports Club<sup>d</sup>, Refuse Landfill/Tip<sup>d</sup>, Residential<sup>c d</sup>, Residential Institution<sup>a d</sup>, Restaurant<sup>a d</sup>, Rural Industry-Cottage<sup>d</sup>, Rural Industry-Food<sup>a d</sup>, Shop-Local<sup>a d</sup>, Veterinary Surgery<sup>a d</sup>.

#### **NOT PERMITTED**

Abattoir, Advertisements and Advertising Structures, Betting Office, Caravan Park-Residential, Cash & Carry / Wholesale Outlet, Crèche / Nursery School, Dance Hall / Discotheque, Enterprise Centre, Funeral Home, Health Centre, Heavy Vehicle Park, Household Fuel Depot, Industry-General, Industry-light, Industry-Special, Motor Sales Outlet, Office-Based Industry, Offices less than 100 sq. m, Offices 100 sq. m - 1,000 sq. m, Offices over 1,000 sq. m, Petrol Station, Public House, Recreational Buildings (Commercial), Refuse Transfer Station, Retail Warehouse, Retirement Home, Science and Technology Based Enterprise, Scrap Yard, Service Garage, Shop-Discount Food Store, Shop-Neighbourhood, Shops-Major Sales Outlet, Transport Depot, Warehousing.

*a In existing premises.*

*c In accordance with Council Policy for Development in Rural Areas.*

*d Not permitted above 350m contour*

COMHAIRLE CHONTAE ATHA CLIATH THEAS  
SOUTH DUBLIN COUNTY COUNCIL

P/017/06

Record of Executive Business and Manager's Orders

Section 261(7) of the Planning & Development Act, 2000

Shillelagh Quarry located at Aghfarrell, Brittas

Having regard to the selection criteria prescribed by the Minister under Section 172(2)(e) of the Planning & Development Act 2000 and to the provisions of the South Dublin County Development Plan 2004-2010 it is considered that the quarry at Aghfarrell, Brittas operated by Shillelagh Quarries Limited would be likely to have significant adverse effects on the environment.

I therefore recommend that a Notice under Section 261(7) of the Planning & Development Act 2000 be served on Shillelagh Quarries Limited, Aghfarrell, Brittas, County Dublin, requiring the company to apply for planning permission and to submit an Environmental Impact Statement to the Planning Authority not later than 18<sup>th</sup> October 2006 or such other period as may be agreed in writing with the Planning Authority in respect of the continued operation of the aforementioned quarry.

DATED 18<sup>th</sup> April 2006

Jane Wamca  
ADMINISTRATIVE OFFICER

DATED 18/4/2006.

Michael Curran  
SENIOR PLANNER

**ORDER:** The service of a Notice under Section 261(7) of the Planning & Development Act, 2000 on Shillelagh Quarries Limited, Aghfarrell, Brittas, County Dublin, requiring the company to apply for planning permission and to submit an Environmental Impact Statement to the Planning Authority not later than 18<sup>th</sup> October 2006 or such other period as may be agreed in writing with the Planning Authority in respect of the continued operation of the aforementioned quarry, is hereby authorised.

DATED 18/04/06

deputy Robert  
COUNTY MANAGER

# SOUTH DUBLIN COUNTY COUNCIL



## INTERNAL MEMORANDUM

**Report re QUARRY REGISTRATION APPLICATION - SDQU05A/1**

### SUMMARY OF REGISTRATION APPLICATION

<b>Date of Registration</b>	20 April 2005
<b>Operator:</b>	Shillelagh Quarries Ltd.
<b>Location:</b>	Aghfarrell, Brittas
<b>Area of Site:</b>	48.5 ha.
<b>Extractable Area:</b>	27.0 ha.
<b>Extracted Material:</b>	Shale
<b>Extraction Method:</b>	Blasting , Crushing
<b>Extraction Rate:</b>	500,000 tonnes per year
<b>Operating Hours:</b>	08.00 - 20.00
<b>Vehicle Movements:</b>	190 per day
<b>Ancillary Operations:</b>	None
<b>IPC Licence:</b>	None
<b>Monitoring:</b>	No details available
<b>Planning Status:</b>	Pre-1964

### ZONING AND OTHER DEVELOPMENT PLAN OBJECTIVES

The area in which the site is located is zoned Objective 'H', "To Protect and Enhance the Outstanding Natural Character of the Dublin Mountain Area", in the Development Plan 2004-2010.

The land use activity 'Industry - Extractive' is 'open for consideration' in areas zoned Objective 'H'. However, such development is not permitted above the 350 metre contour line.

The relevant Development Plan Policies and Objectives are:-

- 2.3.17 Policy EE17: Extractive Industry
- 9.3.1 Policy LHA 1: Preservation of Landscape Character
- 9.3.2 Policy LHA 2: Views and Prospects
- 9.5.1 Policy LHA 15: Dublin Mountain and High Amenity Zones
- 12.3.4 Extractive Industry
- 12.12.7 Upland Mountain Areas/High Amenity Areas
- 13.5.1 Landscape.

### PLANNING HISTORY:

**Reg. Ref. S99A/0016** Planning Permission refused for retention of an earth embankment at Shillelagh Quarries.

**ENFORCEMENT:** There is a history of enforcement action relating to this quarry. The planning report relating to S99A/0016 states:

*"While it appears that there has been some quarrying activity at this site since prior to 1st October 1964 a High Court judgement delivered in May 1978 stated that development being carried on at that time differed materially from the development being carried on prior to 1st October 1964 and that, therefore, planning permission was required for the intensified quarrying operation (Ref. Patterson v. Murphy and Trading Services Ltd. 1978, ILRM 85)."*

## **ISSUES ARISING:**

### **General**

No planning permission exists for this quarry. Information submitted with the registration application states that quarrying operations commenced on the site in the 1930's. The quarry has therefore been in operation since prior to 1<sup>st</sup> October 1964.

### **Traffic**

The quarry site is located in the vicinity of the Kilsaran Concrete quarry at Ballinascorney, previously operated by Tracey Enterprises (Dundrum) Limited, and is accessed on the same road network. The combined impact of the two quarries on the local road network therefore requires to be assessed.

### **Visual Impact**

The quarry site is located in an area in relation to which it is an objective of the Council "To Protect and Enhance the Outstanding Natural Character of the Dublin Mountain Area" (Zoning Objective 'H'). The quarry workings at this location are visible as a significant scar on the landscape in the panoramic views looking south eastwards from Mountseskin Road (the minor road linking the N81 at Kiltalown to Brittas village), and from the R114 (Brittas to Bohernabreena) Road. It is an objective of the Council to protect these views as indicated on Development Plan maps.

No details are available of any landscaping or reinstatement works carried out to date. It is appropriate that such measures be put in place in order to mitigate the adverse impact of the quarry operations on the landscape, having regard to the zoning objective for the area, and in particular to the location of much of the site and workings above the 350 metre contour line.

### **Noise and Vibration**

No details were provided in the registration application of any monitoring of noise and vibration.

### **Dust Deposition and Air Quality**

No details were provided in the registration application of any monitoring of dust deposition and air quality.

### **Further Information**

In accordance with Section 261(3) the applicant was requested to submit a revised site map to a scale of not less than 1:2,500 indicating (a) the site boundary outlined in red, (b) the extractable area outlined in blue, (c) the total area extracted to date outlined in green, and (d) the location of the 350 metre contour line as shown on the Ordnance Survey map by letter dated 30<sup>th</sup> August 2005. Further Information received 28 September 2005 provides a revised site map as requested.

It is apparent from the revised map submitted by way of additional information that the major portion of the extractable area of the quarry is located on lands above the 350 metre contour. As noted above the land use activity 'Industry - Extractive' is not permitted above the 350 metre contour line in areas covered by zoning objective 'H'.

## **ACTION OPEN TO THE COUNCIL UNDER SECTION 261:**

### **Section 261(6)(i)**

In relation to a quarry which commenced operation before 1<sup>st</sup> October 1964, a planning authority may impose conditions on the operation of the quarry, having regard to the development plan and submissions or observations made pursuant to a notice under subsection (4) or (5), not later than 2 years from the registration of the quarry.

A letter accompanying the application states that the operating company consider that the local authority should impose conditions on the operation of the quarry as provided under Section 261 of the Planning & Development Act 2000.

### **Section 261(7)(a)**

Where the continued operation of a quarry, the extracted area of which is greater than 5 hectares and that commenced operation before 1<sup>st</sup> October 1964, would be likely to have significant effects on the environment ( having regard to any selection criteria prescribed by the Minister under Section 172(2)(e) ) a planning authority shall not impose conditions on the operation of a quarry under subsection (6) but shall, not later than one year after the date of the registration of the quarry, require, by notice in writing, the owner or operator of the quarry to apply for planning permission and to submit an environmental impact statement to the planning authority not later than 6 months from the date of the service of the notice, or such other period as may be agreed with the planning authority.

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

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

*The characteristics of proposed development,*  
in particular:

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

*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,
  - landscapes of historical, cultural or archaeological significance.

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

- the extent of the impact (geographical area),
- the probability of the impact,
- the duration and reversibility of the impact.

In considering an application made pursuant to Section 261(7)(a) a planning authority and An Bord Pleanála shall have regard to the existing use of the land as a quarry.

**Public Consultation - Statutory Public Notice**

In accordance with Section 261(4) a public notice was published on the 19<sup>th</sup> October 2005 inviting submissions in relation to the quarry registration applications received by the Council. The notice stated in respect of the registered quarry at Aghfarrell, Brittas, that the planning Authority was considering requiring Shillelagh Quarries Limited to submit a planning application and EIS.

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

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

A copy of a letter addressed to the County Manager dated 27-10-03 enclosed with the above submission refers to a High Court determination (Patterson v Murphy) that the quarrying operation was unauthorised, and details intensification of operations since 1999, including the extension of quarrying well above the 350 metre contour. The letter contends that this has totally destroyed the high amenity of this mountainous area, that the quarry is visible for many miles and that this was not the case prior to 1999.

#### **Consultation with Quarry Owner**

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

- (1) *the policies and objectives included in the South Dublin County Development Plan 2004-2010, including land use zoning, extractive industry, views and prospects, landscape protection, natural and built heritage, pollution, traffic, and amenities; and*
- (2) *to the extent of quarrying carried out to date, the nature scale and extent of the existing quarrying operation, and the potential for further quarrying; and*
- (3) *to the selection criteria prescribed by the Minister under Section 176(2)(e).*

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

In support of its contention that the continued operation of the quarry would not be likely to have 'significant effects on the environment' the submission comments on each of the numbered items cited in the council's letter of 21<sup>st</sup> February, 2006, and refers to the results of noise and dust monitoring carried out on the site as set out in Appendix A to the submission.

In summary the submission contends that with regard to Item (1):

- In relation to Land Use Zoning; while the subject quarry is operating above the 350 metre OD contour level extraction processes have been in operation since c.1930's which pre-dates the introduction of county development plans and the introduction of the 350 metre contour restriction introduced in the County Development Plan 1998.
- In relation to Extractive Industry; the subject quarry is an existing quarry and the extraction of shale is a long established land use in the area. Quarries by their nature are tied to aggregate resource locations, and the aggregate products of the quarry

are supplied to the local and regional market. Shillelagh quarries has implemented an Environmental Management Programme at the quarry, which includes best practice mitigation measures and an environmental monitoring programme (dust deposition, noise, and blasting). The quarry operates within the Quarries and Ancillary Activities - Guidelines for Planning Authorities, and the future environmental management / monitoring at the quarry can be adequately addressed by way of imposing conditions on the development, as provided for under section 261(6).

- In relation to Views and Prospects / Landscape Protection; the subject quarry, by virtue of its location / elevation / method and direction of working does not and will not impact on any of the Prospects listed in Table 13.9 of the County Development Plan from viewing points at Blessington Road (Killinarden Area), Ballinascorney Road or the Eastern and Western sides of Glenasmole Valley. On this basis the continued operation of the quarry will not result in any significant environmental (visual / landscape) effects.
- In relation to Natural and Built Environment; the quarry is not located within any designated ecological area, Natural Heritage Area or Special Area of Conservation, and the nearest proposed NHA is located approximately 2 km. From the site boundary. There are no features of archaeological interest on or surrounding the site. On this basis the continued operation of the quarry will not result in any significant effects on the natural or built environment.
- In relation to Traffic; the existing road network has adequate capacity to accommodate the traffic from the quarry, and there is and will be no significant traffic impact from the continued operation of the quarry.

In summary the submission contends that with regard to Item (2):

- In relation to the extent of quarrying carried out to date, the nature scale and extent of the existing quarrying operation and the potential for further quarrying; the existing quarry comprises approximately 48.5 hectares (119.8 acres), with a workable area of approximately 27 hectares (66.7 acres). The area extracted to date is approximately 12 hectares (29.5 acres). The existing topography in the vicinity varies in level from approximately 330 metres OD to 390 metres OD.

The existing quarry can be considered small to medium scale by its nature and extent when compared to other quarries located within the Greater Dublin Area. Shale is extracted using industry standard blasting techniques. Blasting is carried out approximately 1 to 2 times per month. The fragmented rock is crushed and screened using mobile processing plant located within the quarry floor to produce a range of aggregate products. No aggregate washing is carried out.

Future quarrying will be carried out in accordance with current operational practice. Where a material change is to occur (in terms of introducing value added manufacturing activities (concrete or asphalt), or an increase in the scale of the operations) then such a change will require planning permission.

In summary the submission contends the following with regard to the selection criteria prescribed by the Minister under Section 176(2)(e):

1. *The characteristics of the proposed development*, in particular:
  - In relation to the Size of the Proposed Development; a preliminary extraction scheme for the quarry indicates an extractable reserve within the quarry lands of approximately 16 million tonnes. There is no evidence to indicate that the size of the quarry has resulted in any significant environmental effects. The environmental management practice and mitigation measures in place at the quarry ensure that quarry operations do not impact significantly on the environment.

- In relation to the Cumulation with Other Proposed Development; There is one other quarry in the vicinity of the quarry at Aghfarrell but it is of sufficient distance away as not to have cumulative effects on the environment.
- In relation to the Use of Natural Resources; The shale is extracted and processed in an efficient sustainable manner thereby ensuring that there are sufficient extractable shale reserves for future generations whilst ensuring adequate security of supply for present development in the Greater Dublin Area. The operational life of the quarry will be 40 years.
- In relation to the Production of Waste; no waste is produced during extraction / processing of shale into aggregate products at the quarry. The environmental monitoring programme implemented at the quarry provides for the management of any man-made waste arising on the site. All recyclable materials are segregated on site to facilitate economic and safe recycling or disposal prior to being collected by licensed waste contractors. On this basis the waste management procedures in place at the quarry will not result in any significant effect on the environment.
- In relation to Pollution And Nuisances; No significant pollution or nuisances arise from the quarry. Noise monitoring carried out at the quarry indicates that the development complies with the DOEHLG recommended threshold limits of <55 dB(A)<sub>Laeq 1 hour</sub> measured at the nearest noise sensitive location. Records of noise monitoring are kept as part of the environmental monitoring programme implemented at the quarry. Best environmental management practice mitigation measures as recommended in the DOEHLG (2004) guidelines are implemented at the quarry. These include;
  - Use of screening berms
  - Location of mobile stone processing plant on the quarry floor
  - Minimising drop heights of material from plant and machinery
  - Regular maintenance of plant and machinery
  - Internal traffic routing and using haul roads with as low a gradient as possible

The environmental noise results demonstrate the effectiveness of the existing mitigation measures at the quarry to minimise noise levels.

- Dust Monitoring carried out at the quarry indicates that the development complies with the DoEHLG (2004) threshold limits of <350 mg/m<sup>2</sup>/day (averaged over 30 days) measured at the site boundary. Records of dust monitoring are kept as part of the environmental monitoring programme implemented at the quarry. Best environmental management practice mitigation measures as recommended in the DOEHLG (2004) guidelines are implemented at the quarry. These include;
  - Screening berms are vegetated to eliminate wind blown dust
  - Use of water bowser to suppress dust on internal haul roads during dry weather
  - Location of mobile stone processing plant on the quarry floor
  - Minimising drop heights of material from plant and machinery
  - Regular maintenance of plant and machinery
  - Regular cleaning of entrance area if necessary

The dust deposition results demonstrate the effectiveness of the existing mitigation measures at the quarry to minimise dust deposition levels.

- **Blasting:** Blast monitoring carried out at the quarry indicates that the development complies with the DoEHLG (2004) recommended threshold limits for groundbourne vibration of 12 mm/sec (peak particle velocity), and for air overpressure of 125 dB (Lin) – 95% confidence limit, measured at the nearest noise sensitive location. Records of blasts are kept as part of the environmental monitoring programme implemented at the quarry. Best environmental management practice mitigation measures as recommended in the DoEHLG (2004) guidelines are implemented at the quarry. These include;
  - Experienced professionals are used to design and carry out blasting operations
  - Use of time delays to limit maximum instantaneous charge
  - Use of appropriate stemming
 The blast monitoring results demonstrate the effectiveness of the existing mitigation measures at the quarry to minimise the impact of blasting operations.
- **Water:** The quarry extracts shale from below the groundwater table and groundwater inflows are controlled by sump pumping. The following best environmental management practice mitigation measures as recommended in the DOEHLG (2004) guidelines are implemented at the quarry;
  - Fuel storage tank is bunded
  - Fill point is located within the bunded area
  - A spill kit is provided on site, in the unlikely event of an accidental spillage.
- **Waste Management;** As stated previously.
- **Traffic / Transport;** The following measures are in place to ensure that traffic does not result in any significant environmental effects;
  - specific traffic routing
  - Ensuring all trucks are not over-loaded
  - Provision of car parking on site
  - Provision of truck parking on site
  - Maintenance of internal haul roads

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

- In relation to the existing land use; The quarry at Aghfarrell is an existing quarry, not a proposed development. The existing land use within the site is shale extraction and processing. Quarry operations have been carried out on the lands since the 1930's and have been operated by Shillelagh Quarries Ltd. Since that time. This submission confirms that the quarry will not result in significant environmental effects.
- The relative abundance, quality and regenerative capacity of natural resources in the area; The quarry is developed in a shale resource. The quarry rock faces will recolonise and regenerate resulting in ideal nesting habitats for bird species. Quarries are recognised as contributing significantly to the biodiversity of local areas, and the subject quarry is no exception.
- The absorption capacity of the natural environment, paying particular attention to the following areas; (a) mountain and forest areas, and (b) landscapes of historical, cultural or archaeological significance; The subject quarry is not located within any designated area, Natural Heritage Area or Special Area of Conservation as defined by the South Dublin County Development Plan.

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

- In relation to the extent of the impact (geographical area); The best practice environmental mitigation measures implemented at the subject quarry ensure that the extent of any potential impacts is effectively limited to within the Shillelagh

Quarries Ltd. Land interest. Environmental monitoring results indicate that the quarry is operated within the environmental threshold limit values for noise, dust deposition and blasting recommended by the DoEHLG (2004) guidelines.

In relation to the probability of the impact;

- Environmental monitoring results indicate that the quarry is operated within the environmental threshold limit values for noise, dust deposition and blasting recommended by the DOEHLG Guidelines (2004).

In relation to the duration and reversibility of the impact;

- Extraction operations are in effect a temporary land-use with the lands being restored to beneficial long-term after-use on cessation of quarrying activities. A restoration and after-use plan is currently being prepared for the quarry, and Shillelagh Quarries Limited would be pleased to accept imposition of a condition in this regard.

The submission concludes that based on the responses outlined above to each of the criteria stated in Schedule 7 and considering the:

- i) results of the ongoing environmental monitoring programme
- ii) implementation of current best practice mitigation measures
- iii) long-term nature of the existing quarrying operations on the site (since before 1<sup>st</sup> October 1964
- iv) small scale nature of the operation
- v) location of the quarry

it is clear that the extraction operations at the Aghfarrell quarry will not result in significant environmental effects.

### **Departmental Reports**

Environmental Health Officer: The report states that the submission received 7<sup>th</sup> April 2006 in relation to Shillelagh Quarries Limited quarry at Aghfarrell demonstrates compliance with the standards contained in the "Environmental Management Guidelines for the Extractive Industry (Non Scheduled Minerals)" (Draft), published by the Environmental Protection Agency. Accordingly there is no evidence to suggest that any pollution effects of the Quarry could not be mitigated. The report recommends that conditions to ensure the application of these standards should be attached to this operation.

Roads Department: A verbal report indicates that the existing road network is adequate to accommodate the traffic generated by the existing quarry operation at Aghfarrell, subject to an appropriate financial contribution being levied as part of any conditions to be imposed on the quarry operation to ensure that adequate maintenance of the road network is carried out to sustain the level of HGV traffic generated.

### **Assessment**

As noted earlier the quarry site is located in an area in relation to which it is an objective of the Council "To Protect and Enhance the Outstanding Natural Character of the Dublin Mountain Area" (Zoning Objective 'H'). The quarry workings at this location are visible as a significant scar on the landscape in the panoramic views looking south eastwards from Mountseskin Road (the minor road linking the N81 at Kiltalown to Brittas village), and from the R114 (Brittas to Bohernabreena) Road. It is an objective of the Council to protect these views as indicated on Development Plan maps.

It is noted that the consideration of the visual impact of the existing quarry operation in the submission by Barnett and Associates does not take account of the Development Plan objectives to protect views of the area in the vicinity of the quarry from public roads in the area.

### **Recommendation**

Having regard to the characteristics of the subject quarry operation and in particular to the visual prominence of the quarry workings, the environmental sensitivity of the geographical area in which the quarry is located as determined by the zoning objective for the area and the designation of views in the vicinity of the site to be protected and the location of much of the site and workings above the 350 metre contour line, and the potential significant effects of the quarry operation in relation to the criteria set out above having regard to the current rate of extraction and to the potential operational life of 40 years, it is considered that the quarry operation would be likely to have significant adverse effects on the environment.

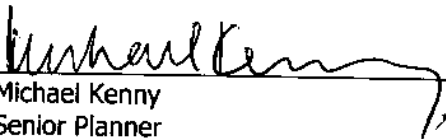
It is therefore appropriate that, in accordance with Section 261(7)(a), the owner / operator of the quarry be required to apply for planning permission and to submit an environmental impact statement to the planning authority not later than 6 months from the date of the service of the notice, or such other period as may be agreed with the planning authority.

It should be noted that in accordance with section 261(10)(b) any quarry in respect of which a notification under subsection (7) applies shall, unless a planning application in respect of the quarry is submitted to the planning authority within the specified period, be unauthorised development.



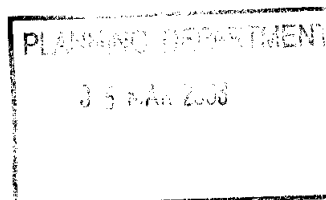
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Robert Matthews  
Senior Executive Planner



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Michael Kenny  
Senior Planner



**Shillelagh Quarries. Ltd.**

**ENVIRONMENTAL AUDIT 2007  
QUARRY OPERATIONS  
AGHFARRELL, BRITTAS, CO. DUBLIN.**

**February 2008**

**Prepared for:  
Shillelagh Quarries. Ltd,  
Aghfarrell,  
Brittas,  
Co. Dublin.**



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## 1. INTRODUCTION

Shillelagh Quarries Ltd. commissioned John Barnett & Associates Ltd. to undertake an environmental audit of its facilities at Aghfarrell, Brittas, Co. Dublin (see Location Plan Figure 1). It is a requirement under Section 12.0 of the Environmental Management System (EMS) December 2007.

The scope of the audit is to examine the activities of Shillelagh Quarries Ltd. to determine potential environmental impacts, to recommend thresholds and measures to reduce or alleviate any impacts where required. Section 12.0 of the EMS requires the audit to address the following:

- *Summary of all of the environmental monitoring results for the year*
- *Written record from the on-site weighbridge of the quantity of material leaving the site.*
- *Annual topographical survey to show all areas excavated and restored, to provide a full materials balance*
- *Record of movement of heavy vehicles outside the approved opening hours*
- *Full record of any breaches over the previous year for noise, dust and water quality*
- *Written record of all complaints including actions taken on each complaint.*

### 1.1. Audit

A site visit was carried out on Tuesday 15<sup>th</sup> January 2008, assessing all activities at Aghfarrell Quarry.

The audit team included;

- Ms. Ann Clancy            Environmental Scientist
- Ms. Lorraine Holland    Environmental Scientist

The audit was carried out in the following manner:

1. Environmental Audit Procedure.
  - Inspection of the site and equipment and company records;
  - Review of compliance with existing EMS conditions;
  - Review of materials storage and waste management practices;
  - Review of environmental monitoring records;
  - Completion of Action Plan for findings of Environmental Audit (see Appendix A).
2. Preparation of the Draft Environmental Audit Report.

3. Review Meeting.
4. Finalise and Issue Environmental Audit Report.

## **1.2. Report Structure**

The following report is structured as follows:

### ***Section 1 – Audit Methodology***

### ***Section 2 – Project Description***

A description of the surrounding environment, plant activity, plant history and planning background.

### ***Section 3 – Environmental Review***

This section reviews and assesses the Company's operational environmental performance. Monitoring is carried out on a regular basis and results are also discussed in this section.

### ***Section 4 – Conclusions & Recommendations***

This section summarises the conclusions arising from the environmental audit completed and presents a number of recommendations for consideration by Shillelagh Quarries Ltd.'s management.

## **2. PROJECT DESCRIPTION**

### **2.1. Company Background**

Shillelagh Quarries Ltd. is principally engaged in the production of quarrying and aggregate processing sector. The Company employs a total number of 21 people (excluding sub contractors), maintaining local employment in the area.

### **2.2. Management Structure**

For the purpose of the Environmental Audit the senior management representatives met with were:

- Company Director Ms. Sandra Murphy

### **2.3. Site Location and Setting**

Shillelagh Quarries Ltd.'s facility is located in Aghfarrell within the townland of Brittas, Co. Dublin. It is approximately 2km south west of the village of Brittas and the N81 Dublin to Tullow national secondary road (see Fig. 1 – Site Location Plan). Land around the site is utilised for agricultural use and forestry.

### **2.4. Planning and Operational Considerations**

Quarrying commenced on the lands before 1<sup>st</sup> October 1964. The quarry was registered with South Dublin County Council in accordance with the requirements of Section 261 of the Planning and Development Act, 2000 (Quarry Ref No. SDQU05A/1)

Under Section 261, the planning authority requested Shillelagh Quarries Ltd. to submit a planning application (and accompanying EIS) for the quarry. This application was submitted on 18<sup>th</sup> April 2007. A request for further information was issued by South Dublin County Council and a response to this request was submitted on 10<sup>th</sup> December 2007 (Planning File Ref. No. SD07A/0276). The application is currently under consideration by South Dublin County Council.

An Environmental Management System, (December 2007) has been implemented at the quarry. This includes an Environmental Monitoring Programme.

### 3. ENVIRONMENTAL REVIEW

The main issues identified as a result of the Environmental Audit have been addressed under the following headings:

- Dust & Air Quality
- Noise
- Blasting
- Waste Management
- Water
- Visual Amenity - *Restoration*
- Other Environmental Issues – *Transport, Public Safety, Good Housekeeping, Community Relations*

Recommendations were made as how to address the issues that arose (see action plan – Appendix A).

#### 3.1. Air Emissions

A dust monitoring station has been established at location D1, as shown by Figure 2. A standard Bergerhoff dust gauge has been used to record monthly deposition of insoluble particulate matter at the site boundary. The results for year 2007 are shown in Table 3.1:

##### 3.1.1. Assessment

*The DoEHLG (2004) Quarries and Ancillary Activities: Guidelines for Planning Authorities states that the:*

*'TA Luft dust deposition limit value be adopted at site boundaries near quarry developments:*

*Total dust deposition (soluble and insoluble): 350 milligrams per square metre per day (when averaged over a 30 day period).'*

The EPA (2006) environmental management guidelines for the sector also recommend this dust deposition emission limit value.

The results from 2007 indicate that the dust deposition levels are below the DoEHLG (2004) / EPA (2006) recommended dust deposition emission limit value

### 3.1.2. Dust Mitigation Measures

Dust suppression and control measures are in use in the Quarry. These include:

- Dust from loading is very localised, confined to the loader and the quarry floor.
- Use of mobile processing plant located on the quarry floor.
- Use of a water bowser to spray internal roads during periods of dry weather.

Dust monitoring for 2008 will commence in April 2008 to assess the effectiveness of the measures adopted and to ensure continued compliance with the accepted thresholds.

### 3.2. Noise

Noise is generated from various operations within the quarry development: crushing, screening, loading shovels, excavators and dump trucks.

A noise monitoring station has been established at one location (see Figure 2). Continuous noise monitoring was carried out using a Larson Davis Model 812 Sound Level Meter and a Larson Davis Model 824 Sound Level Meter, which were calibrated using a Larson Davis Acoustic Calibrator CAL 200. The results obtained are shown in Table 3.2.1.

A further noise survey was undertaken on 24<sup>th</sup> July and 31 July 2007. Noise measurements were made at five locations to assess noise levels in the vicinity of the existing quarry. The monitoring locations are shown on Figure 2 and are described as follows:

- N1** At the northern boundary of the site, 55m from the rear of the existing residence.
- N2** To the north of the quarry at the existing site entrance.
- N3** To the north west of the quarry at the existing residence.
- N4** To the west of the quarry at the existing residence.
- N5** In the undisturbed area to the south of the existing quarry.

The results obtained are shown in Table 3.2.2.

#### Discussion

The noise levels at N2 were affected by traffic entering and exiting the site. The noise levels at N3 were affected by machinery in use at the house close to the monitoring location. The noise levels at N2, N3 and N4 were also affected by frequent traffic on the local road.

Noise levels recorded at stations N1 and N5 are more representative of site activity as these levels are not influenced by passing traffic.

### 3.2.1. Assessment

Allowing for external traffic, the noise monitoring results show that the development complies with the noise threshold limits recommended in Quarries and Ancillary Activities: Guidelines for Planning Authorities (DoEHLG, 2004):

- (a) an  $L_{Aeq,1hr}$  value of 55 dB(A)- Daytime, at the nearest noise sensitive location.
  
- (b) an  $L_{Aeq,15min}$  level of 45 dB(A)- Nighttime, at the nearest noise sensitive location.

### 3.2.2 Noise Mitigation Measures

The following noise containment measures have been implemented to ensure continued compliance with the DoEHLG, 2004 noise limit of 55 dB (A).

- The preservation of hedgerows and boundary features aids noise reduction.
- Site activity on the quarry floor is below surrounding lands.
- Site activity is concentrated towards the centre of the site.
- Plant and machinery is regularly maintained.
- Provision of a screening berm acts as a barrier for noise.
- Where possible, planting has been carried out around the quarry boundary.

### 3.3. Blasting

Rock blasting is carried out twice to three times a month on average. Each blast is monitored at the nearest inhabited dwelling. The results for 2007 are shown in Table 3.3.

All the ground vibration levels recorded are within the recommended DoEHLG (2004) threshold limit value of 12mm/sec peak particle velocity. The air overpressure results, except for three air overpressure readings of 125.1 dBA on 03/01/2007, 125.2 on 11/01/2007, 127.6 on 22/01/2007 and 143.5 on 11/07/2007 comply with the DoEHLG (2004) recommended threshold value of 125dBL (with 95% confidence limit). One individual air overpressure value exceeded the limit value by more than 5 dBL i.e. 130 dBL, as recommended in the DoEHLG (2004) guidelines.

The following precautions are undertaken within the quarry to minimise disturbance during blasting:

- No blasting to be carried out outside of 10:00 hours and 18:00 hrs on working days (Monday to Friday).
- Air overpressure is minimised through proper blast design, avoiding the detonation of large unconfined charges.
- Regular monitoring of blast and blasting practice to be carried out to ensure strict adherence to the present standards. All drilling, blasting and shot firing is carried out by a blasting sub-contractor.
- Neighbours within 600 m of blast location are to be notified 24 hours before a blast. Currently blasting is carried out at distances greater than 600metres from neighbouring dwellings and therefore no notification is required. This shall be reviewed on a regular basis.

### **3.4 Waste Management**

The company has a waste management plan in place and any waste materials arising on site are collected by permitted carriers for re-use, recycling or disposal at permitted / licensed facilities, as follows:

#### **Scrap Metal**

Scrap metal and scrap items are brought to Hammond Lane.

#### **Batteries**

Batteries are currently collected by the supplier.

#### **Waste Oil**

Waste oil from the site is collected by Atlas Oil

#### **Tyres**

Tyres are collected by Krum

#### **Domestic Waste**

Domestic Waste arising on site is collected by IPODEC

### **3.5. Water**

Periodic water quality monitoring is carried out at the quarry. Lagoon and surface water monitoring was carried out in April 2007. The results of water quality monitoring are shown in Table 3.4. The results confirm that the water quality at these locations comply with the emission limit values recommended for suspended solids and Mineral Oil/Diesel Range Organics recommended in the EPA (2006) Environmental Management Guidelines for the sector.

### **3.6 Other Environmental Issues**

#### **3.6.1. Transport**

The regional road adjacent to the quarry entrance (R114) which links Brittas to Dublin, carries local traffic and traffic coming from the quarry.

### **3.7. Public Safety**

#### **3.7.1. Signage**

There are a number of signs around the perimeter of the site and at the site office / reception area.

### **3.8 Environmental Records**

#### **3.8.1 Environmental Monitoring Reports**

During our site inspection, it was noted that up to date environmental records were not kept in the site office.

## **4. CONCLUSIONS**

The operation has complied with standard dust deposition limit values during 2007. The noise levels recorded exceeded standard noise emission limit values during 2007 in some cases. This was due to external traffic. Water quality testing carried out indicates compliance with the EPA guideline values.

## **5 RECOMMENDATIONS**

The recommendations arising out of the 2007 environmental audit have been presented in the Audit Action Plan in Appendix A. The action plan proposed has been discussed and agreed with the management of Shillelagh Quarries Ltd.

The key actions to be taken include:

- (i) Ensure a complete set of all environmental monitoring results are maintained at the site office.
- (ii) A designated suitable area for wastes arising on site is to be assigned
- (iii) A sprinkler system needs to be operated in dry weather when vehicles are entering / exiting the quarry.
- (iv) Erect further signage on the approach road to warn of the quarry entrance.

## TABLES

Station	Monitoring Period	Result (mg/m <sup>2</sup> /day)
D1	01/12/2006 to 25/01/2007	134
D1	25/01/2007 to 27/02/2007	232
D1	27/02/2007 to 18/04/2007	47
D1	18/04/2007 to 13/06/2007	138
D1	13/06/2007 to 31/07/2007	78
D1	31/07/2007 to 13/09/2007	16
D1	13/09/2007 to 24/10/2007	81

**Table 3.1 Dust Deposition Monitoring Results 2007 (Refer to Figure 2)**

Location	Date	Time	Measured Noise Levels- dB (A)		
			L <sub>Aeq,1hr</sub>	L <sub>A10,1hr</sub>	L <sub>A90,1hr</sub>
N1	20/03/2007	09:58 – 10:58	48.5	49.1	42.7

**Table 3.2.1 Noise Monitoring Results – 20/03/2007 (Refer to Figure 2)**

Location	Date	Time	Measured Noise Levels – dB(A)		
			L <sub>Aeq</sub>	L <sub>A10</sub>	L <sub>A90</sub>
N1	31/07/07	13:04 – 14:04	37.8	39.0	29.7
N2	31/07/07	10:23 – 11:23	58.2*	52.1	34.7
N3	24/07/07	15:12 – 16:12	56.3*	50.5	35.4
N4	24/07/07	15:09 – 16:09	58.6*	52.2	34.0
N5	31/07/07	11:46 – 12:46	36.1	38.2	31.0

**Table 3.2.2 Noise Monitoring Results – 24<sup>th</sup> and 31<sup>st</sup> July 2007 (Refer to Figure 2)**

Weather Conditions 24<sup>th</sup> & 31<sup>st</sup> July 2007:

- N1: Dry and sunny. Wind 1.6 – 3.4 m/s. 20°C  
 N2: Dry and sunny. Wind 0 – 0.7 m/s. 18°C  
 N3: Dry and overcast with sunny spells. Wind 0 – 1.2 m/s. 16°C  
 N4: Dry and overcast with sunny spells. Wind 0.1 – 1.4 m/s. 16°C  
 N5: Dry and sunny. Wind 1.4 – 4.4 m/s. 15°C.

\* External traffic on county road audible during monitoring period.

Date	Location	Ground Vibration Peak Particle Velocity (mm/sec)	Air Over Pressure (dBA)
03/01/2007	S. Murphy Residence	0.4	125.1
11/01/2007	S. Murphy Residence	0.5	125.2
22/01/2007	S. Murphy Residence	0.2	127.6
05/02/2007	S. Murphy Residence	1.3	124.1
09/02/2007	S. Murphy Residence	0.5	122.5
28/02/2007	S. Murphy Residence	0.6	124.6
12/03/2007	S. Murphy Residence	1.2	123.2
22/03/2007	S. Murphy Residence	1.3	120.2
13/04/2007	S. Murphy Residence	1.3	118.2
20/04/2007	S. Murphy Residence	0.6	113.7
11/05/2007	S. Murphy Residence	0.4	116.6
24/05/2007	S. Murphy Residence	0.3	115.6
14/06/2007	S. Murphy Residence	1.5	116.9
03/07/2007	S. Murphy Residence	0.4	119.8
11/07/2007	S. Murphy Residence	1.1	143.5
24/07/2007	S. Murphy Residence	0.4	116.1
31/07/2007	S. Murphy Residence	0.3	122.8
16/08/2007	S. Murphy Residence	0.6	98.5
24/08/2007	S. Murphy Residence	0.5	98.5
07/09/2007	S. Murphy Residence	0.7	103.2
25/09/2007	S. Murphy Residence	1.2	95.4
28/09/2007	S. Murphy Residence	1.3	122.1
09/10/2007	S. Murphy Residence	1.4	120.3
31/10/2007	S. Murphy Residence	1.2	116.5
09/11/2007	S. Murphy Residence	1.1	115.1
23/11/2007	S. Murphy Residence	0.4	123.1
07/12/2007	S. Murphy Residence	0.3	124.3
19/12/2007	S. Murphy Residence	0.4	119.4

**Table 3.3 Blast Monitoring Results 2007 (Refer to Figure 2)**

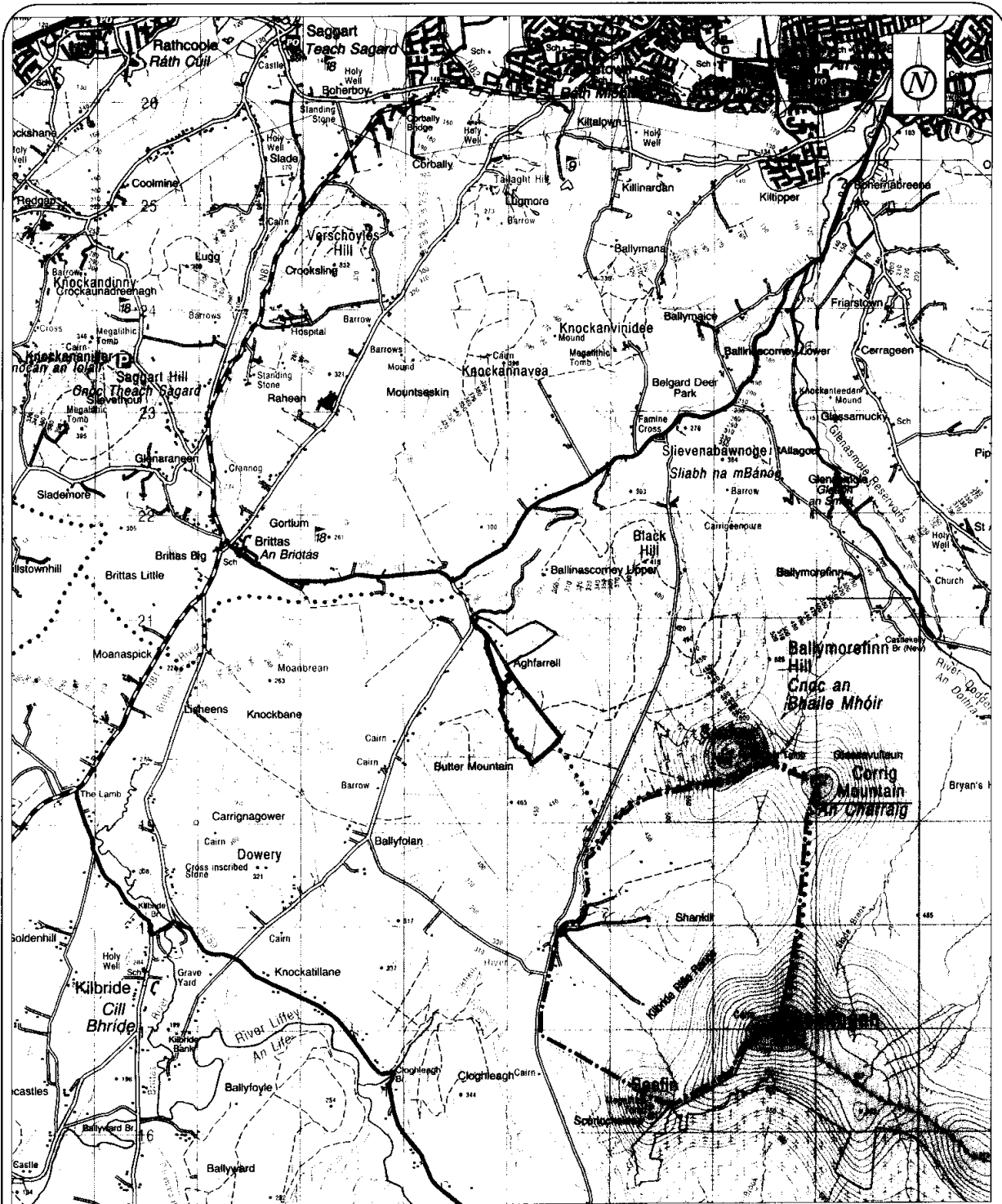
Parameter	Detection	Lagoon Discharge	SW1
<b>Field parameters</b>			
Electrical Conductivity	us/cm	143	189
pH	pH units	6.98	n/a
<b>Laboratory</b>			
Suspended solids	mg/l	<10	<10
Total Hardness			n/a
Total Alkalinity	mg/l	40	n/a
TOC			n/a
Nitrates	mg/l	7.7	n/a
Ammonia	mg/l	<0.2	n/a
Chloride	mg/l	11	n/a
Potassium	mg/l	0.5	n/a
Mineral Oils and DRO	ug/l	<10	<10

**Table 3.4 Water Quality Monitoring Results – 12<sup>th</sup> April 2007 (Refer to Figure 2)**

## FIGURES

- Figure 1 Site Location (1/50,000)
- Figure 2 Environmental Monitoring Plan (1/5,000)





**Legend**

- Land Ownership c.48.5ha (c.119.8 acres)
- Application Area c.28.1ha (c.69.4 acres)

1:50,000

0m      1000m      3000m

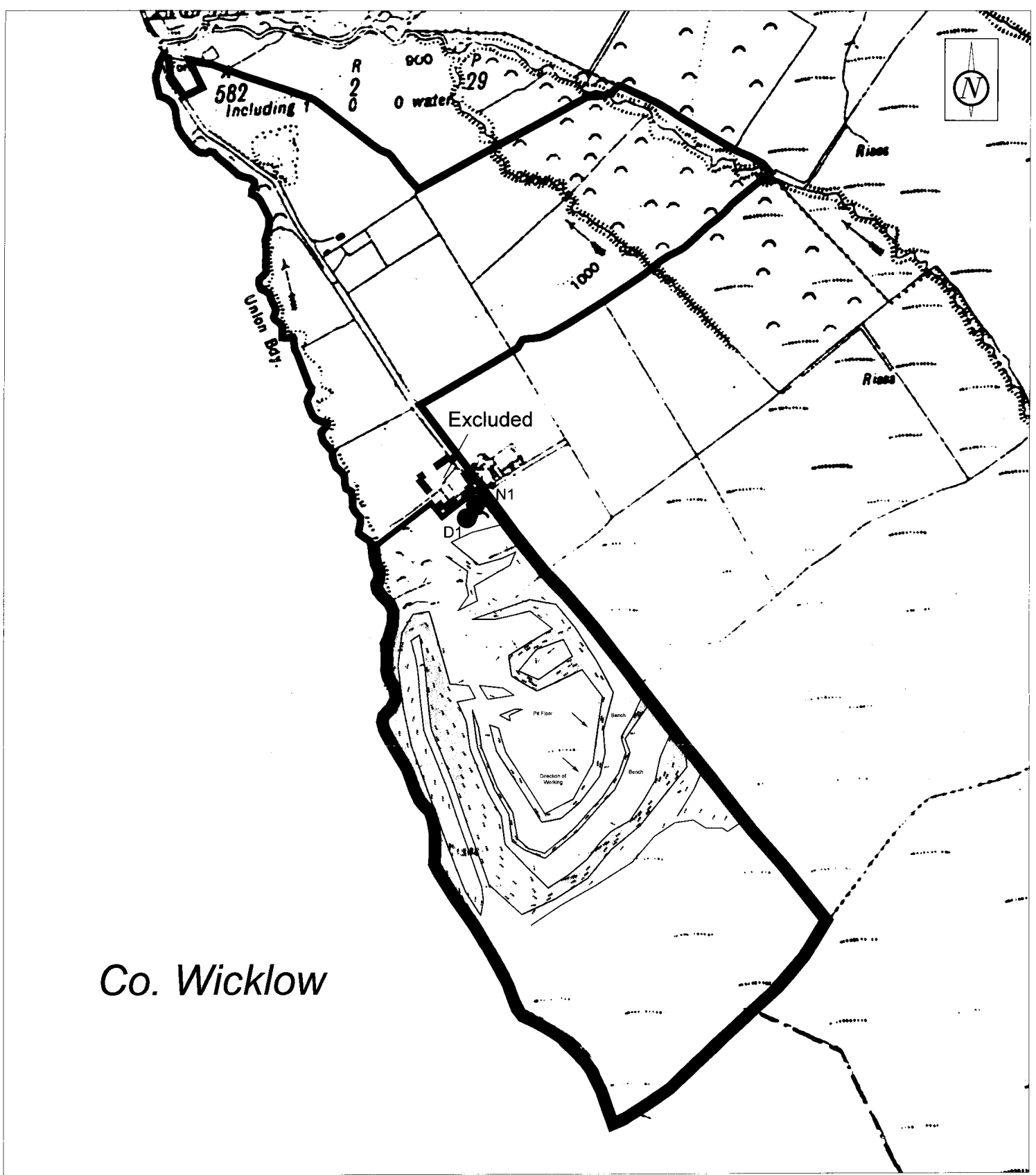
Ordnance Survey Ireland Licence No. SU 0000707 (c) Ordnance Survey Ireland & Government of Ireland

Based on  
1:50,000 O.S.  
Discovery Series Map  
No.s 50 & 56 (OS)

**JBA**  
JOHN BARNETT & ASSOCIATES  
7 DUNDRUM BUSINESS PARK  
WINDY ARBOUR  
DUBLIN 14

Client: Shillelagh Quarries Ltd.	
Site: Aghfarrell Quarry, Brittas, Co. Dublin	
Title: SITE LOCATION MAP	
Drawn: tp/smcd	Scale: 1:50,000
Job. No: 3400	Date: Jan 2008

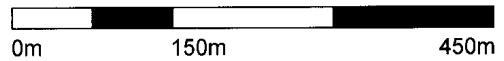
**FIGURE 1**







Co. Wicklow

Based on 1:10,560 scale digital map provided  
by Ordnance Survey Ireland  
DUBLIN 24 & 24A

Scale 1:5,000



**Legend**

-  Land Ownership c. 48.5ha (c. 119.8 acres)
-  Workable Area c. 27.0ha (c. 66.7 acres)
-  N1 Noise Monitoring Location
-  D1 Dust Monitoring Location



**SHILLELAGH QUARRIES**

Aghfarrell Townland,  
Brittas, Co. Dublin

**Environmental Monitoring  
Locations**

Author:gf  
Date: April 2006

Figure 2

## **APPENDIX A**

### Action Plan for Findings of Environmental Audit

**ACTION PLAN FOR FINDINGS OF ENVIRONMENTAL AUDIT – FEBRUARY 2008**

Shillelagh Quarries Ltd., Aghfarrell, Brittas, Co. Dublin.

Aspect	Area of concern	Priority	Recommendation Action
Environmental Management Procedures	Site Records	High	Appropriate site records are to be maintained at the site office.
Air Emissions	Sprinkler System	Medium	A sprinkler system is to be used in dry weather when vehicles are entering/exiting the quarry.
Waste	Lubricants / Oil Drums/ Batteries	High	Designated storage areas to be assigned for wastes arising on site. All oil drums to be kept on pallets
Waste	Site Records		Details of types and quantities of all wastes generated to be maintained on site
Public Safety	Site Entrance	High	Warning signage to be provided approaching quarry entrance on the Regional Road.

**High Priority** Issues requiring immediate action to limit or prevent pollution risks.

**Medium Priority** Issues which should be addressed in the near future.

**Low Priority** Issues which can be addressed in a phased manner over a period of time.

Signed: Auditor: Lorraine Holland

Date: 29 Feb 2008

Auditee: Liamca Murphy

Date: 09/2/2008

