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| Title of Report: | Planning Committee Report – LA01/2018/0570/F |
| Committee Report Submitted To: | Planning Committee |
| Date of Meeting: | 26th January 2022 |
| For Decision or For Information | For Decision |

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| Linkage to Council Strategy (2021-25) | |
| Strategic Theme | Cohesive Leadership |
| Outcome | Council has agreed policies and procedures and decision making is consistent with them |
| Lead Officer | Senior Planning Officer |

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| Budgetary Considerations | |
| Cost of Proposal | Nil |
| Included in Current Year Estimates | N/A |
| Capital/Revenue | N/A |
| Code | N/A |
| Staffing Costs | N/A |

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| Screening Requirements | Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals. | | |
| Section 75 Screening | Screening Completed: | N/A | Date: |
| | EQIA Required and Completed: | N/A | Date: |
| Rural Needs Assessment (RNA) | Screening Completed | N/A | Date: |
| | RNA Required and Completed: | N/A | Date: |
| Data Protection Impact Assessment (DPIA) | Screening Completed: | N/A | Date: |
| | DPIA Required and Completed: | N/A | Date: |

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| <u>No:</u> | LA01/2018/0570/F | <u>Ward:</u> | Magilligan |
| <u>App Type:</u> | Full Planning | | |
| <u>Address:</u> | Keady Quarry, 121 Broad Road, Limavady | | |
| <u>Proposal:</u> | Retrospective application for extraction of basalt within existing quarry, retention of processing plant, weigh bridge, site offices and access road including a lateral extension incorporating wheel wash, realigned quarry access road, landscaping and full site restoration | | |
| <u>Con Area:</u> | n/a | | |
| <u>Valid Date:</u> | 14.05.2018 | | |
| <u>Listed Building Grade:</u> | n/a | | |
| <u>Agent:</u> | Six West Ltd, 18c Weavers Court, Linfield Road, Belfast, BT12 5GH | | |
| <u>Applicant:</u> | Ardstraw Quarries Ltd, 21 Urbalreagh Road, Victoria Bridge, Strabane, BT82 9LJ | | |
| <u>Objections:</u> | 152 | <u>Petitions of Objection:</u> | 0 |
| <u>Support:</u> | 0 | <u>Petitions of Support:</u> | 0 |

Executive Summary

- The proposed application is for retrospective permission for an extension to an existing quarry and a proposed further extension to an existing quarry.
- The site is within the Binevenagh AONB on the site of an existing quarry. It is not within any other designations.
- There are 152 objections to the proposal which are summarised within the report.
- All consultees (except DfI Roads) are content subject to the application of conditions on any approval granted.
- DfI Roads have advised that the access and visibility splays provided onto Ringsend Road do not meet the required standards.
- The applicant considers that they do not have to provide improvement to the access due to their “fallback” position.
- The Planning Department does not accept that there is a fallback position provided by a historical planning approval which would allow the proposal to operate without upgrading the access. Considering this, the proposal is required to meet the current Roads standards.
- Based on the current standards, the proposed development does not comply with the requirements of policy AMP2 of PPS3 as it proposes to intensify the use of an existing road junction onto Ringsend Road at which visibility splays cannot be provided.
- Furthermore, the proposal is contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience

of road users since adequate forward sight distance is not available on the public road, in accordance with Departmental standards.

Drawings and additional information are available to view on the Planning Portal- <http://epicpublic.planningni.gov.uk/publicaccess/>

1.0 RECOMMENDATION

1.1 That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in section 9 and the policies and guidance in sections 7 and 8 and resolves to **REFUSE** planning permission subject to the reasons set out in section 10.

2.0 SITE LOCATION & DESCRIPTION

2.1 The site, which covers 4.8ha, is an extension to Keady Quarry which is an existing basalt quarry. Keady Quarry is located approx. 4km to the east of Limavady. The site is accessed off Keady Road which connects to both the Broad Road (A37) and the Ringsend Road.

2.2 The site is located on the western flanks of Keady Mountain and the surrounding landscape comprises of open moorland to the east and deciduous woodland to the west. The site is located within the Binevenagh Area of Outstanding Natural Beauty and National Landscape Character Area (LCA) 10 Binevenagh Ridge, and in the Western portions of Local Landscape Character Area 36, Binevenagh.

3.0 RELEVANT HISTORY

3.1 LA01/2018/0158/PAN - Retrospective application for extraction of basalt within existing quarry, retention of processing plant, weigh bridge, site offices and access road including a lateral extension incorporating wheel wash, realigned quarry access road, landscaping and full site restoration – approved 22nd February 2018

3.2 LA01/2017/0397/F - Retrospective application for extraction of basalt, retention of processing plant, site office and access road

including a minor extension incorporating landscaping, native species planting and full site restoration – Deemed Refusal 31st January 2018

3.3 B/1978/0124 – Rock Extraction Quarry – approved 14th March 1979

4.0 THE APPLICATION

4.1 The proposal covers the following key aspects:

- Retrospective permission for the extraction of basalt;
- Retention of the existing site infrastructure (processing plant, site office and access road);
- Proposed wheel wash and site entrance;
- Proposed extension to the east;
- Proposed restoration of site upon the cessation of mineral extraction.

4.2 It is proposed to extract rock using the methods that are currently used on site including drilling and blasting. The rock will then be crushed and screened and stockpiled on the quarry floor for sale and distribution.

4.3 It is proposed to develop the site in 3 phases which will be progressive in nature. Once extraction has been ceased it is then proposed to restore the site using the mosaic management process with monitoring and review taking place over a 5 year period.

4.4 It is proposed that the site will operate from 0700 hrs to 1700 hrs Monday to Friday and 0700 hrs to 1300 hrs on Saturday. It is not proposed to operate on a Sunday or on Public Holidays.

4.5 The site life expectancy is 5 years for extraction with 1-2 years for restoration. The site will employ 9 full time members of staff with a further 4 employed on a seasonal basis.

Design & Access Statement

- 4.6 A design and access is not required even though this is a major application. Under Article 6 (4) (b) of The Planning (General Development Procedure) Order (NI) 2015 the requirement for this statement does not apply to engineering or mining operations.

Environmental Statement

- 4.7 The application is accompanied by a voluntary Environmental Statement as the proposal is considered to EIA development as it falls within Schedule 2, Class 2(a): Extractive Industry - Quarries, open-cast mining and peat extraction and meets the threshold of all development.

5.0 PUBLICITY & CONSULTATIONS

External

- 5.1 No neighbours were identified for notification within the terms of the legislation. The application was advertised on 30th May 2018 in the local papers. The Environmental Statement was advertised on 25th June 2018. The separate pieces of Further Environmental Information (FEI) were also advertised in local papers, respectively on 24th April 2019, 2nd September 2020, and 15th January 2020.
- 5.2 There are 152 objections, and no letters of support. There are 126 letters which used the first pro forma. A further 17 were submitted using a second pro form, and a further 2 letters using a third pro forma. Then there are 7 further individual letters. The issues raised can be summarised as:
- Impact on European and National designations
 - Visual amenity, cumulative impact on landscape due existing windfarms
 - Impact on protected species and wildlife
 - Impact on historical monuments and archaeology due to retrospective works and proposed works

- Inadequate access and visibility splays (plus 3rd party lands required)
- Impact of noise
- Impact of surface water
- Damage to residents' property
- Damage to water supplies/incorrect information regarding private water supplies provided
- Risk of land slip
- Limited economic benefit to area/no economic justification provided.
- Proposal should be subject to EIA
- Contrary to PPS 16 TSM8 regarding safeguarding tourism assets
- Dwellings would not have been approved if quarry was still active therefore unfair to those who built dwellings
- Seeks evidence that the third party landowner has been notified
- Request that NIES HED and Causeway Coast Heritage Trust are asked for comment

Internal

- 5.3 See appendix 1 for details of consultations carried out and the responses provided.

Proposal of Application Notice

- 5.2 As this application is a major application it must comply with the Proposal of Application Notice and carry out community consultation at least 12 weeks prior to the submission of the application.
- 5.3 A Proposal of Application Notice was submitted on 7th February 2018 under LA01/2018/0158/PAN. The applicant advised that they intended to undertake the following forms of consultation:
- Public event.
 - Press notice of the public event.

- Letter drop to all properties within 1km of the development.

5.4 The PAN advised that the public event would be held on 20th March 2018 at the Bushtown Hotel, Coleraine. Prior to this a press notice advertising the public exhibition was to be published in a local newspaper on 7th March 2018.

Community Consultation Report

5.5 The community consultation report (CCR) was submitted as part of the planning application, received on 2nd May 2018 which is 12 weeks after the Proposal of Application Notice was received, as required by the legislation.

5.6 It contained the methods of consultation carried out and a summary of the comments and feedback from this exercise. The report demonstrates that the consultation was carried out as agreed in the Proposal of Application Notice.

5.7 Prior to the event, it was advertised in 2 local newspapers on 8th March 2018 and letters were delivered to properties within a 1.6km radius of the site. The event took the form of a public drop in event, on 20th March 2018 at the The Bushtown Hotel, during which members of the public could view the proposal which was being displayed on boards. Six West Ltd staff were on hand to answer questions about the proposal. Comment cards were also set out for the attendees to complete.

5.8 Attendees were encouraged to give feedback on the proposal by way of completing the comment cards or by sending comments to the office of Six West Ltd, by post or email, within 14 days following the event.

5.9 The registration sheet provided at the event notes that the event was attended by seven members of the public. Following the event one email of objection was submitted to Six West Ltd. During the event the following areas of concern were raised by attendees:

- Noise from quarrying/blasting;

- Damage to property from blasting;
- Damage to water supply from blasting;
- Potential landslip;
- Quarrying without permission;
- No warning of blasting;
- Traffic concerns including suitability of roads and haulage times;
- Additional traffic on Gortgarn Road.

5.10 The CCR demonstrates that adequate community consultation has taken place and the key issues of concern have been considered. The report shows that the concerns have been considered as part of the assessments included within the Environmental Statement. There have been no changes made to the proposal in response to the community consultation.

6.0 MATERIAL CONSIDERATIONS

- 6.1 Section 45(1) of the Planning Act (Northern Ireland) 2011 requires that all applications must have regard to the local plan, so far as material to the application, and all other material considerations. Section 6(4) states that in making any determination where regard is to be had to the local development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 6.2 The development plan is the Northern Area Plan 2016 (NAP).
- 6.3 The Regional Development Strategy (RDS) is a material consideration.
- 6.4 The Strategic Planning Policy Statement for Northern Ireland (SPPS) is a material consideration. As set out in the SPPS, until such times as a new local plan strategy is adopted, councils will apply specified retained operational policies.

- 6.5 Due weight should be given to the relevant policies in the development plan.
- 6.6 The extant planning approval B/124/78 is also a material consideration.
- 6.7 All material considerations and any policy conflicts are identified in the “Considerations and Assessment” section of the report.

7.0 RELEVANT POLICIES & GUIDANCE

The Northern Area Plan 2016

Strategic Planning Policy Statement (SPPS)

Planning Strategy for Rural Northern Ireland (PSRNI)

Planning Policy Statement 2: Natural Heritage

Planning Policy Statement 3: Access, Movement and Parking

Planning Policy Statement 6: Planning, Archaeology and The Built Heritage

Planning Policy 15: Planning and Flood Risk

Planning Policy 16: Tourism

Planning Policy Statement 21: Sustainable Development in the Countryside

8.0 CONSIDERATIONS & ASSESSMENT

- 8.1 The main considerations in the determination of this application relate to the:

- Principle of development
- Unauthorised EIA Development
- Planning Policy
- Natural Heritage
- Archaeology
- Impact on hydrology and hydrogeological links
- Flooding
- Visual amenity
- Amenity of people living and working in proximity to the site
- Access and road safety

- Economic benefit
- Waste management plan
- Restoration plan.
- Consideration of Objections

Principle of development

8.1 The regional strategic objective for minerals development are:

- facilitate sustainable minerals development through balancing the need for specific minerals development proposals against the need to safeguard the environment.
- minimise the impacts of minerals development on local communities, landscape quality, built and natural heritage, and the water environment; and
- secure the sustainable and safe restoration, including the appropriate re-use of mineral sites, at the earliest opportunity.

8.2 This requires the balance of the need to support the winning and working of minerals against the impact on the environment, landscape and amenity of those who live and work nearby. It also requires an active restoration of the site.

8.3 The principle for a quarry at this site has been established through the granting of planning permission B/1978/124/F. This application is seeking both permission for an extension to the quarry as well as retrospective planning permission for an unauthorised extension to the quarry. The application also included the retention of processing plant, weigh bridge, site offices and access road including a lateral extension incorporating wheel wash, realigned quarry access road, landscaping, and full site restoration

8.4 The Northern Area Plan 2016 states that '*Proposals for extraction of all minerals will be determined in accordance with prevailing regional planning policy, currently set out in the MIN*

policies of the Planning Strategy for Rural Northern Ireland. It also states that mineral development also needs to respect the environmental policies contained in PPS 2: Planning and Nature Conservation, and PPS 6: Planning, Archaeology and the Built Heritage.

- 8.5 As well as planning policies the Northern Area Plan also directs to the Minerals Resource Map of Northern Ireland which was launched by the Environment Minister and the Minister of Enterprise, Trade and Investment in May 2012. The map was produced to provide planners, industry and local communities with a tool to assist future decisions on a county-to-county basis in relation to the continued supply of minerals and in the protection of the environment. The Mineral Resource Map indicates Keady Quarry as Mineral Workings.
- 8.6 The area plan recognises that some quarries, such as Keady, are located within an AONB and states that *'In determining planning applications, the need for the mineral resource will be balanced against the need to protect and conserve the environment, taking into account all relevant environmental, economic and planning considerations'*. The area plan does not have any designations which impact or limit the expansion of the existing quarry.

Unauthorised EIA Development

- 8.7 It should be noted that part of the proposal is for retrospective permission to regularise the existing quarry and an unauthorised extension of the quarry. As a quarry it falls within Schedule 2 of the EIA Regulations and with the voluntary submission of the ES, it is acknowledged to be EIA development. Therefore, this element of the application constitutes unauthorised EIA development.
- 8.8 The law on when EIA development can be regularised retrospectively was established by the European Court of Justice in case 215/06 Commission V Ireland [2008]. In this case Ireland failed to apply a test of exceptionality when

determining whether to retrospectively regularise EIA development. The decision maker must apply a test of exceptionality before permitting unauthorised EIA development.

8.9 The case (R(Baker) V Bath and North East Somerset Council [2013] EWHC 946 (Admin) determined that the decision maker should consider whether the developer would gain an unfair advantage and/or be unfairly able to circumvent EU Law as a result of any retrospective regularisation.

8.10 This means that the Council must determine:

- Whether or not a development is exceptional
- Whether the developer would gain an unfair advantage and/or be unfairly able to circumvent EU Law

8.11 This is reinforced in R (Ardagh Glass Ltd) v Cheshire West Council (CA) [2011] where the Court of Appeal summarised, *“The [decision maker] can and in my view should also consider, in order to uphold the [EIA Directive], whether planning permission would give the developer an advantage he ought to be denied, whether the public can be given equal opportunity to form and advance their view and whether circumstances can be said to be exceptional.”*

8.12 The test of exceptional circumstances is laid out in Baker and the court took the phrase to *“mean that a particularly compelling case must be made out for such retrospective permission”*.

8.13 The developer considers that there is a compelling case due to the employment benefit, site alternatives and site restoration. There are at most 9 jobs at the site, therefore limited weight can be given to this.

- 8.14 There is an extant approval (B/124/78) on this site which the unauthorised works have significantly extended beyond to the East, meaning the majority of the quarry that exists is outside the red line of this approval and has been quarried since 1979. This is not a proposal to develop a greenfield site, this at least would always have been a proposal for an extension to an existing quarry.
- 8.15 Since 1993 the PSRNI policy has applied for minerals and requires under MIN 1 that *“extensions to existing mineral workings which minimise environmental disturbance in the countryside will normally be preferred to new workings on green field sites”*. This suggests that subject to meeting all other policy requirements, the principle of extension of an existing quarry would be acceptable and has been since 1993. This shows that the development is exceptional as it has been long acceptable in principle.
- 8.16 Currently this application is able to satisfy all environmental policy requirements and consultee requirements (except for Dfl Roads). Current environmental requirements are the same, if not more stringent than those required historically. Therefore, a stricter test is being applied than if the quarry extension had been applied for previously under previous policy and legislation. This shows that the developer is not being given an unfair advantage by applying retrospectively.
- 8.17 The applicant considers that there has been no competitive advantage as instances of unsuccessful tender demonstrates that developing without permission does not increase the likelihood of successful tendering. They also consider that post development is likely to be more accurate in terms of assessing the impact. While this is noted it also means that where there is harm, there is no opportunity for the Council to prevent or mitigate against it. However, in this case none of the consultees have identified any environmental harm.

- 8.18 Finally, the applicant argues that formal site restoration can only be achieved if a permission is granted. The Planning Department considers that most of the scheme proposed is based on natural regeneration with only a limited amount actively carried out by the developer. Accordingly, this can only be given limited weight.
- 8.19 Overall, the applicant is not unfairly able to circumvent EU Law as they have submitted a voluntary ES and have been subject to an HRA. None of the responses received from the consultees have indicated that they could not comment because of the unauthorised works done or that anything has been compromised because of it.
- 8.20 While the development is unauthorised EIA development it is capable of approval subject to meeting all the other policy tests laid out below.

Planning Policy

- 8.21 The regional strategic objectives for minerals development in the SPPS seek to balance the need for specific minerals development against the need to safeguard the environment.
- 8.22 PPS 21 directs minerals application to the minerals policies within the Planning Strategy for Rural NI (PSRNI). Policy MIN 1 of the PSRNI also seeks to balance the need for the mineral resource against the need to protect and conserve the environment.
- 8.23 The existing quarry is within the Binevenagh AONB but within no other designations.
- 8.24 As detailed above, the application is accompanied by a voluntary Environmental Statement which has been assessed by various consultees.

8.25 Policy MIN 1 goes on to state that '*extensions to existing mineral workings which minimise environmental disturbance in the countryside will normally be preferred to new workings on green field sites*'. As detailed above, this proposal is also for the extension to an existing quarry.

Natural Heritage

8.26 Policy NH 1 of PPS 2 states that Planning Permission will only be granted for a development proposal that, either individually or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on a European Site including Special Protection Areas (SPA) and Special Areas of Conservation (SAC) or a Ramsar Site. The site is hydrologically linked to the River Roe and Tributaries SAC and Lough Foyle SPA and Ramsar sites via the Keady and Ballyrisk Beg to Curley River and the River Roe.

8.27 A Habitat Regulations Assessment (HRA) was carried out by Shared Environmental Services (SES) in light of the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). SES state that having considered the nature, scale, timing, duration and location of the project it is concluded that, provided mitigation is conditioned in any planning approval, the proposal will not have an adverse effect on site integrity of any European site.

8.28 DAERA is also content that there is no significant impact due to surface water run off which would impact the nearby European designated sites which are waterways ie River Roe and Tributaries SAC and Lough Foyle SPA and Ramsar sites via the Keady and Ballyrisk Beg to Curley River and the River Roe.

8.29 Policies NH 2 and NH 5 of PPS 2 require consideration of the impact of the development on protected and priority species. The Ecological Assessment submitted as part of the

Environmental Statement shows that there are no protected or priority species on the site.

- 8.30 NED is content that there are no significant ornithological issues associated with the proposal, however, it has proposed that measures are taken to minimise threats to breeding birds and maintain the availability of nest sites.
- 8.31 Both SES and DAERA NED are content with the proposal and the impact on any of the European and National designations and biodiversity identified within LCA 36

Archaeology

- 8.32 Both Policy MIN 1, the SPPS and Policy PPS 6 require the consideration of the impact of the development on Built Heritage. The application site is near an enclosed cairn (LDY 010:007) which is a monument of regional importance scheduled for protection under the Historic Monuments and Archaeological Objects (NI) Order 1995.
- 8.33 The exceptions for allowing development are where the proposed operations are short term and the environmental implications are not significant. On site processing of the excavated material is unlikely to be permitted in these instances.
- 8.34 The proposed quarrying is for 5 years until 2023 with 2 years restoration after that, which in terms of a quarry is relatively short term. Any processing is carried out far beyond the identified archaeological site. Also, no significant environmental implications have been identified.
- 8.35 Policy BH 1 of PPS 6 operates a presumption in favour of the physical preservation in situ of archaeological remains of regional importance and their settings which include scheduled monuments. Historic Environment Division has reviewed the

Environmental Statement and are content that the proposal can meet the requirements of policy BH 1 if conditions are applied to any approval. This would include a condition requiring certain works to be included within an Archaeological Programme of Works to be submitted prior to the commencement of development on the proposed extension area.

Impact on hydrology and hydrogeological links

- 8.36 With the expansion of the quarry there is the possibility of suspension of suspended solids within quarry discharge and displacement of groundwater, potential for rainfall runoff.
- 8.37 NIEA Water Management Unit has considered the impacts of the proposal on the surface water environment and on the basis of the information provided is content with the proposal subject to standing advice.
- 8.38 NIEA Regulation Unit (Land and Groundwater Team) has considered the impacts of the proposal on the aquatic environment (especially groundwater) and on the basis of the information provided is content with the proposal without conditions.

Flooding

- 8.39 Due to the size and nature of the development FLD3 of PPS15 applies and DfI Rivers recommended that a Drainage Assessment was carried out. This was provided and DFI Rivers was content that the drainage assessment states that no additional impermeable surfaces will be created, and the existing stormwater management system should be capable of serving the proposed development therefore minimising risk of flooding.

Visual amenity

- 8.40 Policy Min 2 of the PSRNI and the SPPS seek to protect both areas of designation and general landscape amenity. The site is

within Binevenagh AONB, National LCA 10 which is the Binevenagh Ridge Landscape and Local LCA 36, Binevenagh. The landscape in this area is characterised by open upland, rough grazing and an exposed landscape with few roads or settlements, scattered farms on edges of the uplands and considered to be sensitive to change on the Western fringes of the ridge.

- 8.41 LCA 36 advises that, “*Quarrying within sheltered and enclosed locations will minimise visual impact and new planting may be designed to screen active workings.*” It is important to note that quarrying is not precluded subject to minimisation of visual impact. However, it should be noted that substantial planting is not characteristic of this area of the LCA where it is upland open mosaic landscape with little planting, therefore, to add substantial planting would be inappropriate and potentially equally intrusive as any development it seeks to screen.
- 8.42 Policy NH6 considers the impact within the AONB, in this case Binevenagh AONB. The original quarry predates both AONB designations on this site (North Derry AONB was designated in 1966, Binevenagh AONB 2006), therefore the quarry formed part of the landscape that was designated.
- 8.43 Policy TSM 8 of PPS16 should be applied in instances where development has the potential to negatively impact tourism assets. Tourism assets are defined as “*any feature associated with the built or natural environment which is of intrinsic interest to tourists*”. The Binevenagh AONB is an asset within the confines of this definition and permission should not be granted where there is an adverse impact on this asset. The adverse impacts may be visual but are not limited to visual with other potential adverse impacts being considered throughout the report.
- 8.44 Protected Landscapes Team in DAERA advised that they had no comment to make as the proposal did not qualify for comment based on their criteria of commenting on the potential

impact of regionally significant development on the world Heritage Site (WHS) and its Distinctive Setting and/or the AONBs within Northern Ireland.

- 8.45 Neither of the designations made sought to exclude the quarry landscape. This indicates that the quarry did not have such an unacceptable impact on the landscape that would preclude it from being part of the AONB designations. Moreover, the approval in 1979 under B/1978/0124/F was granted within the North Derry AONB therefore was clearly not considered to be unacceptable within the AONB. Considering this it cannot be said that the existing quarry or the proposed extension has an unacceptable adverse visual impact on the AONB.
- 8.46 Planning permission for new development within an Area of Outstanding Natural Beauty will only be granted where it is of an appropriate design, size and scale for the locality and all the following criteria are met: a) the siting and scale of the proposal is sympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality; and b) it respects or conserves features (including buildings and other man-made features) of importance to the character, appearance or heritage of the landscape.
- 8.47 In this case it the siting and scale of the proposal is acceptable by reason of the fact of how long it has been there before the designation. However, consideration must be given to the additional visual impact created by the proposed extension.
- 8.48 The proposal is not located on the escarpment summit (which is one of the key landscape characteristics of the AONB) but rather is down slope from the profile of Keady Mountain. This lower central part of the escarpment of Binevenagh Ridge is less sensitive than the more prominent Northern and Southern sections.

- 8.49 Views of the quarry are possible from a longer range views due to the elevated landscape from Bolea Road, Gortcarn Road, Ringsend Road, Drumalief Road, Ballyavelin Road, Drumsurn Road, Terrydoor Road, Edenmore Road, and Windyhill Road where the impact is slight to moderate. The most significant views are when passing on the Broad Road from Limavady to Coleraine.
- 8.50 The proposal for the extension of the quarry is to the East which is uphill from the existing quarry but does not extend to the summit of the hill which is approximately a further 50m higher. The higher landmass behind the quarry face would be still discernible and the overall character of the area retained, therefore any visual impact is acceptable.
- 8.51 As part of the ES a landscape assessment was provided to consider the effects from changes in the physical landscape which may give rise to changes in its character. This considers the landscape value, quality, capacity and magnitude of change and concludes that the impact will not be significant from any of the viewpoints identified.
- 8.52 Particular regard is also given to the location of plant, stockpiles, and overburden/waste within the working. In this case stockpiles are shown to the South East of the weighbridge. The plant is located within the quarry floor which can only be viewed from within the quarry site.
- 8.53 Mitigation has been proposed with the deconstruction of dormant cement structures at the entrance of the site which are currently prominent in the landscape. A restoration plan with an environmental management plan has also been proposed and is discussed in more detail later in this report.

Amenity of people living and working in proximity to the site

- 8.54 MIN 6 of the PSRNI considers safety and amenity, while the SPPS advises that particular regard should be given to the amenity of local residents. The nearest address is 80A Ringsend Road and is approximately 305m from the red line of the application. The closest dwelling is 82 Ringsend Road and is approximately 358m from the red line of the application. The next closest is 105 Broad Road which is approximately 408m from the red line of the application.
- 8.55 Pollution and nuisance can arise from the creation of dust, noise and vibration from blasting, quarrying, transportation and storage of minerals and materials. These nuisances are inherent to the nature of the quarrying industry but are not constant and not even daily in their occurrences.
- 8.56 Blasting is not a daily activity, it is proposed that blasting will be carried out once every 2 months depending on market demand, therefore, impact will be limited to the days and times on which the blasting occurs. EHO have advised that in order to control the blasting effects on residents living nearby certain conditions should be attached to any approval if granted to control the timings of the blasts and the air overpressure and magnitude of vibration. EHO has no objection to the proposal in terms of blasting. Any damage caused by blasting to residents' properties is a civil matter between those parties.
- 8.57 With regard to noise, EHO has assessed the acoustic assessment submitted as part of the ES and are content that the quarry noise limit proposed is less than the maximum limit permitted by guidance NPPG 2014. EHO has no objection to the proposal subject to conditions being applied to any approval to protect the amenity of nearby residential properties. These conditions include controlling operating times and noise levels.

- 8.58 With regard to dust and air quality, EHO have advised that this is regulated by IPRI within DAERA. It goes on to advise that in terms of air quality, monitoring has been undertaken between 25 July and 28 August 2017. Particulates have been assessed and no issues have been identified. EHO advise that any dust arising will be mostly within the quarry itself and any impacts beyond the quarry are considered as being low given that the nearest receptor is over 400m away from the quarry faces.
- 8.59 IPRI advise that given the nature of quarry workings, it is inevitable that some dwellings may periodically suffer a loss of amenity due to the deposition of dust. It notes historical complaints from local residents with regard to dust created by vehicular traffic in and out of the quarry but have advised that a more efficient system to dampen roads and working areas will be addressed through the conditions of the required PPC Permit.
- 8.60 With regard to safety, there is risk of accident due to blasting, removing and storing materials, however the blasting is limited and controlled and industry standards limit the risk when removing, transporting and storing materials on the site. Furthermore, access is restricted to quarry sites therefore limiting risk to the public.
- 8.61 Geological Survey NI were consulted and raised no issues in relation to landslip or instability caused by the application. Chapter 5 of the ES deals with the assessment of the terrain, drainage, upslope and downslope characteristics, spoil heaps, cutting around the quarry and haul roads to assess the geology and slope stability.
- 8.62 A hazard identification methodology was used to zone the site into 2 areas and to assess the risk. The 2 zones were categorised as low risk and negligible risk. Minimal mitigation

was laid out for the low risk area and involved monitoring the run off onto the road surfaces.

- 8.63 The Health and Safety Executive for Northern Ireland has assessed the proposal and have no objections. Road safety is addressed below.
- 8.64 Objections have been raised regarding the impact of the blasting on residents' water supplies. NIEA Drinking Water Inspectorate (DWI) has considered the information provided by the applicant in relation to the potential impact of the proposals on private water supplies and based on the information provided is content. The impact of the blasting on public water supplies has also been assessed by NI Water. NI Water was advised of the objection letters alleging damage to water supplies and it has advised that it is not aware of any damage caused to NI Water infrastructure assets by blasting from this quarry. NI Water is content with the proposal and advised that private water supplies are not within their remit.

Access and Road Safety

- 8.65 Min 7 of the PSRNI advises that the Council should take account of the safety and convenience of road users and if the traffic using an access from a proposed mineral development would prejudice the safety and convenience of road uses planning permission will normally be refused unless a satisfactory access can be provided.
- 8.66 The proposal includes access off Keady Road which is a public road. This junction is considered acceptable. Keady Road links to both the Broad Road and Ringsend Road with both currently being used. However, the proposal shows that traffic will use the Ringsend Road junction which is less constrained in terms of the road geometry allowing vehicles to access the site. The use of a single access road would need to be conditioned to ensure adherence to this point in the event of an approval.

- 8.67 The Council must give weight to any legitimate fallback position which allows the quarry to operate within an extant approval. If the quarry could continue to operate within the confines of permission B/1978/0124 - the “fall back” position, then it would be permitted to continue using the existing access and visibility arrangements with no requirement for upgrades.
- 8.68 The test for fallback is established under *Gambone v Secretary of State for Communities and Local Government* (2014) EWHC 952 (Admin) requires that the Council must decide:
- whether or not the way in which the land may be developed is a matter which amounts to a material consideration
 - where there is a greater than theoretical possibility that the development might take place;
 - the scale of harm that would arise.
- 8.69 The Planning Department acknowledges that the way in which the land may be developed amounts to a material consideration as both the proposal and the extant permission are for a quarry. However, the Council considers that this weight should be limited due to the inherent difference in what was proposed in the 1979 grant and what was quarried/developed on the ground as laid out below.
- 8.70 The quarry, as constructed, is almost wholly outside the redline of the approval B/1978/0124 with only the access roads and a small section of land of the quarry within it. Based on aerials, it appears that limited quarrying has taken place on the approved site since the approval was granted. Almost all the quarrying has taken place outside the approved site.
- 8.71 For this approval to provide a legitimate fallback position, it would have to be capable of sustaining the quarry ie a greater than theoretical possibility that the development might take place. If the 1979 approval was capable of being fully

implemented, it is likely that this would already have been done and would not have been left until now nor would other areas o have been quarried out in preference to this part of the site. In this case it has not been demonstrated that the the 1979 approval is not exhausted nor obtainable. The Planning Department is mindful that a large part of the lands within the 1979 approval is now taken up by internal road arrangements.

- 8.72 As identified at paragraph 8.68, harm is a relevant consideration in assessment of the fallback position. There has been no harm identified regarding visual amenity, public amenity, flora, fauna, or unacceptable impact on environmental designations. However, DfI Roads have identified that the access arrangements are unsatisfactory and that there would be harm to the public road network.
- 8.73 It appears to the Planning Department that there is no realistic fallback position. The quarry of the 1979 approval is not realistically capable of being operated, therefore there is not a greater than theoretical possibility that the development might take place. In addition, there would be harm if permitted to do so. Without a fallback position the requirements for access and visibility do not need to be limited and current policy may be applied.
- 8.74 DfI Roads have advised that they have safety concerns relating to the increased use of the Ringsend Road junction in relation to the required visibility splays and forward sight distance. The existing available visibility splays are approx. 2.4m x 60m (western) and 2.4 x 40m (eastern) which is well short of the required 2.4m x 160m splays. 3rd party land would be needed to provide the required splays and objectors have indicated that this would not be possible. The owner of the lands is not identified within the application however both the objectors and applicant have advised that the land owner is now not willing to provide the required land at this time.
- 8.75 The forward/stopping sight distance on Ringsend Road for vehicles approaching the junction travelling towards Limavady,

is restricted by a summit in the road alignment. The consultant suggested that the available distance of approx. 86m is available, which is questioned, but even this is well short of the desirable minimum 160m length required by DMRB standards. DfI Roads consider that no relaxation below this desirable minimum shall be used on the immediate approaches to junctions.

- 8.76 The applicant relies on the fallback position, in that they do not consider that DfI Roads can require any improvements therefore the splays as existing (which are all within the applicant's control) must be accepted.
- 8.77 In the event that the fallback is not accepted the applicant also considers that DfI Roads only have remit over the point of access onto the public road ie Keady Road and they cannot require upgrades onto the point of access onto Ringsend Road. The agent supplied 3 appeals to support this assertion (2009/A0263, 2012/A0264, 2013/A0113).
- 8.78 The Planning Department considers that the appeals provided are not comparable as they refer to proposals for 2 and 3 dwellings and not major commercial works with heavy goods vehicles. Two of the appeals are at the same location. Furthermore 2 of the appeals depend on the same interpretation of the AMP 2 policy which the Planning Department does not accept. Within the amplification of the policy AMP 2 permits DfI Roads to consider the public road network surrounding the application site as is being required in this case.
- 8.79 There have been 2 recorded road traffic collisions in the vicinity of the Ringsend Road junction in question in the past 2 years. Therefore, DfI Roads continues to be of the opinion that the access arrangements remain unacceptable.

Economic Benefit

- 8.80 The economic benefit is a consideration that must be given in accordance with S45 of the Planning Act (NI) 2011 and the

SPPS in that it is a material consideration that should be given due consideration.

- 8.81 The appellant's submission considers minerals to be a growth industry with the construction industry identified by the Executive as a key initiative for rebuilding the economy.
- 8.82 The chapter "Socio Economic & Need for the Development" within the ES looks at the economic and social benefits of quarries in general and the needs of rural areas and the Limavady area. It does not explicitly lay out direct benefits in terms of jobs and economic gain.
- 8.83 The Planning Statement provided indicates that there will be 9 full time employees with up to 4 more employed on a seasonal basis. There is no indication of any further economic benefit provided. This is a relatively small number of jobs and would not warrant economic benefit being given determining weight in the consideration.

Waste Management Plan

- 8.84 Planning (Management of Waste from Extractive Industries) Regulations (NI) 2015 sets out specific requirements on operators of quarries for the management of waste produced by onshore extractive industries. It states that planning permission for relevant development shall not be granted unless a waste management plan has been submitted to and approved by the council in accordance with regulations 6 and 7.
- 8.85 The waste management plan was submitted on 2nd May 2018. Water Management Unit advised on 3rd May 2019 that they were content on the basis of this information submitted.

Restoration plan.

- 8.86 Policy Min 8 of the PSRNI requires mineral workings to be restored at the earliest opportunity with the type of restoration dependant on the nature of the quarry.

- 8.87 A restoration plan accompanied by an Environmental Management Plan has been submitted and considered acceptable by DAERA. It proposes that at the end of phase 3 the quarry faces will be retained and the quarry floor will be allowed to naturally regenerate.
- 8.88 The benches created by quarrying will be slightly graded using overburden to create new landforms. The quarry will have a mix of natural regeneration, open mosaic habitat, and scrub with hedging at the entrance to the quarry faces.
- 8.89 The Environmental Management Plan lays out how the retained habitats will be protected during extraction; how continued management is undertaken post restoration and how the results are monitored to allow management revisions as necessary. This monitoring will be undertaken for the first 5 years after restoration.

Consideration of Objections

- 8.90 There are 152 objections, and no letters of support. There are 126 letters which used a pro forma. There are a further 17 using a different pro form, and 2 letters using a third pro forma. Then there are 7 further individual letters. The issues raised can be summarised as:

(a) Impact on European and National designations

- 8.91 This is considered in paragraphs 8.26 - 8.31.

(b) Visual amenity including cumulative impact on landscape due existing windfarms

- 8.92 Cumulative impact with other development is not a policy test that applies in minerals development or any of the other policies which have been applied in this case. Visual amenity is considered in paragraphs 8.40 -8.53.

(c) Impact on protected species and wildlife

8.93 This is considered in paragraphs 8.29.

(d) Impact on historical monuments and archaeology due to retrospective works and proposed works

8.94 This is considered in paragraphs 8.32 – 8.35.

(e) Inadequate access and visibility splays (plus 3rd party lands required)

8.95 This is considered in paragraphs 8.65 – 8.79.

(f) Impact of noise

8.96 This is considered in paragraphs 8.54 – 8.57

(g) Impact of surface water

8.97 This is considered in paragraphs 8.36 – 8.38.

(h) Damage to residents' property

8.98 This is considered in paragraphs 8.56.

(i) Damage to water supplies/incorrect information regarding private water supplies provided

8.99 This is considered in paragraphs 8.64.

(j) Risk of land slip

8.100 This is considered in paragraphs 8.61 – 8.62

(k) Limited economic benefit to area/no economic justification provided.

8.101 This is considered in paragraphs 8.80 – 8.83

(l) Proposal should be subject to EIA

8.102 This application was not subject to an EIA Determination because a voluntary ES was submitted as part of the initial submission. EIA Determinations are only carried out to ascertain if an ES is required however, as one as already submitted, a Determination was unnecessary. The details of the ES and the subsequent advertisement are laid out in paragraphs 4.7 and 5.1.

(m) Contrary to PPS 16 TSM8 regarding safe guarding tourism assets

8.103 This is considered under paragraphs 8.43 – 8.53.

(n) Dwellings would not have been approved if quarry was still active therefore unfair to those who built dwellings

8.104 Any applications for dwellings prior to RPA in 2015 were subject to consultation with Planning HQ Minerals Unit, who considered the proposal in relation to the quarry. While the quarry may have had periods of reduced activity or no activity, in planning terms it was always considered live for the purposes of new applications in the vicinity. Considering this it cannot be said that the dwellings were only approved because the quarry was perceived to be inactive (which is wasn't) and this is not the case.

(o) Seeks evidence that the third party land owner has been notified

8.105 No third party lands are required for the splays proposed, therefore there is no need for any notification or amendment of the application forms to reflect third party ownership.

(p) Request that NIEA HED and Causeway Coast Heritage Trust are asked for comment

8.106 Historic Environment Division (HED) within DAERA were consulted and were content subject to conditions being applied for the proposed development. Causeway Coast Heritage Trust are not a statutory consultee and therefore were not consulted.

9.0 CONCLUSION

9.1 The proposal is acceptable in terms of Principle of development unauthorised EIA Development, planning policy, natural heritage, archaeology, impact on hydrology and hydrogeological links, flooding, visual amenity, amenity of people living and working in

proximity to the site, access and road safety, waste management plan and restoration plan. The Planning Department has also considered the proposed economic benefit and the 152 objections made. However, this proposal is considered unacceptable in this location because the standard of the existing road network at the Keady Road/Ringsend Road junction cannot accommodate the proposal.

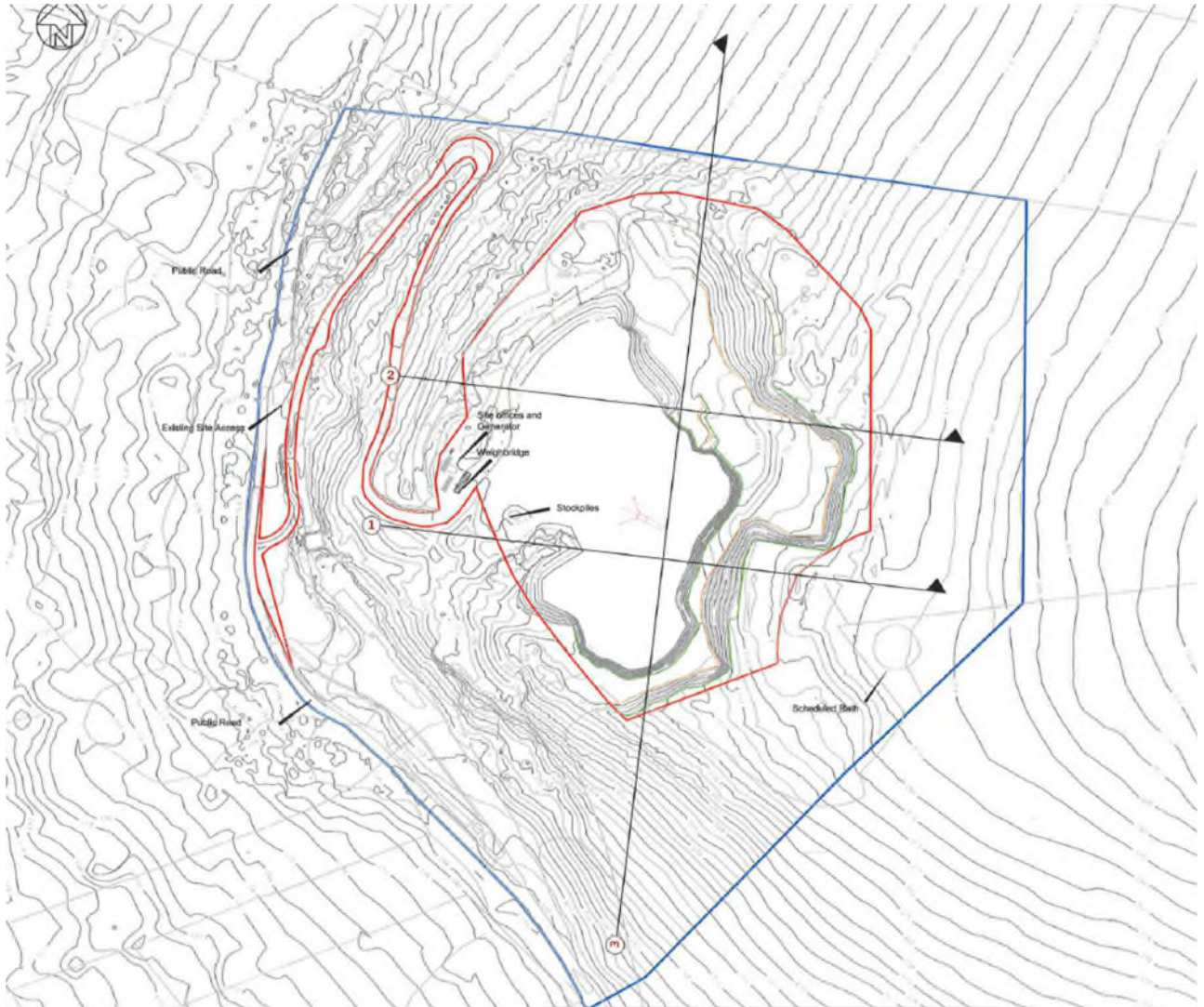
10.0 REFUSAL REASONS

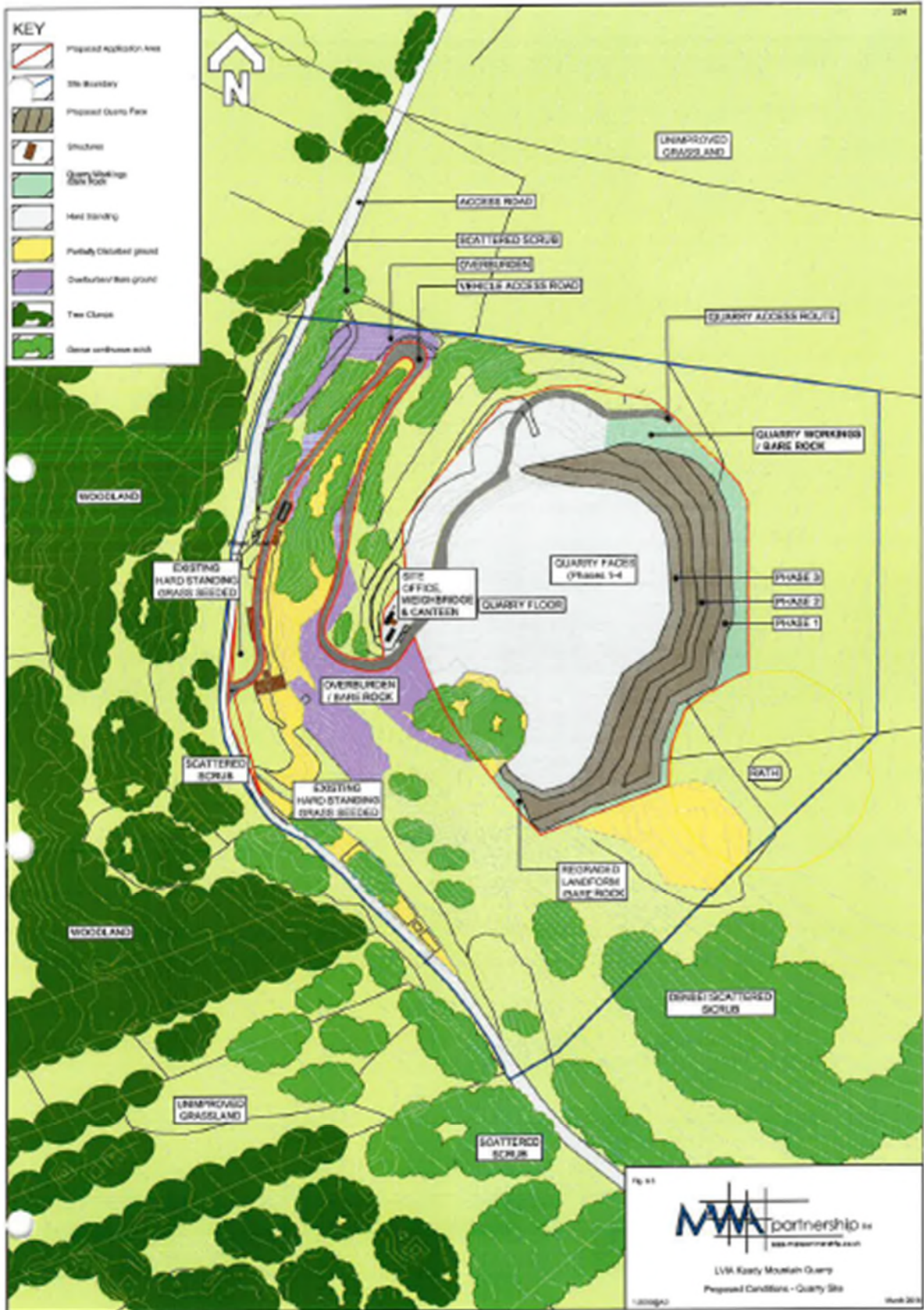
- 10.1 The proposal is contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since it proposes to intensify the use of an existing road junction onto Ringsend Road at which visibility splays of 2.4 metres x 160 metres cannot be provided in accordance with Departmental standards.
- 10.2 The proposal is contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since adequate forward sight distance of 160 metres is not available on the public road, in accordance with Departmental standards.

Appendix 1: Consultation Responses

| Consultee | Final Response Date | Responses |
|---|----------------------------|--|
| DETI Energy Branch | 25.06.2020 | No comment |
| DETI Geological Survey NI | 23.08.2018 | No objection |
| Environmental Health | 05.09.2018 | No objection subject to conditions |
| HSENI | 22.07.2019 | No objection – subject to bench heights being restricted |
| Loughs Agency | 25.02.2021 | No objection |
| NIEA – Drinking Water Inspectorate | 09.01.2020 | No objection |
| NIEA – Water Management Unit | 10.08.2018 | No objection |
| NIEA - IPRI | 10.08.2018 | No objection |
| NIEA Land & Ground Water Regulation Unit | 03.05.2019 | No objection |
| Natural Environment Division | 15.02.2021 | No objection subject to conditions |
| DfC – Historic Environment Division | 03.09.2018 | No objection subject to conditions |
| NI Water | 31.01.2020 | No objection |
| Rivers Agency | 29.10.2018 | No objection |
| Shared Environmental Services | 14.01.2020 | No objection subject to conditions |
| DfI Roads | 15.12.2020 | Refusal recommended |

Site Location Map





Erratum

LA01/2018/0570/F

1.0 Update

1.1 Paragraph 6.6 of the Planning Committee Report states:

“The extant planning approval B/124/78 is also a material consideration.”

As it is unclear whether this planning permission was lawfully implemented, reference to “extant” is removed accordingly:

“The planning approval B/124/78 is also a material consideration”.

1.2 Paragraph 8.14 of the Planning Committee Report states:

“There is an extant approval (B/124/78) on this site which the unauthorised works have significantly extended beyond to the East, meaning the majority of the quarry that exists is outside the red line of this approval and has been quarried since 1979. This is not a proposal to develop a greenfield site, this at least would always have been a proposal for an extension to an existing quarry.”

As set above, as it is unclear whether this planning permission was lawfully implemented, reference to “extant” is removed accordingly:

“There is an approval (B/124/78) on this site which the unauthorised works have significantly extended beyond to the East, meaning the majority of the quarry that exists is outside the red line of this approval and has been quarried since 1979. This is not a proposal to develop a greenfield site, this at least would always have been a proposal for an extension to an existing quarry.”

1.3 Paragraph 8.69 of the Planning Committee Report states:

“The Planning Department acknowledges that the way in which the land may be developed amounts to a material consideration as both the proposal and the extant permission are for a quarry. However, the Council considers that this weight should be limited due to the inherent difference in what was proposed in the 1979 grant and what was quarried/developed on the ground as laid out below.”

As set out above, it is unclear whether this planning permission was lawfully implemented, reference to “extant” is changed to “previous” accordingly:

“The Planning Department acknowledges that the way in which the land may be developed amounts to a material consideration as both the proposal and the previous permission are for a quarry. However, the Council considers that this weight should be limited due to the inherent difference in what was proposed in the 1979 grant and what was quarried/developed on the ground as laid out below.”

2.0 Recommendation

- 2.1 That the Committee note the contents of this Erratum and agree with the recommendation to refuse the proposed development in accordance with paragraph 1.1 of the Planning Committee report.

Addendum

LA01/2018/0570/F

1.0 Update

- 1.1 The agent has made a further submission regarding some of the points raised in the Committee Report.
- 1.2 The agent considers that the fallback position of quarrying the area approved in March 1979 (Ref: B/1978/0124/F) is a realistic option for the applicant in the event of refusal of the subject application. This is relevant as if the fallback position were demonstrated, this would involve use of the public road junction at Keady Road/ Ringsend Road by vehicles from the quarry. They request the opportunity to demonstrate this based on the comments of the Committee Report.
- 1.3 Some initial technical details have been provided about obtaining the remaining reserves within the 1979 approved quarry. These need to be explored to determine what weight should be attributed to those details and whether submission of a Proposed Certificate of Lawful Use or Development (CLUD) is required.
- 1.4 The agent has provided additional case law regarding the fallback position which needs to be considered in detail and applied to the specifics of the application.
- 1.5 The agent disagrees with the application of policy AMP 2 of PPS 3 Access Movement and Parking. They contend that DfI Roads cannot require upgrades beyond the point of access to Keady Road, when no direct access or intensification occurs. However, as set out in the Planning Committee Report, Policy AMP 2 of PPS

3 allows for consideration of the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase. The proposal does involve intensification of the use of an existing access onto a public road i.e. the existing quarry access onto Keady Road.

1.6 The matter of the interpretation of this policy is further challenged with the submission of a reference to an additional planning appeal. The details of this appeal need to be provided and considered in light of the submission made.

1.7 Deferral of the application would allow the Planning Department to consider the further issues raised and in turn, to advise the Planning Committee accordingly.

2.0 Recommendation

2.1 That the Committee note the contents of this Addendum and agree with a new recommendation to **defer the application** to enable the Planning Department to further consider the points raised by the agent in support of the application.

Addendum 2

LA01/2018/0570/F

1.0 Update

- 1.1 Between the submission of the papers to the Committee and the Committee meeting on 25 August 2021, the agent made a further submission. This comprised some of the points raised in the Committee Report relating to the fall-back position, technical details about obtaining the remaining reserves within the 1979 approved quarry, and application of Policy AMP 2 of PPS 3 Access Movement and Parking.
- 1.2 At the 25 August 2021 Committee meeting, the Committee resolved to defer the application to further consider the points raised by the agent in support of the application.
- 1.3 On 27 August 2021, the Planning Department wrote to the agent seeking details of the case law referred to in their submission. The Planning Department also advised that if the applicant sought to depend on the fall-back position and a lawful commencement of the 1979 quarry permission, submission of an application for a Certificate of Lawful Development (CLUD) was required.
- 1.4 Further to exchanges with the Planning Department in the intervening months, on 22 December 2021 the Agent submitted further information contending a lawful start on the 1979 quarry approval. However, this was not submitted in the form of the required CLUD application. Planning case law, specifically *Saxby v Secretary of State for the Environment, Transport and Regions and Westminster City Council 1998 EWHC Admin 462*, makes it

clear that the appropriate mechanism to demonstrate lawfulness is submission of a lawful development application (CLUD).

- 1.5 The Planning Department advised the agent on 29 December 2021 that the information provided was not in the form of a CLUD application as required and that this matter could not be considered as part of the current planning application. The agent was given until the 12 January 2022 to advise their client of the Council's position and to respond accordingly.

- 1.6 On 11 January 2022 the Agent confirmed that no CLUD application would be submitted. The Agent questions why a CLUD is required given that the 1979 planning permission (B/1978/0124/F) exists on the site. They specify the number of quarries in the Borough and query whether each operator will be asked to submit a CLUD application to ensure the lawfulness of their operations. They state the cost of a CLUD application and underline the low threshold that constitutes development within the minerals sector. In addition, they question whether the Council would issue an enforcement notice if extraction was to take place within the area approved by the 1979 permission. They make clear their intention to appeal any refusal of planning permission and apply for costs. Notwithstanding the position in the *Saxby* case law, they argue that it is not necessary for the Council to issue a formal decision on this matter. They add that the applicant is willing to "surrender" their existing planning permission (Ref: B/1978/0124/F) if planning permission is granted for this application. They refer to *R v Secretary of State for the Environment ex parte P F Ahern* which refers to the assessment of implications for impact on the environment relative to those to which the site might be put if the proposed development were refused. They argue that the proposed development offers improved amenity and landscape impacts relative to the former permission Ref: B/1978/0124/F, aligning the site with modern day conditions and current environmental standards.

1.7 As set out in Paragraph 8.14 of the Planning Committee Report, the majority of the existing quarry exists outside the red line (approved area) of the Ref: B/1978/0124/F approval. This casts doubt on whether the Ref: B/1978/0124/F approval was ever lawfully implemented. To reconcile this matter, submission of a CLUD application is required. This would allow it to be clearly established whether or not there is a fall-back position regarding use of Keady Road for quarry operations. If circumstances were similar to other minerals proposals, it is likely that the Planning Department would take the same approach. It is recognised that a modern quarry approval is likely to offer greater environmental safeguards relative to that approved by Ref: B/1978/0124/F. However, without a CLUD, the lawfulness of that development cannot be conclusively presumed. Whether enforcement action is warranted for quarry operations is a matter separate from assessment of the current application.

1.8 Therefore, a fall-back position has not been demonstrated to allow for assessment as a material consideration. Accordingly, there is no change in the Planning Department's recommendation to refuse the application as set out in the Planning Committee Report.

2.0 Recommendation

2.1 That the Committee note the contents of the Planning Committee Report, Addendum, and Addendum 2 and agree with the recommendation to refuse the application.