

PRE/ACCC/C/2014/107

- The Complaint essentially is in respect of a planning authority decision to extend the duration of a planning permission so as to facilitate the completion of the proposed activity or development. Such a decision is made under section 42 of the Planning and Development Act 2000 as amended.
- **A decision to extend the duration of a permission is not in any meaningful sense a “decision to permit an activity”,** within the meaning of Article 6.
- Decisions as to **whether to permit activities** i.e. Article 6 type decisions as to whether the activity should be permitted/allowed at all are subject to environmental impact assessment (EIA) and public participation in accordance with the EIA Directive and the Aarhus Convention. In Ireland projects are in many cases made subject to EIA at thresholds which are a fraction of those in the EIA Directive. Thus the threshold for Quarries in Ireland is 5ha as opposed to 25ha in the Directive. In fact none of the permissions being complained about by the complainant in this case met the Aarhus Convention or the EIA directive threshold of 25ha either individually or when taken cumulatively. Yet because of the lower Irish threshold each permission application was in fact subjected to an EIA and full public participation in accordance with the EIA Directive.
- However, once it has been decided by the competent authority, in the light of the results of necessary public consultation, that it is appropriate to permit an activity/development, a separate question arises as to what is the appropriate time for the completion of the works? What time limit should be specified in the permission for the completion of the construction or other works?
- Ireland’s planning legislation provides essentially that the competent authority can decide what is an appropriate period for the completion of the works which are been permitted, but that if that body does not specify a period, then the default period will be 5 years, with provision made for a mandatory extension (maximum another 5 years), at the request of the developer, provided particular conditions are met. This is similar in effect to providing for a general 10 year permission provided that certain conditions are met at the 5 year mark.
- The criteria for an extension of the duration of a permission are either that
 - substantial works to complete the project have been completed within the original duration of the permission and the planning authority is satisfied that the development will be completed within a reasonable time OR
 - substantial works have not been completed within the original duration of the planning permission, but the planning authority is satisfied that there were considerations of a commercial, economic or technical nature beyond the control of the applicant which substantially militated against either the commencement of development or the carrying out of substantial works pursuant to the planning permission.

- Where a planning authority is satisfied that one of these criteria is met, the extension of duration is granted. There is no requirement for public consultation in assessing whether these administrative, as opposed to environmental, conditions are met. The decision is not a review of the planning or environmental merits of the application hence it is not considered as being necessary to have a repeat EIA or public participation. It is not an Article 6 type decision. Neither is it an Article 7 type decision.
- In relation to construction projects it tends to be the norm that the planning authority/An Bord Pleanála (Planning Appeal Board) do not specify a duration, and therefore the default duration of 5 years kicks in, with the provision for more or less automatic extension of duration on request as set out above.
- However with other projects it will be clear from the start that 5 years will not be sufficient to complete the works which have been permitted e.g. in the case of a quarry, the extraction of the aggregate from a particular site. Windfarms also are normally given 10 years for construction as there can frequently be delays in obtaining the grid connection.
- The Department's Statutory Guidelines on Quarrying and Ancillary Activities (2004) states
- ***"4.9 Life of planning permissions***
- *Where the expected life of the proposed quarry exceeds 5 years it will normally be appropriate to grant permission for a longer period (such as 10 - 20 years), particularly where major capital investment is required at the outset. 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."*
- That it is to say, it is recognised that the completion of quarrying works will take far longer than 5 years and that a permission of up to 20 years may be appropriate. It is also recognised however that it is advisable to set a finite period even where it is known that the works will not be completed in the period, in order that the matter may be reviewed in the light of changed environmental standards.
- In this case a permission was granted in 2004, to expire in 2013, and a permission for an extension to the quarry was granted in 2010, also to expire in 2013. Both permissions were the subject of environmental impact assessments and full public consultation, a right to appeal to An Bord Pleanála, and the right to seek access to justice by means of a judicial review to the High Court to challenge the substantive or procedural legality of the decisions. No such judicial reviews were taken.

- The extension of the duration of these permissions, in 2013, by 5 years, up to 2018, means the duration of the permissions is 14 years and 10 years, respectively, well within the outer limit of 20 years envisaged in the Guidelines. These decisions to extend the duration of a permission are also subject to judicial review before the High Court but no judicial reviews were instituted by the Complainant.
- It is within our discretion under the EIA Directive to allow permissions of this duration, whether by specifying this length originally, or by (as we do) specifying a shorter length with a more or less automatic extension where certain conditions are met.
- Regarding the s. 261A procedure, this is a procedure introduced to ensure compliance with judgments of the ECJ in respect of EIA and habitat issues. The procedure required an assessment by planning authorities of all quarries within their administrative areas to see if they were compliant with the EIA directive and the Habitats Directive. Depending upon the outcome quarries were considered to be compliant, or were required to apply for substitute consent or were declared to be unauthorised development and required to cease operations.
- In respect of the Quarry at issue the planning authority finding on S.261A was apparently that appropriate assessment should have been carried out but was not, and that therefore a substitute consent was required. However on review An Bord Pleanála set aside this finding – they found an appropriate assessment was not required thus the quarry does not need further permission. It was in effect considered to be EIA and habitats assessment compliant. Incidentally, the decisions of planning authorities and of An Bord Pleanála pursuant to s. 261A are both subject to public participation.