

**Comment:**

***I note the 'intervention' received. I also note its very late lodgement which must be viewed as an attempt to stymy comment. This comes from well-paid public servants and it is unacceptable that unpaid citizens are treated in such a fashion. Notwithstanding, in the very short time available to me (receiving this communication on the morning of the hearing), I have managed to prepare some commentary. Please see comments in the boxes hereunder.***

- 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.

**Comment:**

***This is not so: in 2003 permission was granted to descend into the groundwater aquifer to 7m a.O.D. without any public notification whatever. Hectares have been already been dealt with in my earlier submission. Moreover the total quarry operation at the sites (one of the biggest in Ireland), is well over 25ha in extend.***

- 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.

**Comment:**

***This is not so: in 2003 permission was granted to descend to 7m a.O.D. without any public notification.***

***No reinstatement whatever (supposed to be progressive).***

***Reinstatement bonds are wholly inadequate to ensure reinstatement, etc.***

***The quarries did not suffer any slowdown and have been very busy throughout the recession, with substantial export business.***

***This is very much an environmental decision. The above comment alluding to it a 'administrative' decision illustrates the mindset of the planning authorities (which are in effect administrative authorities doubling up as planning authorities).***

- 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.

**Comment:**

***There is no reinstatement whatever (supposed to be progressive).***

- 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.

**Comment:**

***This quote from the Guidelines is helpful. The finite period is to facilitate review. Given the major reinstatement issues, the mistake in 2003 in permitting extraction to 7m a.O.D. and the intensification of the activity, the inadequacy of the reinstatement bonds, it is entirely reasonable therefore that the public be entitled to point these out to the authority, which otherwise is unaware of the problems. This should be viewed as a helpful input from the public. It appears from the intervention, and extension of duration consents that they don't want to know the problems that exist.***

- 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.

**Comment:**

***Judicial Review in Ireland is not in practice accessible to the public, as such proceedings require large financial resources in the region of €100,000's of thousands of euro. It is utter nonsense to suggest that this is a real alternative. In fact An Bord Pleanála (the planning appeals board) limited the 2010 permission to complete in 2013. It was indeed anticipated that an extension of time would be sought, but it was the intention of the public to use this opportunity to highlight the serious problems, which had arisen, so that the operation could be 'reviewed' as per Department's Statutory Guidelines on Quarrying and Ancillary Activities (2004).***

- 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.

***Repeated references to Judicial Review are demening when in practice the public are not financed to take such proceedings which run into €100,000's thousands of euro.***

- 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.

***Comment similar to above.***

***In fact An Bord Pleanála (the planning appeals board) limited the 2010 permission to complete in 2013. It was indeed anticipated that an extension of time would be sought, but it was the intention of the public to use this opportunity to highlight the serious problems which had arisen so that the operation could be 'reviewed' as per Department's Statutory Guidelines on Quarrying and Ancillary Activities (2004).***

- 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.

***Comment:***

***As a retrospective process, the s261A process had nothing whatever to do with reviewing operations to permit an extension of the operations. This was not an opportunity to permit the public to highlight the serious issues so as to have them addressed and considered in any revised permission to extend the life of the quarry. These included serious issues (as alluded to above) re No Reinstatement whatever, Hopelessly Inadequate bonds, or to seek a re-evaluation of the erroneous decision in 2003 to descend to 7m a.OD into the groundwater aquifer without any public consultation whatever on these levels at the time.***

***Comment:***

***Continued references to previous public participation in earlier processes are erroneous and unhelpful.***

***The current process is the one where there was no public participation; this is the one at issue question!***

***I am a trained lawyer and know this area of law inside out. I am available to appear***

*before the committee should that be required.*