

# Appeal Decision

Park House  
87/91 Great Victoria Street  
BELFAST  
BT2 7AG  
T: 028 9024 4710  
E: [info@pacni.gov.uk](mailto:info@pacni.gov.uk)

---

**Appeal Reference:** 2021/A0070.  
**Appeal by:** RGM Construction Ltd.  
**Appeal against:** The conditional grant of full planning permission.  
**Proposed Development:** Application under Section 54 of the Planning Act (NI) 2011 to remove condition no. 29 (re. frequency of use and permitted operating hours of Air Drilling Plant) of approval LA02/2017/0709/F for extension to quarry including consolidation and deepening of the existing operational area, amendments to the existing access and restoration.  
**Location:** Ballylig Quarry, Ballylig Road, Broughshane.  
**Planning Authority:** Mid & East Antrim Borough Council.  
**Application Reference:** LA02/2020/0978/F.  
**Procedure:** Hearing on 8 March 2022.  
**Decision by:** Commissioner Mark Watson, dated 26 October 2022.

---

## Decision

1. The appeal is allowed, full planning permission is granted and condition 29 of permission LA02/2017/0709/F is deleted.

## Reasons

2. The main issues in this appeal are whether or not the condition:
  - is necessary and reasonable; and
  - whether or not its removal would result in an adverse impact on residential amenity.
3. The appeal site comprises an existing hard rock quarry on Ballylig Road, several kilometres to the north-west of Broughshane. Full planning permission was granted by the Council on 13th August 2019 for an extension to the existing quarry including consolidation and deepening of the existing operational area, amendments to the existing access and restoration (ref: LA02/2017/0709/F). The planning permission was granted subject to a series of conditions. It permitted six phases of development with progressive deepening of the quarry followed by restoration. There was no dispute that the approved development had commenced and from the totality of the evidence the operator is currently completing phase three. Since the approval was granted, several of the original conditions have been discharged or varied, or are subject to current applications or appeals to vary or remove them. The subsequent applications and appeals are referred to where relevant later in this decision.

4. Section 54 of the Planning Act (NI) 2011 (the Act) applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. On an appeal arising from a Section 54 application, the Commission can consider only the conditions subject to which permission should be granted, in this case condition 29.
5. Condition 29 of permission LA02/2017/0709/F, the subject of this appeal, read:  
*'air drilling plant shall not be operated for more than two days in any six week period and only operated between the hours of 10:00 and 18:00 on permitted days'.*

The reason given for the condition was:  
*'to protect residential amenity'.*

6. A subsequent planning application which sought removal of condition 29 was submitted to the Council and refused on the basis that it had not been demonstrated that the peak noise levels and impulsive nature of the air drilling would not, in combination with the other equipment at the quarry, adversely impact on nearby residential receptors.
7. Ballylig Quarry is an existing operational basalt quarry covering approximately 11 hectares. Its access is onto the Ballylig Road at western corner of the site. The Ballylig road also abuts the site along the north-west boundary. The original footprint of the quarry is broadly T-shaped and surface water is collected in a pond at the southern end. The surrounding topography obscures any direct views into the appeal site. The quarry has recently been extended northward and an earth bund created which lies parallel to the Ballylig Road. The bund widens at the northern end where the development is closest to other properties. It was recently augmented with additional overburden and new planting. The broader site will enable four phases of deepening which must be completed by 2044. The nearest noise sensitive receptor is No. 45 Ballylig Road which is immediately north-west of the widest section of the bund. Other neighbouring properties are located further north on Ballylig Road and to the east on Loughloughan Road.
8. The Ballymena Area Plan 1986 – 2001 (BAP) acts as the LDP for this area. In the BAP, the site is located in the open countryside, outside of any settlement or rural policy area. Section 14 of the BAP pertains to mineral extraction. Ballylig Quarry is listed as an existing hard rock quarry. The BAP states that where permission is granted for quarry development, the permission will be subject to conditions designed to minimise environmental impact. The extent, direction and method of working, and the positioning of ancillary plant and buildings may be stipulated and, where appropriate, controls will be placed on the use of blasting.
9. Paragraph 6.148 of the Strategic Planning Policy Statement for Northern Ireland (SPPS) states that minerals are an important natural resource and their responsible exploitation is supported by Government. It further states that the minerals industry makes an essential contribution to the economy and to our quality of life, providing primary minerals for construction, such as sand, gravel and crushed rock, and other uses, and is also a valued provider of jobs and employment, particularly in rural areas. Paragraph 6.150 states that while minerals development delivers significant economic benefits, there are also a

number of challenges arising from this form of development which fall to be addressed through the planning system. The effects of specific proposals can have significant adverse impacts on the amenity and wellbeing of people living in proximity to operational sites.

10. The SPPS is no more prescriptive than the mineral policies contained in the document A Planning Strategy for Rural Northern Ireland (PSRNI) on the issues raised in this appeal. The retained policy provisions of the PSRNI therefore remain applicable to the appeal before me.
11. Policy MIN6 of the PSRNI considers the safety and amenity of the occupants of nearby dwellings. It is acknowledged that the continuous and disruptive nature of mineral operations make them “bad neighbours” particularly of housing. MIN6 states that permission will not normally be granted for mineral workings where potential sources of nuisance are judged to be incompatible with standards of amenity. Where permission is granted for a mineral working in close proximity to other developments, conditions designed to mitigate disturbance from the working will, where appropriate, be attached to the permission.
12. As the relevant standards of amenity in respect of mineral workings are not defined in Northern Ireland policy, both parties referred me to the planning practice guidance attached to the National Planning Policy Framework (NPPF) for England. It advises that subject to a maximum of 55dB(A) LAeq, 1hr (free field), mineral planning authorities should aim to establish a noise limit, through a planning condition, at the noise-sensitive property that does not exceed the background noise level by more than 10dB(A) during normal working hours. Where it will be difficult not to exceed the background level by more than 10dB(A) without imposing unreasonable burdens on the mineral operator, the limit set should be as near that level as practicable. The abbreviation dB(A) denotes a weighted decibel level that reflects how a human ear hears the noise. LAeq, 1hr is a measurement of the average sound level over an hour and ‘free field’ indicates that the noise level is not influenced by proximity to buildings. In application LA02/2017/0709/F it was established that the background noise level at the nearest noise-sensitive receptor was 36dB and it was agreed that an appropriate overall noise limit for the site would be 49dB(A) LAeq, 1h (free field). This overall noise level for the quarry is governed by condition 19 of that permission. There is no proposal to change this limit.
13. The NPPF states that where the site noise has a significant tonal element, it may be appropriate to set specific limits to control this aspect. It goes on to state that peak or impulsive noise, which may include some reversing beepers, may also require separate limits that are independent of background noise. The NPPF also advises that care should be taken, however, to avoid any of these suggested values being implemented as fixed thresholds as specific circumstances may justify some small variation being allowed. The Council relied on this part of the guidance to justify the additional noise controls in condition 29.
14. The Council clarified that there was no tonal element to the noise. Rather it was the peak level and impulsive character of the noise when air drilling takes place which was the concern. It considered that were condition 29 to be removed there would be nothing to limit the impact of such peak and impulsive noise impacts on nearby receptors. Notwithstanding the level and character of the noise in

question, which shall be addressed below, the Appellant pointed to the unreasonableness of condition 29 in that it restricted air drilling in a manner wherein it was not efficient for the overall operation of the quarry.

15. According to the evidence, air drilling is used to drill vertical boreholes in which to place explosive charges for a blast. The use of air to cool the drill bit, as well as removing arisings during the drilling process, is considered a more efficient and environmentally friendly method than use of liquid, which generates run-off. I was told that air drilling can take up to two days on site and its duration is dependent on the intended blasting pattern. The machinery is brought onto site when needed but is otherwise in use at other quarries throughout parts of Northern Ireland, thus pre-booking in advance is necessary.
16. The Appellant obtained the Council's noise data and included it as an appendix to their Noise Statement of Case, running to over 600 pages. As environmental factors impact on measured noise, weather data was recorded in order to establish the effects of wind changes and precipitation and periods of higher wind speeds and rainfall were excluded from the results. Allowing for these exclusions, the Council's data suggested that the overall noise limit was breached on 10 occasions during the month.
17. However, the Appellant undertook their own analysis of the same data and compared it with their own noise measurements at the same location. The Appellant's equipment was set to send emails alerts any time the 30-minute noise level reached 48dB. The Appellant also obtained data from a nearby wind turbine which, being at a greater height, would give a more reliable picture of the climatic conditions in the area than the Council's measurements taken close to a building. The wind directions given by the Council were averages of a series of 1 minute measurements and these could not be reconciled with the wind direction or speed data from the wind turbine, which I consider to be more reliable as it is not influenced by proximity to buildings. Many of the breaches of the 49dB limit recorded by the Council occurred when the quarry was not operating. Therefore the survey data does not demonstrate that the quarrying operations, including the air drilling, are the source of the noise. Given the above discrepancies in the Council's noise monitoring data, I am not persuaded that it is sufficiently robust to prove that the quarry operations have breached the overall noise limit imposed by condition 19. Accordingly, I attach little weight to this data in the determination of the appeal.
18. The Appellant employed a different noise consultant during the original application LA02/2017/0709/F for extension of the quarry. The acoustic information relied upon at that time, and which informed the conditions in question, was hypothetical data derived from the machine specifications. The information now before me is actual readings of the plant operating in the quarry. To my mind, this provides a more accurate impression of the noise impact of the air drilling taking place in the specific environment of Ballylig Quarry. Whilst the Appellant and their then representatives may have accepted the conditions at that time during meetings with the Council, that does not preclude the Appellant seeking to alter or remove conditions at a later point, nor would any such acceptance of conditions at the time in itself justify their retention now.

19. The Appellant's Noise Statement of Case stated that noise emissions are compliant with the 49dB limit of condition 19. It stated that noise source levels within the modelling assessment were compared to those measured on site, with noise levels obtained at the site boundary with the air drilling was in operation, both in insolation, as well as measured noise levels from all aspects of the site working simultaneously. It was however pointed out that air drilling, which is carried out in preparation for a blast to take place, does not occur at the same time as rock hammering, which takes places after a blast. The Appellant's evidence is that the measured and predicted noise levels from the air drilling on site is less than 41dB at the nearest receptor on Ballylig Road. That level is around 8dB below the limit set in condition 19, as well as being circa 14dB below the fixed limit in the NPPG guidance of 55dB for total noise operations for quarry operations. I have been given no reason to doubt this evidence.
20. I visited the site and surrounding environment during normal quarry operations and also when the air drilling was taking place. Other machinery on the quarry floor, including the rock hammer, was also in operation during that period as I requested it be so in order to assess its noise first hand. From the nearest receptor on Ballylig Road the noise from air drilling was perceptible, particularly as it was taking place by necessity on higher land at the quarry working face. However, it was not at a level which, to my ear, sounded particularly overbearing, nor was the peak level and impulsive character of the air drilling particularly dominant over the general background noise level. From receptors further from the quarry site boundary the perceptibility of the air drilling diminished. I accept that the recently augmented earth bund may have assisted to some degree in reducing the overall noise emissions from the quarry at the receptors on Ballylig Road.
21. Whilst the Council pointed to the removal of condition 29 leaving the air drilling process unfettered, the specific role it plays in pre-blast preparation restricts its use to limited instances and duration on site. Due to the security issues with bringing explosives onto a quarry site, the air drilling is only carried out just prior to when a blast is scheduled and the explosives are to be delivered and set. Thus there is limited scope for air drilling to take place on the site, both in terms of its actual necessity, but also arising from its limited availability due to its use elsewhere at other quarries throughout Northern Ireland. Whilst it may be the case that there could be more air drilling occur than condition 29 presently allows for, it would still be restricted to when it was actually required to facilitate preparation for blasting, whilst also slotting into the broader schedule for that equipment to be brought onto site for use. Nor does that condition actually control any noise levels in its own right, but simply controls the use and duration of air drilling. Furthermore the overall hours of operation for the quarry remain restricted by condition 30 of permission LA02/2017/0709/F. It would also remain with the Council's remit to require a noise assessment to be carried out by the Appellant in response to a noise complaint from occupants of a noise sensitive receptor, or at its own discretion, under condition 31 of the same permission.
22. Whilst condition 29 may have rendered quarry operations less efficient than they might be, that in itself does not point to the condition being unreasonable. However, the totality of the noise evidence, of which I find the Appellant's data and analysis to be more accurate and persuasive than the Council's, leads me to conclude that that provided the overall 49dB noise limit is complied with, no unacceptable adverse impacts would arise on nearby residential amenity. I

therefore find that condition 29 is unnecessary and that its deletion would not give rise to any adverse impacts on the residential amenity of nearby receptors.

23. A successful appeal in respect of a Section 54 application results in a new planning permission for the same description of development as previously approved, but with different conditions attached. The remaining relevant conditions from the previous permission therefore must be repeated. From the totality of the submitted evidence, as well as my on-site observations, the development on site has progressed since that application was granted. Some of the conditions could be altered or clarified to reflect the stage the development is now at, or the outcome of subsequent applications. I consider that the conditions should remain broadly as stated in the original permission with the following exceptions:

- Section 54 of the Act prohibits an extension to the deadline for starting development beyond the date set by condition no. 1 of the 2019 permission. However, as it was not disputed that the development has commenced and is now at phase 3, no time limit is necessary.
- Condition No. 5 which required submission of a Construction Method Statement was discharged under application LA02/2019/0821/DC, so it is no longer necessary.
- The position of the approved site office, weighbridge and wheel wash were varied through an application for a non-material change (LA02/2019/0772/NMC). The site office was subsequently moved again as a non-material change under application LA02/2020/0985/NMC. These changes necessitate an amendment to condition No. 7 regarding the wheel wash. As the wheel wash is in place on site, the condition should simply require that it is retained and used by all HGVs.
- Condition No. 9, which refers to the permission superseding previous planning approval references dating from 1974 to 2004 is not a planning condition. I do not consider it to be necessary and it can be deleted.
- Condition Nos. 12 and 13 were varied by application LA02/2020/0155/F and will be in accordance with that decision. The original document titles have been referred to in the interests of clarity. An application to discharge these revised conditions is at the time of this appeal under consideration by the Council (ref. LA02/2021/0407/DC).
- The height of the screening bund required by condition No. 20 was increased through an application for a non-material change (ref. LA02/2021/0084/NMC). The condition should be amended to refer to this more recent approval.
- As the approved phases 1 and 2 are now complete, condition No. 21 which provided for increased noise limits during those phases is no longer relevant and shall be removed.
- Condition No. 22 was varied under appeal decision 2020/A0069 and shall be changed to reflect that decision.
- Condition No. 23 was deleted through the outcome of that same appeal decision.
- Condition No. 25 is subject to a current application for variation (LA02/2021/0422/F) under consideration by the Council and will be left as existing pending its determination.
- Condition No. 27 is subject to a separate planning appeal (ref. 2021/A0054) and will be retained pending the outcome of that appeal.

24. For the reasons given above the appeal proposal complies with Policy MIN6 of the PSRNI and the related provisions of the SPPS. Nor would it offend the relevant provisions of the BAP. The appeal shall succeed and full planning permission is granted subject to the conditions set out below. Given the number of original conditions and variations that have already or may in future take place, I shall adopt the original numbering system so that all parties charged with interpreting the planning permission are clear on the original condition and any amendments.

**Conditions (numbered in accordance with decision LA02/2017/0709/F)**

- (2) The development hereby approved shall be carried out and operated in accordance with the approved plans set out below.
- (3) The vehicular access and visibility splays that have been provided in accordance with Drawing No. 05/1 bearing the date stamp 22nd November 2018 shall be permanently retained and kept clear.
- (4) Gates or security barriers at the access shall be located at a distance from the edge of the public road that will allow the largest expected vehicle to stop clear of the public road when the gates or barriers are closed.
- (6) Within 6 months of exhaustion of approved reserves, all quarry plant and machinery, structures, buildings, foundations, scrap metal, disused vehicles and other waste materials shall be removed from the site.
- (7) The wheel wash shall be permanently retained in good operational condition for the duration of quarrying within the site. Prior to exiting the site, all Heavy Goods Vehicles (HGVs) shall use the wheel wash.
- (8) No extraction shall take place beyond or below the approved benches as indicated on Drawing No. 03/1 bearing the date stamp 22nd May 2018 and No. 04/1 bearing the date stamp 22nd November 2018.
- (10) Extraction shall be for a limited period only, and shall cease on or before the 11th July 2044.
- (11) Progressive reinstatement of the site shall proceed in a phased approach in accordance with the approved restoration scheme as shown on drawing No. 23 and the Landscaping Plan by MCL Consulting, which were received on 22nd November 2018.
- (12) The quarry operator shall carry out the monitoring of rainfall and quarry discharges as set out in the monitoring plan of table 9 of the Hydrogeological and Hydrological Assessment Addendum Report by MCL Consulting, which was received on 22nd November 2018. The quarry operator shall also carry out monitoring of groundwater levels prior to and for the duration of quarrying as set out in the Golder letter entitled "Ballylig Quarry – Hydrogeological opinion on the groundwater level monitoring planning condition" which was received on 11th May 2020. Groundwater level monitoring data shall be submitted to and agreed by the Council in writing prior to commencing phase 4 and each subsequent phase of the

approved extraction. Groundwater level monitoring data shall be retained and made available to the Council upon request.

- (13) No extraction shall take place below 125m AOD until 12 months of groundwater level monitoring has been completed as set out in the Golder letter entitled “Ballylig Quarry – Hydrogeological opinion on the groundwater level monitoring planning condition” which was received on 11th May 2020, the findings compiled in a report to be submitted to the Council and groundwater trigger levels agreed in writing with the Council.
- (14) Prior to the groundwater trigger levels referred to in Condition 13 being agreed, interim groundwater trigger levels of 135.75m AOD at Bore Hole 5 (BH5) and 134.74m AOD at Bore Hole 7 (BH7) shall be applied (Borehole locations identified in the map in Figure 5 of the MCL Consulting letter entitled “Proposed Planning Conditions – LA02/2017/0709/F: Ballylig Quarry” which was received on 16th August 2018).
- (15) If, prior to the groundwater trigger levels being agreed as outlined in condition 13, the groundwater falls below the trigger levels specified in condition 14, all extraction within the site shall cease within 24 hours, the Council shall be notified and emergency supplies of water shall be made available by the quarry operator to any properties impacted until a suitable permanent alternative supply is agreed with the Council. Extraction shall not recommence on site until confirmation is received in writing from the Council that it is acceptable to do so.
- (16) If, following the agreement of groundwater trigger levels under condition 15, the groundwater falls below these trigger levels, all extraction within the site shall cease within 24 hours, the Council shall be notified and emergency supplies of water shall be made available by the quarry operator to any properties impacted until a suitable permanent alternative supply is agreed with the Council. Extraction shall not recommence on site until confirmation is received in writing from the Council that it is acceptable to do so.
- (17) Within 24 hours of a written request by Mid and East Antrim Borough Council, following a reasonable groundwater level complaint from the occupant of a groundwater dependent receptor and/or at the discretion of the Council, all extraction within the site shall cease and emergency supplies of water shall be made available by the quarry operator to any properties impacted until a suitable permanent alternative supply is agreed with the Council. The details of the suitable permanent alternative shall be submitted to the Council within 2 weeks of the written request and the permanent alternative supply shall be provided at the expense of the quarry operator within 6 weeks of the written request. Extraction shall not recommence on site until confirmation is received in writing from the Council that it is acceptable to do so.
- (18) No extraction below 110m AOD shall take place until such times as a replacement/upgraded water supply has been provided at 14 Loughloughan Road in accordance with a scheme to be agreed in writing with the Council.
- (19) The level of noise emitted from the approved site shall not exceed a daytime noise level of 49dB(A) LAeq, 1h (free field) as measured at the nearest noise sensitive



dwelling (45 Ballylig Road) or at any other noise sensitive dwelling in the vicinity of the quarry.

- (20) The screening bund as approved under application LA02/2021/0084/NMC shall be permanently retained.
- (22) All crushing and screening plant shall only be permitted to operate within the area shaded blue on drawing PAC 1 of appeal decision 2020/A0069 (identified as Figure 3 of the Irwin Carr Consulting Noise Assessment dated 26 November 2019).
- (24) No rock ripping shall take place.
- (25) Works shall be carried out in phases as per drawing No. 03/1 which was received on 22nd May 2018, commencing at phase 1 and only progressing to the next phase upon completion of the previous one.
- (26) All quarry vehicles operating within the development site shall be fitted with white noise (full spectrum) reversing alarms or variable loudness reversing alarms.
- (27) Rock hammering shall not take place on more than 28 days in a calendar year and shall only operate between the hours of 10:00 and 18:00 on permitted days. A log of the use of any rock hammer shall be retained on site for inspection by the Council upon request.
- (28) Not more than 1 rock hammer shall be operational within the approved quarry at any one time. Rock hammering shall only be permitted on the lowermost level of the quarry.
- (30) No quarrying activities or site operations, including the operation of any equipment or machinery, shall take place outside of the following hours:
  - a. 07:00 to 19:00 hours Monday to Friday
  - b. 07:00 to 13:00 hours on SaturdaysThere shall be no quarry activities or site operations, including the operation of any equipment or machinery at any time on Sundays or on public holidays.
- (31) Within 6 weeks of a written request by Mid and East Antrim Borough Council, following a noise complaint from the occupant of a noise sensitive receptor, and/or at the discretion of the Council, the operator shall, at his/her expense employ a suitably qualified and competent person to assess the level of noise from the development and within this period have provided details of the noise monitoring survey within a suitable report to Mid and East Antrim Borough Council.
- (32) Each blasting charge shall be so balanced that a peak particle velocity of 10mm/second and an air overpressure of 128dB is not exceeded at any residential receptors.
- (33) The operator shall monitor and record levels of ground vibration and air overpressure for each blasting operation at the nearest residential receptor, or such alternate location as may be agreed in writing with the Council. The results of this monitoring shall be retained for a minimum of 12 months and shall be made available to the Council upon request.

- (34) In the event that the levels specified in condition 32 are exceeded during any blast, the Council should be notified within 7 days and no further blasting shall be permitted at the site until Mid and East Antrim Borough Council is satisfied that these standards will be met in future blasting operations, and have confirmed this in writing to the operator

This decision is based on the following drawings:

<b>Drawing No.</b>	<b>Title</b>	<b>Scale</b>	<b>Date received by Council (except for drawing PAC1, listed as date received by PAC)</b>
01	Site Location Plan	1:2000	22/11/2018
02	Existing Site Layout	1:2000	04/08/2017
03/1	Quarry Development Plan	1:2000	22/05/2018
04/1	Cross Sections	1:1000	22/11/2018
05/1	Access Route	1:500	22/11/2018
06	Site Office Plan	1:50	04/08/2017
07	Proposed Workshop	1:200	04/08/2017
08	Existing Location of Site Office and Weighbridge	1:500	22/05/2018
14/2	Existing Site Access	1:500	22/11/2018
15/1	Proposed Site Access	1:500	22/11/2018
16	Topographical Survey	1:1000	22/11/2018
17	Phase 1 Overburden Strip	1:1000	22/11/2018
19	Phase 3 125m AOD Level	1:1000	22/11/2018
20	Phase 4 110m AOD Level	1:1000	22/11/2018
21	Phase 5 95m AOD Level	1:1000	22/11/2018
22	Phase 6 80m AOD Level	1:1000	22/11/2018
23	Phase 7 Restoration	1:1000	22/11/2018
24	Site Office Elevations	1:100	22/11/2018
25	Site Office Floor Plan	1:100	22/11/2018
26	Proposed Weighbridge Plan	1:50	22/11/2018
27	Proposed Wheel Wash Elevations	1:50	22/11/2018
01	Relocation of Weighbridge Office (NMC)	1:2000	21/12/2020
02	Revised Bund Design (NMC)	1:800	25/01/2021
PAC1	Location of Screening Equipment	NTS	02/02/2021

**COMMISSIONER MARK WATSON**



### **List of Appearances**

Planning Authority:-	Mr K Patterson (M&EA BC – Planning) Ms C Muldoon (M& EA BC – Env. Health) Mr S Mills (M&EA BC – Env. Health)
Appellant:-	Mr S Beattie QC (instructed by TLT NI LLP) Mr G McGill (Clyde Shanks) Mr S Carr (Irwin Carr Consulting) Mr J Dundee (Synergy Engineering & Environment) Ms S Mulholland (TLT NI LLP – observer) Ms G McCullough (RGM Construction Ltd – observer)

### **List of Documents**

Planning Authority:-	‘A’ Statement of Case (M&EA BC)
Appellant:-	‘B’ Statement of Case & Appendices (Clyde Shanks) ‘C’ Noise Data Annex to Irwin Carr Report