



Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government

PL 8/2013

24 May 2013

To: County/City Managers
Directors of Planning Services
Borough and Town Clerk

Applications for substitute consent pursuant to section 261A: report under section 177I

Dear Manager,

This Circular Letter is issued by the Minister pursuant to section 28 of the Planning and Development Act 2000, as amended, and planning authorities are accordingly required to have regard to it in respect of the relevant function under the Planning and Development Act 2000, in this case preparation of a report under section 177I.

Section 177I of the Planning and Development Act 2000 places a requirement on a planning authority to supply a report to An Bord Pleanála on a substitute consent application, within 10 weeks of being given a copy of such an application by the Board.

Section 177I applies to substitute consent applications generally and was not therefore drafted particularly with section 261A applications in mind. It not considered that planning authorities will require 10 weeks to prepare a report in relation to a substitute consent application made pursuant to section 261A.

A substitute consent application pursuant to section 261A follows on the examination of the quarry under section 261A, in order to make the determinations and decisions required pursuant to subsection (2)(a) and subsection (3)(a), (4)(a) or (5)(a) as the case may be.

In relation to this process, the *Guidelines for Planning Authorities on Section 261A of the Planning and Development Act 2000 and related provisions* (January 2012) stated that planning authorities should firstly compile a list of all quarry developments within the area of the planning authority based on every available source of data, such as:

- The planning register, in relation to permissions granted,
- The section 261 register (showing the position as of 2004/2005),
- Planning enforcement records,
- Information from members of the public, including any submissions received in response to the public notice,
- Rateable valuation records,
- Aerial photos or maps (if available), and
- Local knowledge from planning authority staff, particularly staff dealing with specific areas within a county.

The Guidelines also stated that a file should be opened for each quarry.

In making the required determination under section 261A(2)(a) planning authorities were required to have regard to:

- submissions made within the permitted period;
- any information submitted to it in connection with the section 261 process;
- relevant information on the planning register;
- any relevant information obtained in enforcement actions against the quarry and
- any other relevant information.

Similarly in making decisions under subsections (3)(a), (4)(a) or (5)(a) planning authorities were required to consider all relevant information available to it in relation to the quarry.

It is assumed therefore that all the available information will have been placed on the file relating to the quarry in question or referenced in the report on the individual quarry completed as part of the section 261A process (it is understood that planning authorities generally completed such reports).

The report required under section 177I is required to include

(a) information relating to development (including development other than the development which is the subject of the application for consent) carried out on the site where the development the subject of the application for consent is situated, and any application for permission made in relation to the site and the outcome of the application;

(b) information relating to any warning letter, enforcement notice or proceedings relating to offences under this Act that relate to the applicant for substitute consent;

(c) information regarding the relevant provisions of the development plan and any local area plan as they affect the area of the site and the type of development concerned;

(d) any information that the authority may have concerning—

- (i) current, anticipated or previous significant effects on the environment, or on a European site associated with the development or the site where the development took place and, if relevant, the area surrounding or near the development or site, or
- (ii) any remedial measures recommended or undertaken;

(e) the opinion, including reasons therefor, of the manager as to—

- (i) whether or not substitute consent should be granted for the development, and
- (ii) the conditions, if any, that should be attached to any grant of substitute consent.

As the information at (a), (b) and (d) will already have been assembled by the planning authority, it is only the information at (c) and (e) that will be required to be compiled on receipt of a request for a report i.e. the relevant provisions of the development plan and an opinion as to whether substitute consent should be granted/any conditions. In relation to the latter, the planner(s) dealing with the quarry under the section 261A process will no doubt have formed an opinion as whether the existence of the development in question is consistent with the proper planning and sustainable development of the area.

Also as stated above planning authorities will generally have prepared a report on the quarry for the section 261A process, some of which will be able to be re-used/adapted.

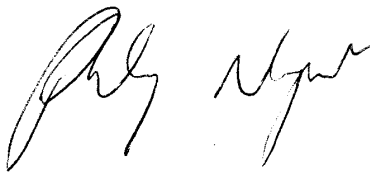
Accordingly, in respect of section 261A substitute consent applications, planning authorities should complete a section 177I report and return it to Board within 3 weeks of receipt a copy of the application from the Board.

This is an essential requirement to ensure that the Board can deal with the substitute consent application within an overall period of 22 weeks.

Each planning authority should ensure now, in relation to any quarry to in respect of which a subsection (3)(a) notice was issued, which was not overturned by the Board, that the information assembled under section 261A is on the relevant quarry file, to facilitate the immediate commencement of consideration of a copy of substitute consent application from the Board.

When a copy of such an application is received, the preparation of the report under section 177I should be prioritised by the planning authority, and as stated above, the completed report should be returned to the Board within 3 weeks at the latest.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Philip Nugent', written in a cursive style.

Philip Nugent
Principal
Planning Section