



An
Bord
Pleanála

Inspector's Report

ABP-305249-19

Development	Fence at quarry.
Location	Fountain Cross, Ballyneillan, Ennis, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	18891
Applicant(s)	Patrick Gibney
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Patrick Gibney
Observer(s)	Michael Halpin
Date of Site Inspection	11 th October 2019
Inspector	Colin McBride

1.0 Site Location and Description

1.1 The appeal site is located in the rural area at Fountain Cross c.3.5kms to the north west of Ennis within the confines of an existing quarry complex. There is an existing access to the quarry located on the southern side of the N85 Lahinch Road, just west of the junction with the R476. There appears to be a blocked up access point (stone blocks) besides the existing gated access. The limestone quarry has been non-operational since c.2009. There is an existing roadside boundary wall along the site frontage and a secure gated access from the N85. The fencing in question is to be located within the site on the opposite side of the access road which runs along the northern boundary, it then is to be erected to run in a south westerly direction to the rear of existing quarry buildings and to the south west of the gravel heaps to the unworked area to the west of this gravelled area. Therefore, it would fence off the concrete moulding shed and gravelled area to the north from the previously more active worked area to the south.

2.0 Proposed Development

2.1. Permission sought to erect a fence within a quarry complex. The fence is metal fence with a 2.43m high panel and runs for a length of 536m from the vehicular entrance to the quarry premises and on an east west axis to the south of a structure identified as a concrete moulding shed located adjoining the southern road side boundary.

3.0 Planning Authority Decision

3.1. Decision

Permission refused based on one reason...

1. The proposal site forms part of a larger site to which planning application P06-1353 (ABP PL03.229040) and the Section 261A reference EUQY4 (ABP03.QV.0324) relate. Having regard to the High Court's invalidation of the An

Bord Pleanála decision to grant P06-1353 (ABP PL03.229040) and its remittal to An Bord Pleanála's Section 261A decision for redetermination by the Board on the planning status of the overall site (which remains outstanding), the Planning Authority considers that the granting of planning permission for the proposed development would be premature pending the adequate registration of all onsite developments. Furthermore the proposed fence would facilitate the re-opening of the manufacturing areas as a stand-alone development from the existing quarry which it is considered would constitute piecemeal and disorderly development of the site, and would, due to the requirement to import all materials to the site, result in intensification of use of the access point, which would have an adverse impact on traffic safety and free flow on the adjacent N85 National road. As such it is considered that to permit further development on this site would not be in accordance with the proper planning and orderly development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (08/01/19): Further information required including details regarding the measures to regularise activities on site in light of the high court ruling regarding the site, revised proposal to ensure the proposed fence does not impact upon the future upgrade of the vehicular access, details regarding justification for the fence, details of the colour and finishes of the fence.

Planning report (30/07/19): It was noted that the provision of a fence to annex part of the site for the purposes of manufacturing works would represent piecemeal development and fails to regularise the issues of the wider site. It was considered that such would lead to intensification of an existing entrance and have an adverse impact on the adjoining road network. Refusal was recommended based on the reasons outlined above.

3.3. Prescribed Bodies

3.3.1 TII (10/07/19): No observations to make.

3.4. **Third Party Observations**

Submission were received from...

Michael Halpin,

John Hehir,

David J. Coley,

Cairn Hill Group.

The issues raised in the submission can be summarised as follows...

- Premature due to quashing of decision under PL. PL03.229040, proposal would be contrary a court order, existing vehicular entrance is unauthorised with compliance with condition no. 4 of PL03.216138 not carried out.

4.0 **Planning History**

4.1 SU0064: Substitute consent application on a portion of the lands that make up the quarry complex. Pending decision.

4.2 RL03.RL3572: Referral regarding whether the construction of a fence measuring 1.8m high within the property at Fountain Cross, Ennis, Co. Clare is or is not development or is or is not exempted development. It was determined that such constituted development and is not exempted development.

4.3 PL03.229040 (P06-1353): Permission granted by the Council (2008) and subsequently upheld by the Board (2012) for the continuation of quarrying activities including the processing of aggregates, landscaping, restoration and associated works at the existing registered quarry lands, in accordance with Section 261 of the Planning and Development Act 2000. An EIS was submitted with this application. This decision was subject to Judicial Review and was subsequently quashed by the High Court in July 2016.

PA ref. QY 4:

Application for registration of quarry under S.261, which gave rise to the subject application and EIS.

- 4.4 PL03.227554 (P07/2651): Permission refused for retention of development consisting of quarrying works, screening embankments, internal roads, settlement lagoons, soak away, overburden storage area, and permission for completion of quarrying works, extension and lining of existing settlement lagoons, construction of a lined settlement lagoon, soakaway, lined storm attenuation tank, landscaping and ancillary works at Fountain Cross Quarry, Fountain Cross, Ennis, Clare. Refused based on one reason...

1. The subject application, which is accompanied by an Environmental Impact Statement (EIS) and which encompasses a site of 8.02 hectares, includes an application for retention permission for quarrying works and associated works as set out in the public notices for the application (including settlement lagoons and soak-away intended to serve the overall quarrying activities at this location). Pursuant to the European Court judgement (Case C- 215-06, Commission -v-Ireland delivered on 3rd day of July 2008), in which it was held that the retention permission system, as it applies in Irish law to projects that are required to be subject to Environmental Impact Assessment under the EIA Directives, does not comply with the Directives, there is no procedure currently in force for application for retention of development which requires Environmental Impact Assessment. The Board is, therefore, precluded from considering a grant of planning permission in this case.

- 4.5 PL03.225688 (P07/1914): Permission granted on appeal to Whelans Limestone Quarries Limited for development consisting of the extension of existing landholding to relocate and upgrade the existing septic tank, puraflo treatment plant and percolation/polishing area, the erection of a boundary fence, landscaping and ancillary works.

4.6 PL03.225480 (P06/1130): Permission granted on appeal to Whelans Limestone Quarries Limited for amendments to the existing quarry entrance; amendments and extension to car park; relocation of the weighbridge and installation of new weighbridge; relocation of wheelwash; construction and surfacing of internal road and existing yard; relocation of diesel tanks and bunding; partial demolition of store; erection of boundary safety fence and walls; erection of lighting poles; extension of existing office; relocation of boundary trees and walls for sight distance purposes; and all associate ancillary site works.

4.7 PL03.216138 (P04/1064): Permission granted on appeal to Whelans Limestone Quarries Ltd. for retention and completion of quarrying works (9.56 hectares) and extension of same (6.64 hectares) to include phased quarrying works, internal haul roads, screening embankment and associated landscaping and restoration works.

4.8 PL03.208056 (P03/904): Permission refused on appeal for construction of offices, store, workshop for vehicle maintenance, widening and retention of entrance, construction of new hard stand area, retention and extension of concrete wall as fence compound, provision of 40 car parking spaces and installation of a proprietary treatment system.

This site lies on the opposite side of the N85 to the appeal site and the reasons for refusal related to creation of a traffic hazard and obstruction of other road users, consolidation and intensification of unauthorised development on this site and risk of groundwater pollution within the catchment of Drumcliff Springs.

4.9 03.WW.0320 (WP138): An appeal against conditions attaching to a discharge licence issued to Whelan's Quarries by Clare County Council was determined in August 2007. This licence relates to the discharge of treated trade effluent and sewage effluent (process water, surface water run-off and treated domestic effluent) to groundwater on site and surface waters adjacent to the site. This licence preceded the current application and appeal which include surface water management proposals, under ref. 07/2651 / PL03.227554.

4.10 Other Planning History files referenced in Planning Reports

P8-14745 Grant of permission in 1979 to retain and relocate concrete batching plant.

P8-16852 Grant of permission in 1981 for tarmac and dust extraction plant.

96-309 Grant of permission in 1996 for offices and septic tank.

00-1605 Permission granted for two stores.

00/1607 Permission granted for pre-cast units curing sheds.

02/777 Permission granted to extend laboratory and construct new offices.

02/25 Permission granted for retention of existing tarmacadam and dust extraction plant.

There are also numerous enforcement files relating to developments on this landholding, identified in internal reports on the planning application.

5.0 Policy Context

5.1. Development Plan

The relevant development plan is the Clare County Development Plan 2017-2023.

Section 8.2.3.3 refers to restrictions to Access onto National Roads. The Council has identified four locations where exceptional circumstances to the general policy may be considered for developments of strategic importance. This includes: *Former Whelan's Quarry site at Fountain Cross, Ennis – use as quarry; rehabilitation of site for outdoor activity/adventure park;*

Section 10.4.6 refers to the Extractive Industry and this includes Objective CDP10.13 i.e: *To promote the extraction of minerals and aggregates and associated processing where such activities do not have a significant negative impact on the environment, landscape, public health, archaeology or residential amenities of neighbouring settlements and where such operations are in compliance with all national regulations and guidelines applicable to quarrying and mining activities.*

Volume 3 deals with Municipal District Written Statement and Settlement Plans and 3a with Ennis Municipal District. The site is in the rural area outside of and to the west of the settlement boundaries.

5.2. Natural Heritage Designations

Toonagh East SAC 2 km from the site.

Ballyallia Lough SPA 2 km from the site.

Ballyallia Lake SAC 2 km from the site.

Lower River Shannon Sac 2.9 km from the site.

Pouldatig Cave SAC 3.6 km from the site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A first party appeal has been lodged by Earth Science Partnership (Ire) Ltd on behalf of the applicant Patrick Gibney, Roadstone Ltd. The grounds of appeal are as follows...

- The current owners have entered into a lease agreement which requires that a fence be erected cordoning off the existing precast manufacturing facility from the rest of the quarry lands.
- It is noted that the pre-cast concrete manufacturing facility was granted in the year 2000 and predates the quarry registration process. It is noted that the permission granted prior the quarry registration process and which were not subject to judicial review are valid permissions and works can continue on such as along as they do not contravene current judicial proceedings.
- It is noted that the concrete manufacturing facility (00/1607) can operate subject to 5 conditions, none of which make it interdependent on the adjoining quarry.

6.2. Planning Authority Response

6.2.1 No response.

6.3. Observations

6.3.1 An observation has been submitted by Michael Halpin, Bushypark, Ennis, Co. Clare.

- Under the High Court decision JR 2012 no. 871JR, An Bord Pleanala is obligated to assess the entire quarry site. The fact that the Board has not completed this assessment renders this application premature.
- The proposal is a piecemeal application and is unsustainable in the overall context and at variance with the High Court decision.
- A condition requiring a new entrance under PL03.216138 was attached and this condition was not complied with. The current entrance is unauthorised and cannot be use as part of the current application. It is noted that the N85 is a heavily traffic route and the site is within the 100kph zone.
- The curing shed is an ancillary quarry activity and needs to be assessed by the Board on foot of the High Court decision and cannot be treated as a stand-alone activity.

7.0 Assessment

7.1. Having inspected the site and examined the associated documents, the following are the relevant issues in this appeal.

Principle of the proposed development, physical impact, visual amenity/adjoining amenity.

Planning status of existing site

Appropriate Assessment

7.2 Principle of the proposed development, physical impact, visual amenity/adjoining amenity:

7.2.1 The proposal is for the construction of a metal fence which has a 2.43m high panel and runs for a length of 536m with the grounds of an existing quarry complex. The fence runs from the vehicular entrance to the quarry premises and on an east west axis to the south of the concrete moulding shed located adjoining the southern road side boundary. The proposal is solely for the fence structure and does not relate any quarrying activity or continuation of use or new uses relating any of the existing structures within the quarry complex at this location.

7.2.2 In terms of physical scale and impact the proposed fence is a structure that is modest in scale and has no significant physical or visual impact in the context of its location within the existing quarry complex. The proposed fence would have no significant impact on the visual amenities of the area or the amenities of adjoining properties and its physical impact would not be contrary to the proper planning and sustainable development of the area.

7.3 Planning status of existing site:

7.3.1 The reason for refusal relates to the fact that the proposal site forms part of a larger site to which planning application P06-1353 (ABP PL03.229040) and the Section 261A reference EUQY4 (ABP03.QV.0324) and the High Court's invalidation of the An Bord Pleanála decision to grant P06-1353 (ABP PL03.229040) and its remittal to An Bord Pleanála's Section 261A decision for redetermination by the Board on the planning status of the overall site (which remains outstanding). It was considered that the granting of planning permission for the proposed development would be premature pending the adequate registration of all onsite developments. It was also considered that the proposed fence would facilitate the re-opening of the manufacturing areas as a stand-alone development from the existing quarry which it is considered would constitute piecemeal and disorderly development of the site, and would, due to the requirement to import all materials to the site, result in intensification of use of the access point, which would have an adverse impact on traffic safety and free flow on the adjacent N85 National road.

7.3.2 It is indicated on the file that the purpose of the fence is to separate the existing concrete moulding plant from the rest of the quarry complex for the purpose of its operation separate to the historic curtilage of the quarry. The applicants have noted that the existing plant is subject to a separate earlier permission that is not impacted by the High Court decision. It is noted that the concrete manufacturing facility (00/1607) can operate subject to 5 conditions, none of which make it interdependent on the adjoining quarry.

7.3.3 The proposal is for a metal fence within an existing quarry complex, which has a long planning history. What is being sought for permission is a fence structure and not a permission for a continuation or intensification of previous authorised operations or a change of use of existing structures or activities within the quarry complex. The operation of the concrete plant independent of the quarry is not the subject of this application, which is purely for a fence structure. The planning status of such is not being assessed under this application and if permission is granted for the fence it does not constitute consent or authorisation for such if it is required. Permitting the fence does not confer any altered planning status to activities or operations and any decision to permit the proposal purely permits a fence structure within the confines of an existing commercial site that has a long planning history of authorised commercial development despite the most recent court decision.

7.3.4 The decision refers to the proposal having an adverse impact in terms of traffic consideration and the N85. The proposal does not entail the provision of a new vehicular entrance or the authorisation of any activity that intensifies a use that would generate additional traffic on site. The proposal is for a fence structure internal to the quarry complex. In regards to compliance with conditions of a previous permission (PL03.216138) regarding alterations to the vehicular entrance, the onus is on applicants to ensure compliance with conditions set down under any permission granted. It would appear that condition no. 4 required that a separate permission be acquired for improvement of vehicular access with it notable that permission was granted under PL03.225480 for amendments to the existing quarry entrance.

7.3.5 I would note that having regard to the nature and scale of the proposal development in the context of existing commercial development at this location, the proposed development is of modest scale and would have a negligible physical and visual impact at this location and would be acceptable in the context of the proper planning and sustainable development of the area.

7.4 Appropriate Assessment:

7.4.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. I recommend a grant of permission subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposal development in the context of existing commercial development at this location, the proposed development is of modest scale and would have a negligible physical and visual impact at this location and would be acceptable in the context of the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 08th day of August 2019, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of

development and the development shall be carried out and completed out in accordance with the agreed particulars.

Reason: In the interest of clarity.

Colin McBride
Planning Inspector

30th December 2019