



An
Bord
Pleanála

Board Direction
BD-001619-18
ABP-300034-17

The submissions on this file and the Inspector's report were considered at a Board meeting held on 25th October, 2018 and again on the 31st October, 2018.

The file relating to the application for substitute consent for the plant area at Clonmelsh Quarry, Nurney (ABP-300037) and the file relating to further development of an existing quarry at Powerstown, Nurney (ABP-300425) were considered at the same meetings.

The Board, in accordance with section 177K of the Planning and Development Act, 2000, as amended, and based on the Reasons and Considerations set out below, decided to GRANT substitute consent in accordance with the following conditions.

REASONS AND CONSIDERATIONS

In coming to its decision, the Board had regard *inter alia* to the following:

- a) the provisions of the Planning and Development Acts, 2000, as amended, and in particular, Part XA,
- b) the provisions of the Planning and Development Regulations, 2001 as amended,
- c) Council Directive 92/43/EEC on the Conservation of natural Habitats and of Wild Flora and Fauna, as amended,

- d) the 'Quarries and Ancillary Activities, Guidelines for Planning Authorities', issued by the Department of the Environment, Heritage and Local Government, in April 2004,
- e) the provisions of the Carlow County Development Plan 2015 – 2021,
- f) the remedial Environmental Impact Assessment Report and the remedial Natura Impact Statement submitted with the application for substitute consent, and supporting documentation,
- g) the submissions received from the applicant in response to the Section 132 notice from An Bord Pleanála,
- h) the report and the opinion of the planning authority under section 177I of the Planning and Development Act, 2000 (as amended),
- i) the submissions made in accordance with regulations under section 177N of the Planning and Development Act, 2000 Act (as amended),
- j) further submissions from the parties in response to reports/observations
- k) the decision of the Board to grant leave to apply for substitute consent under section 177D of the Planning and Development Act, 2000 (as amended), – ref. 01.LQ0001, on the 7th day of April 2017,
- l) the report of the Board's Inspector, including in relation to potential significant effects on the environment and on European Sites,
- m) the nature and scale of the development the subject of this application for substitute consent,
- n) the planning, legal history and historical pattern of development of the site,

- o) the Licence to Discharge Ref. DL7/233 as amended by 01.WW0371 decision of An Bord Pleanála,
- p) the mitigation measures which were/are in place and the restoration scheme proposed,
- q) the nature and scale of the development the subject of an associated application for substitute consent, ref. ABP-300037, to the north of the subject quarry,
- r) the pattern of development in the area, and the proximity of the quarry to a European site.

Remedial Environmental Impact Assessment:

The Board completed an environmental impact assessment of the development taking account of:

- (a) the nature, scale, location and extent of the development for substitute consent,
- (b) the remedial Environmental Impact Assessment Report (rEIAR) and associated documentation submitted in support of the application,
- (c) the submissions received from the Planning Authority, prescribed bodies and observers, and
- (d) the Inspector's report.

The Board considered that the remedial Environmental Impact Assessment report, supported by the documentation submitted by the applicant, adequately considers the past operations of the quarry and identifies and describes adequately the direct, indirect, secondary and cumulative effects of the past operations on the environment. The Board completed an Environmental Impact Assessment in relation to the subject development, by itself and in combination with other development in

the vicinity. The Board agreed with the examination, set out in the Inspector's report, of the information contained in the remedial environmental impact assessment report and associated documentation submitted by the applicant and submissions made in the course of the planning application. The Board considered there is an adequate summary of the rEIAR in non-technical language.

The Board considered, and agreed with the Inspector's reasoned conclusions, that the main significant direct and indirect effects of the past operations on the environment were, and included measures to avoid, prevent or reduce, in particular:

- **Land, soil and geology:** There has been a permanent loss of agriculture land, sand, gravel and rock at the Clonmelsh quarry. The loss of agriculture land is not considered significant in the context of the amount of such land in the vicinity. The mitigation measures in place include the storage of stripped topsoil within berms, for later re-use in restoration and the stabilisation of the berms through re-seeding or self-seeding. It is intended to restore most of the Garryhundon quarry and the quarry edges at Clonmelsh to agricultural use (with some woodland planting) using the stored topsoil, so in these areas the loss is a temporary one. The extraction of rock and sand and gravel is regarded as a beneficial impact for the construction industry in the country.
- **Cultural Heritage:** The quarry is located within an area of high archaeological potential and there are two enclosures identified on the Sites and Monuments Record located within the Clonmelsh and Garryhundon quarried area. Sites CW012-101 at Clonmelsh and CW012-026 at Garryhundon were removed without preservation by record. These impacts on cultural heritage are considered negative and permanent.
- **Water and Hydrogeology:** The Clonmelsh Stream is ephemeral and is stated to run dry in summer months. This stream has been diverted to the south in the past, to facilitate extraction from the Clonmelsh quarry. Mitigation measures include conditions attached to the Discharge Licence controlling the quality of surface water, appropriate systems to manage surface water collected in the quarry void and the proposed construction of a lined, re-routed Clonmelsh Stream, to encourage flow within this ephemeral watercourse.

Some minor impacts on surface water but no permanent effects on surface or ground water have taken place or are expected.

The Board is satisfied that the rEIAR complies with Articles 94 and 111 of the Planning and Development Regulations, 2001 (as amended). The rEIAR identified the likely significant direct and indirect effects of the past operation of the quarry and associated plant on the environment, and also identified any likely continuing impacts. Cumulative impacts with other development in the area, in particular the quarry plant area, were also assessed.

The Board completed an environmental impact assessment in relation to the past development and concluded that, subject to the implementation of the mitigation measures proposed in the rEIAR, and subject to compliance with the conditions set out below, the effects of the past development on the environment, by itself and in combination with other plans and projects in the vicinity, were and would be acceptable. In doing so, the Board generally adopted the report and conclusions of the Inspector.

Remedial Appropriate Assessment

The Board noted that the proposed development is not directly connected with or necessary for the management of a European Site and considered the nature, scale and location of the proposed development, as well as the report of the Inspector. The Board considered the Screening Report for Appropriate Assessment, the remedial Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment screening exercise and an appropriate assessment in relation to the potential effects of the proposed development on designated European Sites.

Remedial Appropriate Assessment (Screening): The Board agreed with the Screening Assessment carried out by the Inspector which concluded that the following European Site is that for which a Stage II appropriate assessment is required, and that significant effects on any other European Sites can be ruled out:

River Barrow and River Nore Special Area of Conservation (Site code 002162).

Remedial Appropriate Assessment (Stage II): The Board considered the remedial Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the past development for the River Barrow and River Nore Special Area of Conservation (Site code 002162) in view of the site's conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the assessment, the Board considered the likely direct and indirect impacts arising from the development, both individually or in combination with other plans or projects, the mitigation measures set out in the remedial Natura Impact Statement and the Conservation Objectives for the European Site.

The Board is satisfied that, subject to the implementation of the identified mitigation measures, and on the basis of the information available, the development, either individually or in combination with other plans or projects, would not adversely affect,

or would not have adversely affected, the integrity of any European site, having regard to the conservation objectives of any such site.

The Board agreed with the summary and examination, set out in the Inspector's Report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant and submissions made in the course of the application. The Board is satisfied that the Inspector's Report sets out how these were addressed in the examination and recommendation (including environmental conditions) and are incorporated into the Board's decision.

Proper planning and sustainable development.

Having regard to the nature, scale and extent of the subject development and to the decisions made in respect of an Environmental Impact Assessment and an Appropriate Assessment, and, subject to compliance with the conditions set out below, the Board is satisfied that the subject development:

- did not and does not seriously injure the amenities of the area or of property in the vicinity,
- did not or does not have an unacceptable impact on the ecology, landscape or visual amenities of the area,
- was and would be acceptable in terms of public health, traffic safety and convenience,
- made a positive contribution to Ireland's requirements for sand, gravel and rock to support development, and

is therefore in accordance with the proper planning and sustainable development of the area.

Conditions

1. (a) This grant of substitute consent shall be in accordance with the plans and particulars submitted to An Bord Pleanála with the application, and by further information submitted on the 21st day of March 2018, and the 16th day of April 2018, except as may otherwise be required 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 and the development shall be in accordance with the agreed particulars.

(b) The grant of substitute consent relates only to past quarrying that has been undertaken up to 24th October 2017, as described in the application, and does not authorise any future development, including further quarrying, or any further excavation on the subject site.

Reason: In the interest of clarity.

2. All environmental mitigation measures identified within the remedial Environmental Impact Assessment Report and remedial Natura Impact Statement, and associated documentation shall be implemented in full, save as may be required to comply with the conditions set out below.

Reason: In the interests of conservation of the environment.

3. Within six months of the date of this order, proposals shall be submitted to the planning authority, for written agreement, of a programme of monitoring of groundwater levels and groundwater quality in the vicinity of the site, to include groundwater wells at locations around the quarry void at Clonmelsh.

Reason: To ensure protection of groundwater quality and supply.

4. Unless a permission for the further development of this quarry is implemented, within six months of the date of this order, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance

company, or other security to secure, acceptable to the planning authority the provision and satisfactory restoration of the site, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory restoration of any part of the site. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory restoration of the site in the interest of visual amenity.

5. Unless a permission for the further development of this quarry is implemented, implementation-stage details of the restoration of the Clonmelsh and Garryhundon quarry generally, in accordance with the drawings and diagrams contained within chapter 12 of the remedial Environmental Impact Assessment Report, shall be submitted to, and agreed in writing with, the planning authority within six months of the date of this order, and which shall include the following:
 - (a) details relating to the finished gradients of the quarry face,
 - (b) an area of sloped access, extending above and below the water line of the future water body, and of not less than 50 meters along the shoreline, to facilitate safe access and egress to the future water body,
 - (c) the control of dust emissions until such time as the restoration is established,
 - (d) a scheme of landscaping and tree planting,
 - (e) details of fencing,
 - (f) proposals for an aftercare programme, and
 - (g) a timeframe for implementation, including proposals for phasing of the restoration works.

Reason: In the interest of protection of the environment, landscape and public safety.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that was provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid within six months of the date of this order or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the application for substitute consent.

Board Member

Date: 13/11/2018

Eugene Nixon