



An
Bord
Pleanála

Board Direction

BD-016014-24

ABP-304951-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on 08/04/2024.

The Board decided to grant substitute consent generally in accordance with the Inspector's recommendation and the following Draft Board Order.

Draft Board Order

WHEREAS Dermot Nally Stone Ltd. care of Earth Science Partnership Ire. Ltd of Tonranny, Westport, County Mayo made an application to An Bord Pleanála on the 19th July 2019, pursuant to section 37L of the Planning and Development Act, 2000 as amended, to regularise the planning status of the sand and gravel quarry at Clonfinlough, County Offaly in accordance with plans and particulars lodged with the Board.

AND WHEREAS, the Board has decided, pursuant to section 37N of the of the Planning and Development Act, 2000, as amended, to grant consent, subject to conditions, for the development.

NOW THEREFORE, the Board has decided that exceptional circumstances exist and to grant substitute consent based on the following Reasons and Considerations, and subject to the conditions set out below:

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 Act, 2000, as amended, and in particular Section 37L and the provisions of the Planning and Development Regulations, 2001, as amended;
- (b) the applicable national, regional and local planning policy including in particular, the provisions of the Offaly County Development Plan 2021-2027;
- (c) the remedial Environmental Impact Assessment Report and the remedial Natura Impact Statement and supporting documentation submitted with the application;
- (d) the report and the opinion of the planning authority and the applicant's response to the report;
- (e) the planning history of the subject site;
- (f) the nature, scale, characteristics and location of the development;
- (g) the Inspector's assessment as set out in the Inspectors Report;
- (h) the mitigation measures outlined and the restoration scheme proposed.

Environmental Impact Assessment

The Board completed an Environmental Impact Assessment in relation to the proposed development, taking account of:

- (a) the cessation of extraction and the limited amount of stockpiled aggregate to be removed from the site prior to restoration,

(b) the remedial Environmental Impact Assessment Report and associated documentation submitted in support of the application,

(c) the submissions received from the planning authority, prescribed bodies and the applicants response,

(d) the Inspector's assessment on environmental effects as set out in the Inspector's Report;

The Board considered that the environmental impact assessment report, supported by information provided by the applicant during the course of the application, identifies and describes adequately the direct and indirect effects of the proposed development on the environment. The Board is satisfied that the information contained in the remedial EIAR complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board concluded that, subject to the implementation of the mitigation measures proposed in the remedial EIAR, and subject to compliance with the conditions set out below, the effects of the proposed development on the environment, by itself and in combination with other plans and projects in the vicinity, would be acceptable. In doing so, the Board generally adopted the report and conclusions of the Inspector. The Board considered, and agreed with the inspector's reasoned conclusions, that the main significant direct and indirect effects of the proposed development on the environment and measures to avoid, prevent or reduce such effects are as follows:

Groundwater: Impacts on groundwater having regard to the exposure of groundwater on parts of the site and the reduction of site levels to below or near groundwater level over large parts of the site, such that the use of the site for agriculture requires post restoration examination.

Birds: Impacts on the established breeding colony of Sand Martin (*Riparia riparia*) on site which would be mitigated by agreeing the location of bird sites on site and putting procedures put in place to protect them.

Landscape: Notwithstanding the limited visibility at ground level in the landscape due to elevated surrounding ground levels and vegetation, the potential for viewing the site from the air, in the context of the surrounding protected landscape is

acknowledged. Restoration of the site, through measures, including suitable landscaping to soften the man-made appearance of the lagoon, offers some mitigation.

Appropriate Assessment

Appropriate Assessment Stage 1 (Screening)

The Board agreed with the Screening Assessment carried out by the Inspector which concluded that the following European Sites are those for which a Stage 2 Appropriate Assessment is required, and that significant effects on any other European Sites can be ruled out:

Mongan Bog SPA (site code 000417), Mongan Bog SAC (site code 000580) and Finn Lough SAC (site code 001776).

Appropriate Assessment Stage 2

The Board considered the remedial Natura Impact Statement and all other relevant submissions including the Hydrogeological and Hydrological Assessment and carried out an Appropriate Assessment of the implications of the proposed development for Mongan Bog SPA (site code 000417), Mongan Bog SAC (site code 000580) and Finn Lough SAC (site code 001776), 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 have adversely affected the integrity of this European site or any other such European designated site, in view of the conservation objectives of any such site.

Proper Planning and Sustainable Development

Having regard to the nature, scale and extent of the development and noting the integrity of European Sites would not be adversely affected, in view of the relevant sites' conservation objectives, as set out above, and subject to compliance with the conditions set out below, the Board is satisfied that exceptional circumstances exist and that to grant substitute consent would be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 19th day of July 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 in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. No future extraction, for commercial purposes shall take place on the site. All remaining stockpiled aggregate which is to be removed for sale shall be removed from the site no later than three years from the date of this Order. All plant and machinery shall be removed from the site on completion of an agreed restoration plan.

Reason: In the interest of clarity.

3. a) The lands shall be reinstated in accordance with a restoration plan which shall be agreed in writing with the planning authority prior to its

implementation and which shall include landscaping of the lagoon edges to reduce the geometric form and soften the man-made appearance. No material is to be imported to the site for restoration or any other purpose.

b) Following reinstatement and prior to the any future use of the lands, the applicant shall provide the planning authority with a report from a Hydrogeologist on measures to be put in place to protect the groundwater, including:

- Proposals for the infilling of the dug wells and the capping of the bored well, if appropriate (i.e. except in circumstances where the bored well is to be retained for use. In such case, detailed proposals for its use should be provided).
- The suitability of the reinstated land for agricultural use, and specific requirements for its future management.

Reason: To protect the groundwater.

4. The following environmental protection measures shall be implemented during the reinstatement process:
- a) Refuelling shall only take place on impermeable areas, that drain through hydrocarbon interceptor(s).
 - b) Spill kits to be maintained on site.
 - c) Incident response plan outlining steps to be undertaken including responsibilities, authorities to be notified and clean up measures to be employed in the event of a spillage or other potentially polluting scenario.
 - d) Provision of suitably bunded areas for storage of oils and waste oils.
 - e) No refuelling within 30m of standing water or bore holes.
 - f) All bunded structures are in compliance with EPA guidelines: 110% of the capacity of the largest tank within the area or 25% of the total volume of

the substance which could be stored within the area, whichever is the greater.

- g) Where decommissioning of bore holes is required decommissioning is undertaken in accordance with EPA Drinking Water Advice Note, Advice Note no. 14: Borehole Construction and Wellhead Protection.

Reason: To protect the groundwater.

5. The agreed restoration on site shall operate only between 0700 hours and 1900 hours, Monday to Friday, and 0700 hours and 1600 hours on Saturdays. There shall be no restoration works or associated activities on Sundays or public holidays.

Reason: In the interests of residential amenity.

6. The sand martin colonies shall not be disturbed either through planting or regrading of the cliff faces in which the birds have nested.

Reason: To protect the nesting birds.

7. Within 3 months of the date of this permission the developer shall pay to the planning authority a financial contribution of €14,802 (fourteen thousand, eight hundred and two euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be 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.

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 permission.

8. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. 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 and environmental protection.

Board Member

Eamonn James Kelly

Date: 09/04/2024

Eamonn James Kelly