



An
Bord
Pleanála

Board Order
PL 08.247410

Planning and Development Acts 2000 to 2017

Planning Authority: Kerry County Council

Planning Register Reference Number: 15/1063 (Tralee)

Appeal by John Kearney care of Ger O’Keeffe Consulting Engineers Limited of Friary Lane/4 Day Place, Tralee, County Kerry and by others against the decision made on the 28th day of September, 2016 by Kerry County Council to grant subject to conditions a permission to Ardfert Quarry Products care of John O’Connell of Sackville, Ardfert, County Kerry in accordance with plans and particulars lodged with the said Council:

Proposed Development: (1) The expansion of the quarry over 26.32 hectares of agricultural land located to the north of the L-10477-0 local road to allow for the extraction of material (limestone and overburden) to a finished floor level of -11.5 metres Ordnance Datum over an area of 15.6 hectares, (2) as previously approved, the deepening of two parts of the existing southern quarry - Area A (6.61 hectares) to -50 metres Ordnance Datum and Area B (2.16 hectares) to -30 metres Ordnance Datum; thereby extending the life of the quarry by 25 years, (3) modification of conditions attached to existing planning permissions (Kerry County Council planning register reference number 00/3519 and An Bord Pleanála appeal reference number PL 08.124451, and Kerry County Council planning register reference number 15/245) to allow for changes to the operational conditions on the site including the continuation of use of all ancillary development (including plant, site infrastructure

and all manufacturing operations) on the site beyond February 2017, in-line with the prolonged life of the quarry, (4) upgrade of the previously approved septic tank with the provision of a wastewater treatment plant, (5) works to a local road, the L-10477-0 and to an existing access road, to facilitate the proposed development, (6) demolition of a habitable house, and (7) ancillary site development works associated with landscaping and the implementation of a restoration plan for the site. The proposed extension will give rise to some 15.86 million tonnes of limestone, and 954,000 tonnes of overburden, which will be extracted over a period of 25 years, all at the site of the existing limestone quarry in the townland of Sackville, Ardfert and in the adjoining townlands of Ballyrobert, Ardrahan and Creegooane, County Kerry. The proposed development was revised by further public notices received by the planning authority on the 4th day of August, 2016.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

The Board had regard to-

- (a) the policies contained within the Kerry County Development Plan 2015-2021 in relation to the extractive industry,
- (b) the 'Quarry and Ancillary Activities, Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in April 2004,
- (c) the planning history of the site,
- (d) the pattern of development in the vicinity,
- (e) the distance to dwellings or other sensitive receptors from the proposed development,
- (f) the submissions made in connection with the planning application and the appeal, and
- (g) the report of the Board's Inspector, including in relation to potential significant effects on the environment and potential effects on European sites.

Appropriate Assessment Screening

The Board noted that the proposed development is not necessary to the management of a European Site. In completing the screening for Appropriate Assessment, the Board noted the Stage 1 Appropriate Assessment Screening report submitted with the application and the further information submitted by the applicant, and the appropriate screening assessment carried out by the Inspector. The Board accepted and adopted the screening assessment and conclusion carried out in the Inspector's report in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the sites' Conservation Objectives. The Board was satisfied that, subject to compliance with the best practice measures proposed by the developer, and subject to compliance with the conditions of this order, the proposed development, either individually or in combination with other plans or projects, would not be likely to have significant effects on the Akeragh, Banna and Barrow Harbour Special Area of Conservation (site code 000332) and the Tralee Bay Complex Complex Special Protection Area (site code 004188), or any other European site, in view of the sites' conservation objectives, and that a Stage 2 Appropriate Assessment and submission of a Natura impact statement is not, therefore, required.

Environmental Impact Assessment

The Board considered that the Environmental Impact Statement submitted with the application, and the further information submitted by the applicant, the reports, assessment and conclusions of the Inspector with regard to this file and other submissions on file, was adequate in identifying and describing the direct, indirect, secondary and cumulative effects of the proposed development.

The Board completed an environmental impact assessment, and agreed with the Inspector in his assessment of the likely significant effects of the proposed development, and agreed with his conclusions on the acceptability of the mitigation measures proposed and residual effects. The Board adopted the report of the Inspector. The Board concluded that, subject to the implementation of the mitigation measures proposed, and subject to the following conditions, the effect of the proposed development on the environment would be acceptable.

Conclusion on Proper Planning and Sustainable Development

Having regard to the established use for quarrying activity on part of the lands, to the planning history of the site, and to the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not have unacceptable impacts on ecology, water quality or the landscape, would not be likely to lead to a risk of flooding, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, 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, as amended by the further plans and particulars submitted on the 22nd day of July, 2016, 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. All of the environmental, construction and ecological mitigation measures set out in the Environmental Impact Statement and other particulars submitted with the application and in the further information submitted to the planning authority on the 22nd day of July, 2016, shall be implemented by the developer in conjunction with the timelines set out therein, except as may otherwise be required in order to comply with the conditions of this order.

Reason: In the interest of clarity and the protection of the environment during the construction and operational phases of the development.

3. This permission shall cease to have effect twenty-five (25) years from the date of this order. The quarry use shall then cease, with all related structures removed and remedial works, including reinstatement works to be carried out to the satisfaction of the planning authority, unless prior to the end of that period, planning permission shall have been granted for the continuance of the use and retention of the structures for a further specified period.

Reason: In the interests of residential and visual amenity and to ensure appropriate restoration of the site.

4. The quarry, and all activities occurring therein, shall only operate between 0730 hours and 1930 hours, Monday to Saturday. No activity, including any lime crushing, shall take place outside these hours or on Sundays or public holidays.

Reason: In order to protect the residential amenities of property in the vicinity.

5. During the operational phase of the proposed development, the noise level from within the boundaries of the site measured at noise sensitive locations in the vicinity, shall not exceed:

- an LArT value of 55 dB(A) during 0800 and 1800 hours, Monday to Saturday inclusive. The T value shall be one hour.
- an LAeqT value of 45 dB(A) at any other time. The T value shall be 15 minutes. Night time emissions shall have no tonal component.

Reason: In order to protect the amenities of property in the vicinity.

6. (a) Blasting operations shall take place only between 1000 hours and 1700 hours Monday to Friday and shall not take place on Saturdays, Sundays or public holidays. Monitoring of the noise and vibration resulting from blasting and the frequency of such blasting shall be carried out at the developer's expense by an independent contractor who shall be agreed in writing with the planning authority.
- (b) Prior to the firing of any blast, the developer shall give notice of his intention to the occupiers of all dwellings within 500 metres of the site. An audible alarm for a minimum period of one minute shall be sounded prior to the firing of any blast. This alarm shall be of sufficient power to be heard at all such dwellings.

Reason: In the interests of public safety and residential amenity.

7. (a) Vibration levels from blasting shall not exceed a peak particle velocity of 12 millimetres/second, when measured in any three mutually orthogonal directions at any sensitive location. The peak particle velocity relates to low frequency vibration of less than 40 hertz where blasting occurs no more than once in seven continuous days. Where blasting operations are more frequent, the peak particle velocity limit is reduced to eight millimetres per second. Blasting shall not give rise to air overpressure values at sensitive locations which are in excess of 125 dB (Lin)max peak with a 95% confidence limit. No individual air overpressure value shall exceed the limit value by more than 5 dB (Lin).
- (b) A monitoring programme, which shall include reviews to be undertaken at annual intervals, shall be developed to assess the impact of quarry blasts. Details of this programme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any works on the site. This programme shall be undertaken by a suitably qualified person acceptable to the planning authority. The results of the reviews shall be submitted to the planning authority within two weeks of completion. The developer shall carry out any amendments to the programme required by the planning authority following this annual review.

Reason: To protect the residential amenity of property in the vicinity.

8. (a) Dust levels at the site boundary shall not exceed 350 milligrams per square metre per day averaged over a continuous period of 30 days (Bergerhoff Gauge). Details of a monitoring programme for dust shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Details to be submitted shall include monitoring locations, commencement dates and the frequency of monitoring results, and details of all dust suppression measures.

- (b) A monthly survey and monitoring programme of dust and particulate emissions shall be undertaken to provide for compliance with these limits. Details of this programme, including the location of dust monitoring stations, and details of dust suppression measures to be carried out within the entire quarry complex, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any quarrying works on the site. This programme shall include an annual review of all dust monitoring data, to be undertaken by a suitably qualified person acceptable to the planning authority. The results of the reviews shall be submitted to the planning authority within two weeks of completion. The developer shall carry out any amendments to the programme required by the planning authority following this annual review.

Reason: To control dust emissions arising from the development and in the interest of the amenity of the area.

9. (a) The wheels and undersides of all vehicles transporting aggregate from the site onto the public road shall, prior to the exit of such vehicles onto the public road, be washed in a wheel washing facility, which shall be constructed, installed and operated in accordance with the requirements of the planning authority.
- (b) In dry weather conditions, all roads within the site and the active working face shall be sprayed with water at least three times a day.

Reason: In the interest of traffic safety and convenience, and to protect the amenities of the area

10. All loads of dry fine materials shall be either sprayed with water or covered/sheeted prior to exiting the quarry.

Reason: In order to prevent dust emissions, in the interest of amenity and traffic safety.

11. The developer shall manage drainage from the quarry site in accordance with a Water Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall include details of the design and operation of flow control devices, including the Intelligent Discharge Management System (IDMS), and shall incorporate a monitoring programme relating to the control and management of water on the site. The plan shall provide for the monitoring of ground and surface water quality, levels and discharges on the site and for ongoing sampling of the Tyshe River upstream and downstream of any discharge and ongoing monitoring of the capacity of the settlement lagoons and attenuation areas. The plan shall ensure that the quarry discharges do not cause or contribute to flooding along the Lower Tyshe, including the floodplain near the Banna housing development, in accordance with details to be agreed in writing with the planning authority. The developer shall be fully responsible for all costs associated with the design, development, installation, commission and maintenance of the IDMS as part of the Water Management Plan, and shall contribute such sums as may be determined by the planning authority to defray the authority's costs in relation to the assessment of the proposals and specifications for the IDMS system.

Reason: In order to protect water quality and to prevent flooding.

12. Prior to commencement of development and prior to the installation of such a system, the applicant or any subsequent owner of the quarry shall submit to and agree in writing with the planning authority, a detailed proposal for independent auditing of the proposed IDMS. The proposal shall include details of the parameters for such auditing. Following agreement, an independent audit of the operation of the IDMS shall be carried out by a competent consultant, prior approved by the planning authority, within six months of the commissioning of the system and on an annual basis thereafter. A report of the findings of each audit and any recommendations arising shall be submitted to the planning authority within two weeks of completion. The hydrological monitoring data that are produced by the applicant (stream gauge and quarry discharge data) and that are recorded as part of the IDMS shall be plotted and submitted to the planning authority on a quarterly basis and these shall be taken into account as part of the independent review/audit of the discharge system functionality and potential impact on stream flow and potential flooding over the full life-span of the quarry or as otherwise determined by the planning authority. Any recommendations arising from the audit findings shall be fully implemented. All costs involved in undertaking the audits, along with any costs associated with the implementation of any recommendations arising, shall be covered by the applicant or any subsequent owner of the quarry.

Reason: In order to prevent flooding and to protect groundwater.

13. (a) Groundwater monitoring wells shall be installed in the vicinity of the site, at locations to be agreed in writing with the planning authority prior to commencement of development. Water levels in these wells shall be recorded every month. A log of these levels shall be submitted to the planning authority on a quarterly basis.

- (b) The developer shall liaise and agree in writing with the operators of the Ardfert Public Water Supply to arrange for the installation of suitable measures to monitor and report ground water levels in this supply. All monitoring work shall be undertaken by a suitably qualified and experienced consultant, acceptable to the planning authority, and at the developer's expense.
- (c) An alternative water supply shall be made available by the developer, at his expense, immediately it becomes evident from the monitoring programme that the quality or quantity of water in the vicinity, and/or in the Ardfert Public Supply, is being adversely affected. Alternative water supplies may be secured by the deepening of private wells, drilling of new wells or other such alternatives or remedial measures as may be specified by the planning authority.

Reason: To protect and monitor groundwater in the vicinity of the site, and to ensure continuity of public and private water supplies in the event of any impacts on such supplies resulting from dewatering operations undertaken as a result of the proposed development.

14. (a) Surface water run-off from open cut areas shall not be discharged directly to any watercourse. All such water shall be trapped and directed to temporary settling ponds.
- (b) Prior to commencement of further quarrying works on the site, the developer shall have installed on lands within his control, a mechanism to facilitate treatment of all discharges to surface water arising from the entire quarry complex. The specific nature, layout and location of such facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public health and to protect water quality.

15. (a) The settlement ponds shall be cleaned out at monthly intervals. Details of the proposed use, handling, and destination of the removed silt shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (b) Any excavation required to accommodate the settlement ponds, cut-off drains and storage ponds shall be agreed in writing with the planning authority prior to such works being undertaken.

Reason: In order to ensure the efficient operation of the settlement ponds.

16. All over ground tanks containing liquids (other than water) shall be contained in a waterproof bunded area, which shall be of sufficient volume to hold 110 per cent of the volume of the tanks within the bund. All water contaminated with hydrocarbons, including stormwater, shall be discharged via a grit trap and three-way oil interceptor with sump to a watercourse. The sump shall be provided with an inspection chamber and shall be installed and operated in accordance with the written requirements of the planning authority.

Reason: In order to protect groundwater and surface water.

17. The development shall be operated and managed in accordance with an Environmental Management System (EMS), which shall be submitted by the developer to, and agreed in writing with, the planning authority prior to commencement of development. This shall include the following:
 - (a) Proposals for the suppression of on-site noise.
 - (b) Proposals for the on-going monitoring of sound emissions at dwellings in the vicinity.
 - (c) Proposals for the suppression of dust on site and on the access road.

- (d) Proposals for the bunding of fuel and lubrication storage areas and details of emergency procedures in the event of accidental spillage.
- (e) Details of safety measures for the land above the quarry, to include warning signs and stock proof fencing.
- (f) Management of all landscaping with particular reference to enhancing the ecological value of the woodland/grassland on the bunds and buffer areas.
- (g) Monitoring of ground and surface water quality, levels and discharges.
- (h) Details of site manager, contact numbers (including out of hours) and public information signs at the entrance to the facility.

Reason: In order to safeguard local amenities.

18. Scrap metal and other waste material shall be removed at least annually from the site in accordance with the written requirements of the planning authority. Such materials shall be deemed to include scrapped trucks, other scrapped vehicles, empty oil barrels, broken or otherwise unusable truck bodies, worn out conveyor belts/chains, worn out batteries, unusable tyres and worn out conveyor/roller shafts.

Reason: To protect the amenities of the area.

19. The developer shall submit annually, for the lifetime of the permission, a map of the progression of the phased development of the quarry and of the quarry perimeter, surveyed against established perimeter beacons, the form and location of which shall be agreed in writing with the planning authority prior to commencement of quarrying works.

Reason: In order to facilitate monitoring and control of the development by the planning authority.

20. The site shall be screened in accordance with a scheme of screening measures and boundary treatment in respect of the entire quarry complex, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the timeframe, specific location(s), and final form and height of proposed screening berms, details of all planting proposed on existing and proposed screen berms, details of the ongoing care and management of such planting, details of a phased programme of landscaping within the quarry and details of an adequate barrier to prevent unrestricted access to the top of the quarry face from adjacent lands.

Reason: In the interest of visual amenity and to safeguard the amenities of residential property in the vicinity during the operating phase of the development

21. All proposed screening measures, including improvements to boundaries and the provision of any fencing and berms, shall be completed prior to commencement of extraction within the northern quarry extension on site.

Reason: In the interest of visual amenity and to safeguard the amenities of residential property in the vicinity during the operating phase of the development.

22. All topsoil shall be stripped and stored separately from overburden. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In order to protect the residential amenities of property in the vicinity.

23. The construction of the new bridge and the associated works to Local Road number L-10477-0 shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures, traffic management measures, and off-site disposal of construction/demolition waste. Upon completion of the bridge, its ownership shall be handed over to the local authority along with all relevant documentation.

Reason: In the interests of public safety and residential amenity.

24. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

25. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -
- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
 - (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
 - (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

26. A comprehensive plan for the restoration of the entire quarry following the cessation of quarrying works shall be submitted to, and agreed in writing with, the planning authority within six months from the date of this order. This plan shall include proposals for re-use of the quarry and measures to ensure public safety therein. The developer shall commence implementation of the agreed site restoration plan within the area of the site within one month of cessation of extraction in this area and shall have completed this part of the plan within 12 months of commencement.

Reason: In the interests of public amenity and public safety.

27. 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 and residential amenity.

28. 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 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. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may require 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

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.

