



Planning and Development Acts 2000 to 2018

Planning Authority: Carlow County Council

Planning Register Reference Number: 01.SH.0236

Application for Substitute Consent by Paul McCann and Stephen Tennant of Grant Thornton (Receivers), 24 to 26 City Quay, Dublin care of Resource Planning Management Development of 70 Glengarriff Parade, Phibsborough, Dublin in accordance with section 177E of the Planning and Development Act, 2000, as amended by the insertion on section 57 of the Planning and Development (Amendment) Act, 2010, as amended.

Application Re: Quarry plant area at Clonmelsh, Nurney, County Carlow.

Decision

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.

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

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

- (a) Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, as amended,
- (b) the provisions of the Planning and Development Act, 2000, as amended, and in particular Part XA,
- (c) the provisions of the Planning and Development Regulations, 2001, as amended,
- (d) the 'Quarries and Ancillary Activities, Guidelines for Planning Authorities', issued by the Department of the Environment, Heritage and Local Government, April 2004,
- (e) the provisions of the current Carlow County Development Plan,

- (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 report and the opinion of the planning authority under section 177I of the Planning and Development Act, 2000, as amended,
- (h) the submissions received from the applicant in response to the section 132 notice from An Bord Pleanála,
- (i) the submissions made in accordance with regulations under section 177N of the Planning and Development Act, 2000, 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, under An Bord Pleanála reference number 01.LS.0019, 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 Discharge Licence, register reference number DL7/233, An Bord Pleanála reference number 01.WW.0371,
- (p) Air Pollution Licence, register reference number APL 10/01, An Bord Pleanála reference number 01.LA.0085,
- (q) the mitigation measures which were/are in place and the restoration scheme proposed,
- (r) the nature and scale of the development the subject of an associated application for Substitute Consent, An Bord Pleanála reference number ABP-300034-17, to the south of the subject plant area, and
- (s) the pattern of development in the area, and the proximity of the quarry to a European Site.

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 2 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 2

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 have adversely affected the integrity of any European Site, in view of the conservation objectives of any such 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 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 plant area 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 application. The Board considered there is an adequate summary of the remedial Environmental Impact Assessment Report 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 would be, and included measures to avoid, prevent or reduce, in particular:

- **Land, soil and geology:** There has been, and will continue to be, a loss of agriculture land at the plant area over the duration of the quarrying activity at this location. 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 the plant area to agricultural and non-agriculture land, native tree and scrub lands and woodland using the stored topsoil, so in these areas the loss is a temporary one. The extraction of rock, sand and gravel is regarded as a beneficial impact for the construction industry in the country.

- **Water and Hydrogeology:** All surface, process and wash water is treated and discharged to the Powerstown River under Discharge Licence, register reference number DL7/233, An Bord Pleanála reference number 01.WW.0371. Mitigation measures include conditions attached to the Discharge Licence, surface and groundwater monitoring, attenuation and settlement lagoons on the quarry floor, reuse and recycling of water for quarry processes, appropriate wastewater treatment system and management and emergency spill kits and bunding.
- **Visual impact:** Visual impact results from the quarry plant and berms. The plant equipment is visible from local roads and scenic routes but not from the Barrow Way. Berms, planting and screening limit the views of the void. Changes to the finished colour of the plant from yellow to green/grey, as conditioned below, will further mitigate this visual impact.

The Board is satisfied that the remedial Environmental Impact Assessment Report complies with Articles 94 and 111 of the Planning and Development Regulations, 2001, as amended. The remedial Environmental Impact Assessment Report 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 operations to the south of the plant area, An Bord Pleanála reference number ABP-300034-17.

The Board completed an environmental impact assessment in relation to the development and concluded that, subject to the implementation of the mitigation measures proposed in the remedial Environmental Impact Assessment Report, 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 adopted the report and conclusions of the Inspector.

The Board agreed with the summary and 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 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 conclusions reached in respect of Environmental Impact Assessment and 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,
- was and would be in accordance with the Carlow County Development Plan 2015-2021, and

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

Conditions

1. This grant of substitute consent shall be in accordance with the plans and particulars submitted to An Bord Pleanála with the application, and with the further information submitted to An Bord Pleanála 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.

Reason: In the interest of clarity.

2. This grant of permission relates only to the plant area and shall be limited to a period of 20 years from the date of this Order. The plant area shall operate in conjunction with the adjacent quarry permitted under An Bord Pleanála reference number ABP-300425-17 and shall not be leased, let or otherwise transferred or conveyed save as part of the joint operation.

Reason: In the interests of clarity and orderly development.

3. Mitigation and monitoring measures outlined in the remedial Environmental Impact Assessment Report, the remedial Natura impact statement and associated documents submitted with this application, shall be compiled into a single Schedule of Monitoring and Mitigation Measures and submitted to the planning authority. These measures shall be carried out in full, except where otherwise required by condition attached to the permission to further develop the adjacent quarry, An Bord Pleanála reference number ABP-300425-17.

Reason: In the interests of clarity and of protecting the environment and in the interest of public health.

4. Within three months of the date of this Order, the wheel-wash facility at the exit from the quarry shall be extended, so as to ensure all Heavy Goods Vehicles exiting from the quarry onto the L3050 Road pass through the wheel-wash.

Reason: In the interests of public health, traffic safety and visual amenity.

5. No well on site shall be used for potable purposes, unless and until quality testing has been carried out to establish the potability of the supply.

Reason: In the interest of public health.

6. The septic tank and percolation area serving the quarry shall be maintained in accordance with the standards set out in the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. \leq 10)" - Environmental Protection Agency, 2009.

Reason: In the interest of public health.

7. No further signage shall be erected at the quarry entrance or affixed to quarry plant, so as to be visible from outside the quarry, without a prior grant of planning permission.

Reason: In the interest of visual amenity.

8. All over-ground tanks containing liquids (other than water) shall be contained within waterproof bunded areas, which shall be of sufficient volume to store 110% of the volume of the tanks within the bund. All water contaminated with hydrocarbons, including stormwater, shall be discharged via a grit trap and hydrocarbon interceptor (with sump) to one of the siltation lagoons within the site or within the adjoining quarry void. 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 water quality in the interests of public health and the conservation of the environment.

9. The site 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, within three months of the date of this Order. This shall include proposals for the following:
 - (a) suppression of on-site noise,
 - (b) on-going monitoring of sound emissions at dwellings in the vicinity,
 - (c) suppression of odours from the asphalt plant,
 - (d) suppression of dust on site and on the adjacent L3050 road, and
 - (e) removal of any aggregate, silt or muck carried out onto the L3053 road shall be promptly removed.

Reason: In order to safeguard local amenities.

10. All surface, processing and wash-water generated within the plant area shall be discharged off-site via the siltation lagoons located within the adjoining Clonmelsh quarry void in accordance with Discharge Licence, register reference number DL7/233, An Bord Pleanála reference number 01.WW.0371.

Reason: In the interest of public health and in the interest of conservation of the environment.

11. Within three months of the date of this Order, signage, alerting road users to the existence of a quarry entrance, shall be erected on the L3050 Road approach – from the west.

Reason: In the interest of traffic safety.

12. The hours of operation of the plant area shall be between 0600 hours and 1900 hours, Monday to Friday and between 0700 hours and 1600 hours on Saturdays. No activity shall take place outside these hours or on Sundays or public holidays without the prior written agreement of the planning authority. No rock-breaking activity shall be undertaken within any part of the site before 0800 hours on any day.

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

13. Floodlighting within the site shall be angled in such a manner as not to cause distraction or glare to users of the L3050 Road or any other road.

Reason: In the interest of traffic safety.

14. The noise level from within the boundaries of the site, as measured at noise sensitive locations in the vicinity, shall not exceed-
 - (a) an LArT value of 55 dB(A) during 0600 hours to 1900 hours Monday to Friday and 0700 hours to 1600 hours on Saturdays, the T-value shall be one hour, and
 - (b) an LAeqT value of 45 dB(A) at any other time, the T-value shall be fifteen minutes.

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

15. (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).
- (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 site, shall be submitted to, and agreed in writing with, the planning authority, within three months of the date of this Order. 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 in the interest of the amenity and conservation of the environment in the area.

16. Within six months of the date of this Order, all plant on the site, roadside and internal fencing shall be finished externally in a green or grey colour to mitigate visual impact. Furthermore, measures to enhance the visual amenity of the entrance and the adjoining roadside, including improved landscaping shall be developed. Details in this regard shall be submitted to, and agreed in writing with, the planning authority within three months of the date of this Order.

Reason: In the interest of visual amenity.

17. Unless a permission for the further development of the adjacent quarry is implemented, implementation-stage details of the restoration of the Clonmelsh quarry and plant area generally, in accordance with 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 shall include the following:

- (a) details relating to the removal of all plant and buildings and an indication of finished levels of the quarry plant area,
- (b) the control of dust emissions, until such time as the restoration is established,
- (c) a scheme of landscaping and tree planting,
- (d) details of fencing,
- (e) proposals for an aftercare programme of five years, and
- (f) a timeframe for implementation, including proposals for phasing of the restoration works.

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

18. Unless a permission for the further development of the adjacent quarry, An Bord Pleanála reference number ABP-300425-17, 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 acceptable to the planning authority to secure the provision and satisfactory restoration of the site, coupled with an agreement empowering the planning 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.

Eugene Nixon
Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this day of 2018.