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**Planning and Development Acts 2000 to 2018**

**Planning Authority: Carlow County Council**

**Associated Substitute Consent Reference Number: ABP-300034-17**

**WHEREAS** Paul McCann and Stephen Tennant of Grant Thornton (Receivers), 24 to 26 City Quay, Dublin care of Resource Planning Management and Development of 70 Glengarriff Parade, Phibsborough, Dublin made an application to An Bord Pleanála on the 5<sup>th</sup> day of December, 2017, pursuant to section 37L of the Planning and Development Act, 2000 as amended, to further develop a quarry and all related ancillary site works over an application site area of 21.9 hectares with excavation over an area of 13.6 hectares. The proposed continued extraction site is to extend from the existing southern face of the quarry at Clonmelsh, Nurney, County Carlow, An Bord Pleanála Substitute Consent reference number ABP-300034-17. The proposed continued extraction site is further bounded by local roads on its remaining three sides, the L3045 to the east and the L3044 to the south and west. The final proposed excavation depth is to match that of the existing quarry at Clonmelsh, Nurney, County Carlow at 25 Above Ordnance Datum. Ancillary site works do not include new access to public roads or services as it is intended to continue to use the existing facilities and access at the plant area at Clonmelsh, Nurney, County Carlow, An Bord Pleanála Substitute Consent reference number ABP-300037-17, all at Powerstown, Nurney,

County Carlow in accordance with plans and particulars lodged with the Board.

**AND WHEREAS**, the Board has decided, pursuant to section 37N of the said Act, to grant permission, subject to conditions, for the said development.

**NOW THEREFORE**, the Board has decided to grant permission, subject to conditions, based on the Reasons and Considerations set out below.

### **Reasons and Considerations**

In making 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,
- (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 provisions of the current Carlow County Development Plan,
- (d) the Environmental Impact Assessment Report submitted with the application for further development,
- (e) the Natura impact statement submitted with the application for further development,

- (f) the submissions received from the applicant in response to the Section 132 notice of An Bord Pleanála,
- (g) the report and the opinion of the planning authority under section 37L(12)(a) of the 2000 Act, as amended,
- (h) the submissions made in accordance with regulations made under Article 270 of the Planning and Development Regulations, 2001, as amended,
- (i) the report of the Board's Inspector, including in relation to potential significant effects on the environment,
- (j) the planning, legal history and historical pattern of quarrying of the site,
- (k) the pattern of development in the area,
- (l) the nature and scale of the development the subject of this application for further development,
- (m) the decisions of the Board to grant substitute consent in respect of part of the subject quarry under An Bord Pleanála reference numbers ABP-300034-17 and 300037-17 and the nature and scale of those developments,
- (n) the Discharge Licence, register reference number DL7/233, An Bord Pleanála reference number 01.WW.0371,

- (o) the mitigation measures and the restoration scheme proposed, and
- (p) the pattern of development in the area, and the proximity of the quarry to a European Site.

## **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 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.

## **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).

## **Appropriate Assessment Stage 2**

The Board considered the Natura impact statement and all other relevant submissions and carried out an Appropriate Assessment of the implications of the proposed 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 proposed development, both individually or in combination with other plans or projects, the mitigation measures set out in the 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 subject development, either individually or in combination with other plans or projects, would not adversely affect the integrity of any European Site, in view of the conservation objectives of any such site.

## **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 proposed development,
- (b) the 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,
- (d) to the remedial Environmental Impact Assessment Reports submitted with the associated applications for substitute consent, An Bord Pleanála reference numbers ABP-300034-17 and ABP-300037-17 and the nature and scale of those developments, and
- (e) the Inspector's report,

the Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development 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 considered, and agreed with the Inspector's reasoned conclusions, that the main significant direct and indirect effects of the proposed development on the environment would be, and included measures to avoid, prevent or reduce, in particular:

- **Land, soil and geology:** There will be a permanent loss of agriculture land, sand, gravel and rock at the subject 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 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 will have 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 monuments identified on the Sites and Monuments Record located within the proposed quarry development. CW012-093 was excavated and preserved by record in 2008. CW012-202 is to be persevered in situ through the application of a 30-meter setback buffer around the monument, see condition number 5 below.

- **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, register reference number DL7/233, An Bord Pleanála reference number 01.WW.0371, controlling the quality of surface water, appropriate systems to manage surface water collected in the quarry void, the reuse and recycling of water for quarry processes and the proposed construction of a lined, re-routed Clonmelsh Stream. No permanent effects on surface or ground water expected.

The Board is satisfied that the Environmental Impact Assessment Report complies with Articles 94 and 111 of the Planning and Development Regulations, 2001, as amended. The Environmental Impact Assessment Report identified the likely significant direct and indirect effects of the proposed development. Cumulative impacts with other development in the area, in particular the Clonmelsh quarry plant area, An Bord Pleanála reference number ABP-300037-17 and the Clonmelsh quarry, An Bord Pleanála reference number ABP-300034-17 were also assessed.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures proposed in the Environmental Impact Assessment Report 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 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 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:

- would not seriously injure the amenities of the area or of property in the vicinity,
- would not have an unacceptable impact on the ecology, landscape or visual amenities of the area,
- would not have an unacceptable impact on cultural heritage,
- would be acceptable in terms of public health, traffic safety and convenience,
- would make a positive contribution to Ireland's requirements for sand, gravel and rock to support development,
- would be in accordance with National Policy Objective 23 set out in the National Planning Framework,

- would be in accordance with the Carlow County Development Plan 2015-2021, and

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, and with the further information received by An Bord Pleanála on the 26<sup>th</sup> day of April, 2018, 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. Mitigation and monitoring measures outlined in the Environmental Impact Assessment Report, the 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 this permission to further develop the quarry.

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

3. This grant of planning permission for further extraction of sand, gravel and rock:
  - (a) relates only to the 21.9-hectare area outlined in red on drawing number 04 Rev A, submitted with the application on the 5<sup>th</sup> day of December, 2017, and
  - (b) shall be limited to a period of 20 years from the date of this Order.

**Reason:** In the interest of clarity and to enable a review of the appropriateness of the continued operation of the quarry in light of the circumstances prevailing at the time.

4. Extraction of rock, or any other material within this quarry extension, shall not take place below a level of 25 metres Ordnance Datum.

**Reason:** In the interest of clarity and to limit the extent of the development to the extraction level in the adjoining Clonmelsh quarry.

5. The proposed extraction area shall be adjusted to reflect the precise location of the Recorded Monument CW012-202 (ring ditch) and no extraction shall take place within 30 meters of the outer extension of the monument. Prior to commencement of development, a revised extraction layout shall be submitted for the written agreement of the planning authority to reflect the correct location of this monument and to indicate the required 30 metres set-back of quarrying from it.

**Reason:** In the interest of clarity, and to protect subsurface archaeology which may exist within the site. The location of Recorded Monument CW012-202 has been incorrectly identified when establishing the footprint of the proposed extension area. The monument is located within the south-eastern section of the site rather than within the north-eastern section.

6. The developer shall facilitate the archaeological appraisal of the extension area. 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 prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works, and
  - (c) provide arrangements, acceptable to the planning authority for the recording and for the removal of any archaeological material which the planning 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 area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

7. 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 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 dust on the site and the access road and the prompt removal of any aggregate, silt or muck carried out onto the public road,
  - (d) measures to prevent and remove material that has been fly tipped within the quarry site and surroundings,
  - (e) safety measures for the land above the extended quarry void; to include warning signs and stock-proof fencing/hedgerows,
  - (f) management of all landscaping,
  - (g) monitoring of ground and surface water quality, levels and discharges,

- (h) bunding of fuel and lubrication storage areas, location of emergency spill kits and details of emergency action in the event of accidental spillage, and
- (i) details of site manager, contact numbers (including out-of-hours).

**Reason:** In order to safeguard local amenities.

- 8. Prior to commencement of development, 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.

- 9. The Clonmelsh Stream shall be diverted within a channel, lined with a 200 millimetre thickness of low-permeability clay and overlain with a substrate of unsorted gravels of varying thickness along the eastern, southern and western boundaries of the quarry extension, to tie in with the already diverted Clonmelsh Stream bed on the western boundary of the Clonmelsh quarry. The specific details shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of protecting and enhancing the environment, and to preserve, insofar as is possible, the watercourse network in the area.

10. All groundwater ingress and surface water within the extended quarry void area shall be discharged to the Powerstown River, in accordance with the Discharge Licence, register reference number DL7/233, An Bord Pleanála reference number 01.WW.0371, via the existing siltation lagoon network on the floor of the adjoining Clonmelsh quarry. No groundwater or surface water shall be discharged to the adjoining road network, diverted to Clonmelsh Stream or to adjacent lands.

**Reason:** In order to protect groundwater and surface water quality in the area, and in the interest of traffic safety.

11. (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 arising from blasting, and the frequency of such blasting, shall be carried out at the developer's expense by an independent contractor which shall be agreed in writing with the planning authority.
- (b) Prior to the firing of any blast, the developer shall give notice of 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. This alarm shall be of sufficient power to be heard at all such dwellings.



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

12. (a) Vibration levels from blasting shall not exceed a peak particle velocity of 12 millimetres per 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 8 millimetres per second. Blasting shall not give rise to air overpressure values at sensitive locations which are in excess of 125 dB (Lin) maximum peak with a 95% confidence limit. No individual air overpressure value shall exceed the limit value by more than 5dB (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 quarrying 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:** In order to protect the amenities of property in the vicinity.

13. The noise level from within the boundaries of the quarry extension area, measured at noise sensitive locations in the vicinity, shall not exceed-
  - (a) an LArT value of 55dB(A) during 0700 hours to 1800 hours Monday to Friday and 0700 hours to 1400 hours on Saturdays. The T-value shall be one hour.
  - (b) an LAeqT value of 45dB(A) at any other time. The T-value shall be fifteen minutes.

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

14. All Heavy Goods Vehicles departing the quarry void shall do so via a wheel-wash at the plant area adjacent to the L3050 Road.

**Reason:** In the interest of traffic safety.

15. (a) Dust levels at the eastern, southern and western site boundaries 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 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 amenities of the area.

16. No signage of any sort shall be erected on the boundary of the quarry extension or within it (so as to be visible from adjacent public roads), without a prior grant of planning permission.

**Reason:** In the interest of visual amenity.

17. All overhead electricity cables traversing the site, shall be relocated, with the written agreement planning authority.

**Reason:** In the interest of orderly development.

18. The quarry extension, and all activities occurring therein, shall only operate between 0700 hours and 1800 hours, Monday to Friday and between 0700 hours and 1400 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.

19. The developer shall submit, every second year, for the twenty-year lifetime of the permission to further develop the quarry, a 3D topographical survey carried out by an independent qualified surveyor agreed in writing with the planning authority. This survey shall show all areas excavated and restored. On the basis of this, a full materials balance shall be provided to the planning authority. The first such survey report shall be submitted within two years of the date of this Order.

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

20. This grant of permission to further develop the quarry does not authorise the importation of materials for the restoration of the site.

**Reason:** In the interest of clarity.

21. Scrap metal and other waste material shall be removed, at least annually, from the site, and from the adjoining Clonmelsh quarry, 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:** In the interests of visual amenity and protection of ground and surface waters, and in the interest of public health.

22. Prior to commencement of development, a restoration plan in accordance with the drawings received by An Bord Pleanála on the 26<sup>th</sup> day of April, 2018 (Drawing Numbers 05a Rev B and 05b Rev B), shall be submitted to, and agreed in writing with, the planning authority for the restoration of the entire Clonmelsh quarry/plant area, and the extension hereby permitted. The plan shall include, inter alia,
- (a) existing and proposed finished ground levels and details relating to the finished gradients of the quarry face,
  - (b) estimated water level within the flooded void,
  - (c) 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,
  - (d) landscaping and tree planting proposals,
  - (e) details of fencing,
  - (f) proposals for an aftercare programme, and
  - (g) a timescale for implementation, including proposals for phasing of the restoration works.

Restoration of the site shall be carried out in accordance with this plan.

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

23. Prior to recommencement 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 (together with the adjoining Clonmelsh quarry), 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 the Board for determination.

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

24. 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 Planning and Development Act 2000, as amended. The contribution shall relate to the greenfield area of the site, which has not, to date, been excavated, and shall be paid prior to recommencement of development 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 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 to further develop the quarry.

## **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.

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

**Dated this            day of            2018.**