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**Planning and Development Acts 2000 to 2020**

**Planning Authority: Kildare County Council**

**Planning Register Reference Number: 19/1097.**

**Appeal** by Kilsaran Concrete (trading as Kilsaran Build) care of RPS of West Pier Business Campus, Dun Laoghaire, County Dublin against the decision made on the 27<sup>th</sup> day of November, 2019 by Kildare County Council to refuse permission for the proposed development.

**Proposed Development:** Provision of a new sand and gravel extraction development on an overall site of circa 32.2 hectares and comprises extraction of sand and gravel with excavation (dry and wet workings) occurring within a circa 17.2 hectares active area (location to vary over the operational phase) and related mobile processing activities that include crushing, washing and screening and all ancillary works, plant and structures (including closed circuit silt disposal lagoons); stockpiling of overburden (topsoil, subsoil and waste), raw and finished aggregates (prior to processing on-site/transportation off-site); staff facilities including prefabricated canteen facility and welfare facilities (located within an existing agricultural shed); ancillary site works including hardstand areas, bunded and covered fuel tanks, weighbridge, wheelwash, and packaged wastewater treatment system; perimeter landscaped screening berms; a new vehicular access point onto the L8006 including boundary treatment and signage; landscaping and full

restoration of the site with the establishment of a terrestrial and freshwater wildlife habitat; and the proposed extraction operational period is for 12 years with 2 years to complete restoration (total duration sought is 14 years); all at Racefield , Ballyshannon , Kilcullen, County Kildare.

## **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**

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

- (a) European legislation, including of particular relevance:
- Directive 2014/52/EU amending Directive 2011/92/EU (EIA Directive) on the assessment of the effects of certain public and private projects on the environment,
  - Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives) which set the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union,

- (b) national planning and related policy, including:
- **Project Ireland 2040 - National Planning Framework** which provides that aggregates and minerals extraction will continue to be enabled where this is compatible with the protection of the environment in terms of air and water quality, natural and cultural heritage, the quality of life of residents in the vicinity, and provides for appropriate site rehabilitation,
  - the 'Quarry and Ancillary Activities, Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2004,
  - Environmental Management Guidelines, Environmental Management in the Extractive Industry (Non-Scheduled Minerals), EPA, 2006,
- (c) the provisions of the Kildare County Development Plan 2017 – 2023,
- (d) the pattern of development in the area,
- (e) the location and current nature of the site,
- (f) the Environmental Impact Assessment Report, Natura Impact Statement and all other information received in connection with the application and the appeal,
- (g) the proposals submitted to carry out the Highway Safety Measures for the L8006, the L8007 and the R418 to accommodate the increased HGV traffic and address the deficiencies in the local road network and the R418,

- (h) the contents of the appeal, the observations on the appeal, the responses to the appeal, and the applicant's response to the Board's Section 131 notice,
- (i) the report and recommendations of the planning inspector including the examination, analysis and evaluation undertaken in relation to the proper planning and sustainable development, appropriate assessment and environmental impact assessment,
- (j) the nature and scale of the development proposed,
- (k) the submissions and observations received, and
- (l) the report of the Inspector.

### **Appropriate Assessment Screening**

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) is the only European Site for which there is a likelihood of significant effects and must, therefore, be subject to Appropriate Assessment.

### **Appropriate Assessment**

The Board considered the Natura impact statement and all other relevant submissions, including the applicant's response to the Board's notice issued under Section 131 of the Planning and Development Act, 2000, as amended, the Inspector's report, and Addendum report in respect of Appropriate Assessment, and carried out an Appropriate Assessment of the implications of the proposal 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 sufficient to undertake a complete assessment of all aspects of the proposed

development in relation to the site's conservation objectives using the best available scientific knowledge in the field.

In completing the assessment, the Board considered, in particular, the following

- (i) site specific conservation objectives for this European site,
- (ii) current conservation status, threats and pressures of the qualifying interest features,
- (iii) likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (iv) the submission received from Inland Fisheries Ireland, and
- (v) mitigation measures which are included as part of the current proposal.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report, as amended by the Addendum report in respect of Appropriate Assessment and of the implications of the proposed development on the integrity of the aforementioned European Site, having regard to the site's conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) in view of the site's conservation objectives and there is no reasonable scientific doubt as to the absence of such effects.

### **Environmental Impact Assessment**

In accordance with the requirements of Section 172 of the Planning and Development Act 2000, as amended, the Board completed an environmental impact assessment of the proposed development, taking account of:

- (a) the nature, scale, location and extent of the proposed development on the site,

- (b) the Environmental Impact Assessment Report and associated documentation submitted in connection with the application and appeal,
- (c) all submissions and observations made in the course of the application and appeal, and
- (d) the Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant in the course of the application and appeal, identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU.

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 and appeal. The Board is satisfied that the Inspector's report sets out how these were addressed in the assessment and are incorporated into the Board's decision.

### **Reasoned Conclusion on Significant Effects on the Environment**

The Board considered that the main significant direct and indirect effects of the proposed development on the environment, and the proposed mitigation measures, are as follows:

- In terms of **biodiversity**, the development will give rise to the loss of approximately 1.9 kilometres of internal hedgerows, in addition to the roadside hedgerow to be removed to accommodate the entrance to the site, which is significant at local level. These hedgerows have been identified as being moderate to low value to commuting and foraging bats and badgers, as well as breeding birds. The hedgerows also offer the potential for roosts and setts. Works will take place outside the

breeding season in order to prevent a significant negative impact on birds. The restoration plans for the site would promote wider biodiversity which would have a positive impact.

- Effects on the receiving **land, soil, geology and water** environments may arise during construction, and operational and restoration phases. The development includes both dry and wet working. Impacts will be mitigated through good construction management and compliance with best practice guidelines. The proposed restoration of the quarry as an ecological resource will not involve infilling of the pit void and works will focus on the banks and water body. The development will result in the permanent loss of agricultural lands.
- In terms of **air quality**, dust levels arising from the operational phase of the development are likely to result in a medium-term slight adverse impact for the property located within 100 metres of the extraction area without additional mitigation in place. Emissions from increased HGV traffic on the local roads are indicated as having a negligible impact on air quality. The site's dust management plan will comply with industry guidelines and the mitigation measures presented are standard for the prevention of dust nuisance.
- In terms of **noise and vibration**, noise monitoring was carried out at seven locations within and in the vicinity of the site. Potential noise sources on the site include a variety of mobile and fixed plant as well as the increase in traffic, which is predicted to result in an increase of less than 3 dB(A) on baseline noise levels at properties along the L8006, L8007 and the R418. Mitigation measures for noise control will be implemented and there will be a medium term slight adverse impact for sensitive receptors along the haul route and within the immediate environs of the site.
- In terms of **visual and landscape impacts**, the proposed development will result in changes to the landscape. The mitigation measures proposed to reduce visual impacts are set out in Section 13.4 of the

EIAR and include screening of vegetation establishment, particularly proposed spoil/storage heaps along the northern and western boundaries and compensation of landscape impact where possible. Other mitigation measures have been built into the design, and specific landscape proposals will be put in place during the restoration phase. The site is located within a landscape character area which has the capacity to absorb a development of this scale in landscape and visual terms. There will be an impact arising at residential properties in the immediate vicinity of the site.

- In terms of **Roads and Traffic** impacts, the proposed development will result in the creation of a new entrance onto the Local Road, L8006, at a location where an 80 km/h speed limit applies. The local road network is narrow in places and the applicant proposes a road widening scheme in order to facilitate the traffic associated with the development.

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, as set out 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.

The Board is satisfied that this reasoned conclusion is up to date at the time of taking this decision.

### **Conclusions on Proper Planning and Sustainable Development**

Having regard to the provisions of the Kildare County Development Plan 2017 – 2023, the 'Quarry and Ancillary Activities, Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2004, the locational requirement that sands and aggregates can only be worked where they occur, the location of the site in



proximity to the regional and national road network, the proposals submitted to accommodate the increased HGV traffic in the vicinity of the site, the design of the proposed extraction and the environmental controls and mitigation measures proposed in the Environmental Impact Assessment Report received, the limited lifetime proposed, and the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the provisions of the Development Plan and the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board considered that the proposals submitted to accommodate the increased HGV traffic in the vicinity of the site would be acceptable in terms of traffic safety and convenience. In respect of noise, the Board noted that the predicted average increase in noise levels at noise sensitive receptors N5, N6 and N7 would be within the range of 5 to 10 dB(A) above background noise levels and, therefore, unlikely to give rise to complaints. The Board also noted that, notwithstanding the second recommended reason for refusal, the Inspector had expressed satisfaction with the matters of air quality and visual impact. The Board considered that it had not been demonstrated that the proposed development would depreciate the value of properties in 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 received by An Bord Pleanála on the 2<sup>nd</sup> day of January, 2020 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. This grant of permission shall be for a period of twelve (12 number) years from the date of commencement of development. Restoration shall be completed within a further two (2 number) years, unless a permission for further quarrying has been received prior to the expiry of this permission.

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

3. The combined extraction of sand and gravel from the quarry shall be limited to 250,000 tonnes per year.

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

4. The developer shall ensure that all mitigation measures set out in the Environmental Impact Assessment Report and Natura impact statement submitted, together with other mitigation measures submitted with the original application and the appeal, shall be implemented in full, except as may otherwise be required in order to comply with the attached conditions.

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

5. The quarry, and all activities occurring therein, shall operate only 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. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

6. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which 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, and
  - (b) employ a suitably-qualified and licensed archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of development.

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 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 ongoing monitoring of dust emissions at dwellings in the vicinity,
  - (e) proposals for the bunding of fuel and lubrication storage areas and details of emergency action in the event of accidental spillage,
  - (f) details of safety measures for the land above the quarry, to include warning signs and stock proof fencing,
  - (g) management of all landscaping with particular reference to enhancing the ecological value of the woodland/grassland on the bunds and buffer areas,
  - (h) monitoring of ground and surface water quality, levels and discharges, and
  - (i) 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.

8. 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-
- (a) an LArT value of 55 dB(A) during 0700 to 1800 hours. The T value shall be one hour.
  - (b) an LAeqT value of 45 dB(A) at any other time. The T value shall be 15 minutes.

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

9. The total dust emissions arising from on-site operations shall not exceed 350 milligrams per square metre per day averaged over a continuous period of 30 days (Bergerhoff Gauge) when measured as deposition of insoluble and insoluble particulate matter at any position on the boundary of the quarry. An adequate hose capacity shall be maintained to dampen down stockpiles, waste piles and equipment during periods of dry windy weather to prevent emissions of fugitive dust.

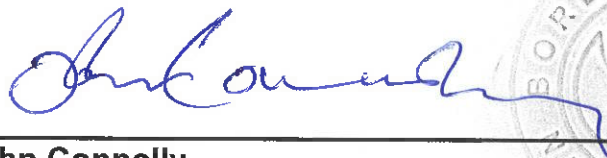
**Reason:** To protect the residential amenities of property in the vicinity.

10. Prior to the commencement of development, the developer shall submit to, and agree in writing with, the planning authority details of the road widening and strengthening scheme. The road strengthening overlay works identified in Section 10.5.3 of the Environmental Impact Assessment Report, together with the road widening along the L8007 and L8006, shall be carried out at the developer's expense.

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

11. 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 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.



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**John Connolly**

**Member of An Bord Pleanála**

**duly authorised to authenticate**

**the seal of the Board.**

Dated this *9<sup>th</sup>* day of *JUNE* 2021.

