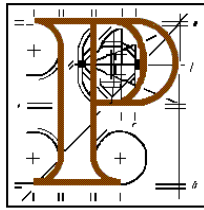


An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2016

Kerry County

Planning Register Reference Number: EUQY094

An Bord Pleanála Reference Number: 08.SU.0028

APPLICATION FOR SUBSTITUTE CONSENT by Patrick Doyle care of Clonergan Consultancy of 51 New Street, Killarney, County Kerry in accordance with section 177E of the Planning and Development Act, 2000, as amended.

LOCATION OF QUARRY: Gortagullane, Coolies, Muckross, Killarney, County Kerry.

BOARD 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 hereunder, 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) the provisions of the Planning and Development Acts, 2000 to 2015, and Part XA in particular,
- (b) the “Quarries and Ancillary Activities, Guidelines for Planning Authorities”, issued by the Department of the Environment, Heritage and Local Government (2004),
- (c) the policies of the planning authority as set out in the Kerry County Development Plan 2015-2021 and the provisions of the previous County Development Plan 2009-2015,
- (d) the remedial Environmental Impact Statement and the remedial Natura Impact Statement submitted with the application for substitute consent,
- (e) the section 132 notice for further information response submitted by the applicant dated the 23rd day of July, 2015,
- (f) the report and the opinion of the planning authority under section 177I of the Planning and Development Act 2000, as amended,
- (g) the submissions made in accordance with Regulations made under section 177N of the Planning and Development Act 2000, as amended, and subsequent submissions in response to the applicant's further information submission,
- (h) the planning history of the site including its section 261 registration under planning authority register reference QY094 in 2007, the planning permission granted under planning register reference number 2019/08 for ‘the extension of boundaries of existing quarry’ and to ‘intensify the tonnage, incorporate sand and washing plant’ and the section 261A determination carried out by the planning authority under register reference EUQY094,
- (i) the nature and scale of the development,
- (j) the pattern of development in the area, including the separation distances to houses, and

- (k) the report and addendum report of the Board's Inspector, including in relation to potential significant effects on the environment and potential effects on European sites.

The Board was satisfied that the information before it was adequate to undertake a remedial environmental impact assessment and a remedial Natura impact assessment in respect of this application for substitute consent.

The Board noted the Inspector's concerns in relation to the adequacy of the information available on file, in respect of noise and dust in the years 2002 to 2007, to allow an environmental impact assessment to be undertaken. The Board did not concur with the Inspector's view, based on the analysis set out under the headings below.

In noting the Inspector's view in relation to the baseline studies supporting the remedial Environmental Impact Statement, the Board acknowledged that the nature of remedial environmental impact assessment, and the preparation of a remedial Environmental Impact Statement, relating to past activities, will inevitably result in baseline studies that are recent in origin. However, the Board was not reliant solely on this data in undertaking its assessment. The Board was satisfied that historical data was available on file in relation to the nature and scale of past operations, including the quarry registration under QY094, the planning permission granted under planning register reference number 2019/08 and the quarry review under EUQY094. The Board considered that the information available, taken in its entirety, was sufficient to complete an environmental impact assessment. The Board, therefore, did not share the view of the Inspector on this matter.

Appropriate Assessment Screening

In conducting a screening exercise for Appropriate Assessment, the Board considered the nature, scale and location of the development, the Appropriate Assessment screening information, the documentation on file generally, the planning history of the site, the submissions on file, and the Inspector's report. The Board was satisfied that, either individually or in combination with other plans or projects, the development did not have and would not be likely to have significant effects on European Sites arising from the significant separation distances involved, and otherwise an absence of potential for connectivity, with the exception of the Killarney National Park, MacGillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code 000365). The Board concurred with the analysis and conclusions of the Inspector in this regard.

Appropriate Assessment

The Board was satisfied that the information before it was adequate to undertake an Appropriate Assessment in respect of the subject development. Having regard to the nature, scale and location of the development, the remedial Natura Impact Statement, the documentation on file generally, the planning history of the site, the submissions on file, and the Inspector's report, the Board undertook an Appropriate Assessment in relation to the effects of the development on the Killarney National Park, MacGillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code 000365). The Board concurred with the analysis and conclusions of the Inspector and adopted his report. The Board therefore, concluded that, either individually or in combination with other plans or projects, the subject quarry has not adversely affected and would not adversely affect the integrity of any European Site, and in particular the Killarney National Park, MacGillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code 000365), in view of the qualifying interests and conservation objectives of this site.

Remedial Environmental Impact Assessment

The Board considered the nature, scale and location of the development, the remedial Environmental Impact Statement, the registration, and the quarry review history of the site, the submissions on file, the report of the planning authority, and the reports of the Inspector. It is considered that the remedial Environmental Impact Statement, in conjunction with the information available on file, identifies and describes adequately the direct and indirect effects on the environment of the development that have taken place. The Board completed an environmental impact assessment in relation to the development, by itself and in cumulation with other development in the vicinity. The Board concluded that, subject to mitigation measures set out in the remedial Environmental Impact Statement and subject to the following conditions, the development of the quarry did not and would not be likely to have unacceptable effects on the environment. In doing so, the Board adopted the report of its Planning Inspector save for in respect of impacts on the following:

Human Beings

The Board is satisfied that the principal effects on human beings related to effects on residential amenity, as described under “Noise and Vibration” below. The quarry development also had a small positive effect in terms of employment, and has provided socio-economic benefit to the wider area. The Board accepted that the quarry is not within a high amenity area, and that there are no amenity attractions of significance in the area, and concluded that tourism was not and would not be affected by the development. The Board is satisfied that the quarry is at a distance from settlements, and that significant effects would not have arisen in this respect from the development of the quarry.

Noise and Vibration

The Board is satisfied that no unacceptable effects are likely to have arisen in terms of noise, as a result of the development of the quarry, due to the distance from the quarry to dwellings in the vicinity, which would provide a significant mitigation of noise. In forming this view, the Board also had regard to the scale of current and previous sand and gravel extraction operations, the information provided in respect of noise on file, the nature of the sand and gravel extraction operations, whereby no noise generating drilling, blasting or rock-breaking took place and to the lack of any records of complaint or enforcement action by the planning authority. In light of the absence of blasting, the Board is also satisfied that no significant vibration effects arose.

The Board accepts that the heavy goods vehicle traffic associated with the development would have contributed to noise and general disturbance at dwellings on local roads. However, in light of the level of vehicular traffic arising, stated in Appendix I of the revised remedial Environmental Impact Statement to peak in April 2007 to be 8 number two-way truck movements (that is, 16 number trips), the Board considered that the effects arising from noise and vibration were within acceptable limits.

Air Quality/Dust

The Board considered that, in light of the location of the quarry below the surrounding area, and particularly in view of the separation distances to sensitive receptors, including dwellings, and noting absence of complaints/enforcement in this regard, no significant or unacceptable impacts were likely to have arisen or are likely to arise in relation to dust from the quarry's past operations.

Hydrology/Hydrogeology/Surface Water and Groundwater Quality

Dry operations only took place at the quarry and it has no surface water connections with water courses with no evidence of water discharges from the site. The Board also noted that there were no objections expressed by Kerry County Council or Inland Fisheries Ireland. The Board, therefore, concluded that significant effects were not likely to have arisen, or would be likely to arise, in relation to hydrology or surface water quality as a result of the operation of the quarry in light of the low potential for any connectivity with surface water features.

No pumping of groundwater took place at the quarry with all quarry operations taking place above water table. There were no water discharges and no evidence of any significant hydrocarbon spillages. The Board was satisfied that there is no evidence that the hydrogeology was affected by the development carried out.

Material Assets

Having regard to the Board's assessment in respect of human beings, noise, vibration, air quality, dust etc. above, to the lack of records of any local complaint or enforcement action by the planning authority, to the pattern of development in the general area, to the nature and extent of the quarry operations and to the limited traffic volumes associated with the past operations, the Board did not consider that there was any evidence that the quarry had a detrimental impact on the value of surrounding properties.

Conclusions on the Proper Planning and Sustainable Development of the Area

The Board is satisfied that, in itself and in conjunction with other development in the vicinity, and subject to compliance with the conditions set out below, the development did not and would not conflict with the provisions of the Kerry County Development Plans 2009-2015 and 2015-2021, did not and would not seriously injure the amenities of the area or of residential property in the vicinity, did not and would not result in a risk of pollution, did not affect known archaeological features or architectural heritage, and was acceptable in terms of traffic safety and convenience. It is, therefore, considered that the development was and would be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. (a) This grant of substitute consent shall be in accordance with the plans and particulars submitted to An Bord Pleanála with the application and the further information submitted to An Bord Pleanála on the 23rd day of July 2015, except as otherwise may be required 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 within six months of the date of this Order, and the development shall be in accordance with the agreed particulars.
- (b) The grant of substitute consent relates only to past quarrying that has been undertaken as described in the documentation supporting the application, and does not authorise any structures or any future development on this site, including any excavation of the 1.12 hectare existing 'undisturbed area' identified in the remedial Environmental Impact Statement to the south of the quarry, unless authorised by a prior grant of planning permission.

Reason: In the interest of clarity.

2. All environmental mitigation measures identified in the remedial Environmental Impact Statement, the remedial Natura Impact Statement and associated documentation shall be implemented in full.

Reason: In the interests of the conservation of the environment and of the amenities of the area.

3. Implementation-stage details of the restoration of the quarry shall be submitted to, and agreed in writing with, the planning authority, in accordance with the measures set out in the remedial Environmental Impact Statement, which details shall include the following:
 - (a) the finished gradients of the quarry faces, including their suitability for bird species,
 - (b) details of secure fencing for the boundaries of the site,
 - (c) a scheme of landscaping and tree planting, and control of invasive species,

- (d) the control of dust emissions until such time as planting is established,
- (e) proposals for an aftercare programme of five years, and
- (f) the scheduling of the works to protect bird species.

The restoration shall be completed to the written satisfaction of the planning authority within 12 months of the date of this Order in accordance with the agreed details.

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

4. 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 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 development. 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 completion of the development.

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

Dated this day of 2017.