



An
Bord
Pleanála

Board Order 04.SU.0136

Planning and Development Acts 2000 to 2017

Planning Authority: Cork County Council

Planning Register Reference Number: CKQY0106

Application for Substitute Consent by Kilsaran Concrete (trading as Kilsaran Build) care of SLR Consulting Limited of 7 Dundrum Business Park, Windy Arbour, 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.

Location of Quarry: Rossmore and Barryscourt Townlands, Carrigtwohill, County Cork.

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 Acts, 2000 to 2017, 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 Cork County Development Plan,
- (f) the remedial Natura impact statement submitted with the application for substitute consent,

- (g) the reports and the opinion of the planning authority under section 177I of the Planning and Development Act 2000, as amended,
- (h) the submissions and observations made in accordance with regulations under section 177N of the said Act, as amended,
- (i) the report of the Board's Inspector,
- (j) the planning history and pattern of existing development in the overall area, and
- (k) the particular planning history of the subject site, including:
- permissions granted under planning authority register reference numbers 99/3410, 99/3411, 01/6604 and 03/4570,
 - the determination of the Section 261A Review of the site carried out by the planning authority, under reference number CKQY0106, which concluded that the assessment of the above planning applications did not constitute an Appropriate Assessment in the context of the EU Habitats Directive (notification of the 23rd day of August, 2012),
 - the review of the above notification by An Bord Pleanála (file reference number 04.QV.0174) which confirmed the determination by the planning authority, with particular reference to planning register reference numbers 99/3410, 99/3411, and 03/4570 (Order dated the 21st day of January, 2014),
 - the subsequent application for substitute consent made by the owner/operator on the 29th day of August, 2014 (An Bord Pleanála reference number 04.SU.0117),

- the application for leave to apply for substitute consent made by the applicant in accordance with Section 261A(20), which was granted by An Bord Pleanála on the 24th day of February, 2016 (An Bord Pleanála reference number 04.LT.0001) meaning the undecided application 04.SU.0117 was deemed withdrawn, and
- the subject application for substitute consent made under section 177E(2A) of the Act.

Appropriate Assessment

The Board concurred with the Appropriate Assessment screening exercise carried out during the Section 261A process (Cork County Council CKQY0106 and An Bord Pleanála reference number 04.LT.0001) which identifies the following two European Sites as requiring a Stage 2 Appropriate Assessment: Cork Harbour Special Protection Area (Site Code: 004030) and Great Island Channel Special Area of Conservation (Site Code: 001058). This screening finding has been confirmed in the remedial Natura impact statement submitted with the application.

The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. Having regard to the nature, scale and extent of the subject development, the remedial Natura impact statement submitted with the application and the mitigation measures contained therein, the submissions on file and the Inspector's assessment, the Board completed an Appropriate Assessment of the impacts of the development on nearby European Sites. Subject to the implementation of the identified mitigation measures, the Board concluded that, on the basis of the information available, the development, either individually or in combination with other plans or projects, would not adversely affect or would not have adversely affected the integrity of any European Site, having regard to the conservation objectives of those sites. In reaching this conclusion, the Board adopted the report of its Planning Inspector, save with respect to the issue of an apparent incursion of the quarry onto the foreshore.

Conclusions on the Proper Planning and Sustainable Development of the Area

Having regard to the satisfactory conclusion of the Appropriate Assessment, as set out above, it is considered that, subject to compliance with the conditions set out below, the continued operation of this quarry, in accordance with the terms of the existing planning permissions pertaining to the site, would be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission on the basis of an apparent incursion of the quarry onto the foreshore, the Board's consideration was as follows:

The quarry lies directly adjacent to two European Sites, namely Cork Harbour Special Protection Area (Site Code: 004030) and Great Island Channel Special Area of Conservation (Site Code: 001058). In the western boundary of the quarry, a specific area has been identified where there is an apparent overlap between the quarry and the boundary of the Special Protection Area and Special Area of Conservation.

Having considered the application documentation, and having viewed the historical mapping and historical aerial photography available from the Ordnance Survey (including aerial photography for the years 1995, 2000 and 2005) together with the mapping of the Special Protection Area and Special Area of Conservation boundaries, the Board concluded that:

- (a) the quarry activities generally appear to pre-date the designation of both the Special Protection Area and Special Area of Conservation;
- (b) the quarry footprint appears in the aerial photography denoted '1995' to be well established, suggesting works were underway in advance of the date of designation of the Special Protection Area (November, 1994). Furthermore, the quarry footprint appears in the aerial photography classified as '1995' and also '2000' to be well established, suggesting works were underway in advance of the date of designation of the Special Area of Conservation (January, 2000);
- (c) the overlap between the quarry footprint and the boundaries of the Special Protection Area and Special Area of Conservation may be explained by the use of historical six inch to one mile mapping during the digitisation of the boundaries of the designated sites, whereas planning applications were made using more up to date Ordnance Survey mapping, and therefore,
- (d) the overlap arises as the result of a mapping discrepancy as opposed to the encroachment of the quarry into or onto the designated sites following designation.

Having reached this conclusion, the Board was satisfied that the Inspector's concerns in relation to loss or destruction of habitat in the Special Area of Conservation and Special Protection Area were no longer valid, and noting the Inspector's satisfaction with the quarry in all other respects, the Board reached the conclusion as set out under 'Appropriate Assessment' above.

Conditions

1. This grant of substitute consent shall be in accordance with the plans and particulars submitted to An Bord Pleanála with the application, except as may otherwise be required in order to comply with the following condition.

Reason: In the interest of clarity.

2. All mitigation measures identified within the remedial Natura impact statement and associated documentation shall be implemented in full.

Reason: In the interest of the protection of European sites.

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

Dated this day of 2017