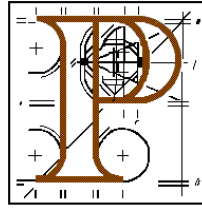


An Bord Pleanála



Inspector's Report

Development: Retention and completion of sand and gravel extraction over an area of 2.25 hectares.

Location: Clara Road, Ballyduff Townland, Tullamore, Co Offaly.

Planning Application:

Planning Authority:	Offaly County Council
Planning Authority Reg. Ref.:	14/47
Applicant:	Cemex (ROI) Ltd. ¹
Type of Application:	Permission
Planning Authority Decision:	Grant Permission subject to conditions.

Planning Appeal:

Appellants:	An Taisce
Type of Appeals:	3 rd Party v Permission
Observers:	None
Date of inspection:	1 st July 2015
Inspector:	Bríd Maxwell

¹ I note that as outlined in further information response received by the local authority on 23 January 2015, ownership of the site changed from Cemex (ROI) Ltd to Roadstone Ltd in late 2014, during the course of the application to the council.

1.0 SITE LOCATION AND DESCRIPTION

1.0 THE SITE

- 1.1 The appeal site is located within the townland of Ballyduff on the Clara Road approximately 3.5km to the north west of Tullamore, Co Offaly. The appeal site which has a stated area of 2.25 hectares is located in the southern section of an active sand and gravel quarry. The eastern edge of the quarry site is bordered by agricultural fields and the R420 and the Dublin Galway rail line runs to the west. The Silver River flows in an east west direction to the north of the quarry. Agricultural land adjoins to the south. The surrounding landscape comprises a mix of urban development, agricultural fields, pockets of woodland, quarries and related development and some residential housing. The Esker Hills golf course is located to the west of the site beyond the rail line.
- 1.2 The well-established quarry takes its access via an access road off the N80 from the north east. Within the quarry are a silt lagoons, a processing area with associated buildings and hardstanding. There are a number of operations and processes carried out within the quarry including washing of aggregates, blockmaking and readimix concrete production. Adjacent to the north east of the of the quarry site are the commercial operations of precast concrete sales and display.
- 1.3 The site is south of the Esker Riada, the linear glacial deposit which traverses the northwest corner of County Offaly (ultimately running from Dublin to Galway). The Esker Riada forms a linear low ridge running in an east west direction.
- 1.4 In terms of designations there are a number of designated sites in the vicinity including

The Ballduff Esker , Proposed NHA Side Code 00085

Ballyduff Wood Proposed NHA Site Code 001777

Charleville Wood SAC (Site Code 000571)

Clara Bog SAC (Site Code 000572)

The proposed route of the Tullamore Western By Pass as indicated in the Tullamore town Development Plan is located approximately 313m to the east of the site.

2.0 PROPOSED DEVELOPMENT

2.1 The application seeks permission for retention and completion of sand and gravel extraction over an area of 2.25 hectares. Documentation submitted with the application outlines that the application site requires regularisation following the Section 261A process.

2.2 In the issue of duration and in response to the Council's request for additional information, it was outlined that sand and gravel extraction is expected to proceed for a further 24 months. The restoration plan is expected to take six months for implementation with further 12 to 24 months for establishment of landscaping.

3.0 PLANNING POLICY CONTEXT

3.1 DEVELOPMENT PLAN

3.1.1 The Offaly County Development Plan 2014-2020 and Tullamore Town and Environs Development Plan 2010-2016 refer.

3.1.2 Within the Tullamore Town and Environs Development Plan Chapter 14 deals with Development Standards and Extractive Industries are addressed at 14.2.9.

3.1.3 As regards groundwater vulnerability the site is within an area designated as high vulnerability on Map 10.1.

3.1.4 The adjacent lands to the north, Eiscir Riada are designated of high sensitivity as designated on Landscape Classification Map 13.6 of the Tullamore Town and Environs Plan. The Esker Riada to the north is designated as an area of High Amenity within the County Development Plan and the Tullamore Town and Environs Development Plan. Policy TTEP 13-17 of the Tullamore Town and Environs Development Plan is “to ensure those extractions (quarries sand and gravel pits) which would result in a reduction of the visual amenity of Areas of High Amenity ... shall not be permitted.”

Policy AHAO-01 of the Offaly County Development Plan - It objective of the council to protect and preserve the county’s primary areas of high amenity.

3.1.5 Policy NHP-23 *“It is Council policy to consider, in consultation with the National Parks and Wildlife Service, Westmeath County Council, the Geological Survey of Ireland and others, the potential designation of the north Offaly esker landscape as a UNESCO geo-park, to promote the unique geological heritage of the area.”*

4.0 **PLANNING HISTORY**

4.1 There is an extensive and complex planning history on the site including the following decisions associated with the site:

EUQY/54.Quarry Assessment under Section 261A of the Planning and Development Act 2000 as amended.

Findings

- *“The quarry did commence prior to 1st October 1964; although it is not deemed to be operating under a pre- 1964 authorisation.*
- *This quarry did obtain planning permission.*
- *The quarry did fulfill the requirements in relation to registration under Section 261.*
- *Post 1990 quarry development does exceed EIA threshold(s) however an EIS was carried out.*
- *Appropriate assessment under the Habitats Directive was deemed not to be required*
- *Post 3rd July 2008 development did not take place.*

Note:

The area of this quarry which occurs outside the area authorised by a grant of planning permission can be addressed through a retention planning application.”²

The basis for determination is set out as follows:

“In relation to Environmental Impact Assessment Directive, the planning authority assessed the quarry with regard to development which took place after 1st February 1990, and determined that an EIA was required but that such an assessment was made.

Reason:

(a) Some development carried out on this site after 1st February 1990 was authorised by a granted planning permissions (PL2/77/347 & PL2/80/98). Environmental Impact Assessment was not required in regard of such development under the EIA Directive as this Directive does not apply in respect of projects authorised before the Directive became operative.

(b) The quarry change or extension which occurred after 1st May 1999, which is governed by S.I. No 93/1999 European

² I note that the area referenced here equates to the current appeal site.

Communities (Environmental Impact Assessment) (Amendment) Regulations 1999. was authorised by a grant of planning permission (PL2/99/1129) which included an Environmental Impact Statement.

In relation to Habitats Directive

The Planning Authority has assessed this quarry with regard to development which took place after 26th February 1997 and determined that an Appropriate Assessment was not required.

Reason:

(a) For development that was carried out on this site after 26th February 1997, which was not authorised by a grant of planning permission prior to the introduction of the Habitats Directive, Appropriate Assessment screening has determined that significant impacts are not likely on a European Site from this quarry.

Consequently, it is decided that No Further Action is required, pursuant to Section 261(A) in relation to Quarry EUQY0054 ay Ballykilmurray and Ballyduff, Tullamore, Co Offaly.”

QB19.0658 Board Decision – No board jurisdiction. The Board determined that there is no provision for a review of a Section 261(a) 2(a) determination in the absence of a decision being taken by the Planning Authority under Sections 3(a), 4(a) or 5(a).

PL2/05/951 Application for retention for fully demountable asphalt plant and ancillary site accommodation works at existing sand and gravel pit site. Invalid.

PL2/99/1129 Planning permission granted for extension and restoration of sand and gravel pit and retention of unauthorised extraction. Subject to 23 conditions. This application was accompanied by an Environmental Impact Statement.

90/000315 Permission granted for the construction of a new weighbridge.

90/000270 Permission granted for a new asphalt / bitmac plant.

PL2/82/463 Permission for washing plant, silt ponds, weighbridge and offices.

PL2/83/348 Permission for installation of concrete production plant.

PL2/82/411 Permission for processing of sand and gravel.

PL2/80/98 Permission to widen develop access road and extract sand and gravel from the site.

PL2/77/347 Permission for extraction of sand and gravel.

5.0 DELIBERATIONS AND DECISION OF THE PLANNING AUTHORITY

5.1 Third Party Submissions including Prescribed Bodies.

- National Roads Authority will rely the planning authority to abide by official policy in relation to development on / affecting national roads.
- An Taisce submission, given the scale of unregulated quarry development which is subject to Section 261A of the Planning and Development Act 2000, as amended in County Offaly, need for this project has not been justified.
- Department of Arts, Heritage and the Gaeltacht notes location in close proximity to OF-016-013 – Designed Landscape Feature which is subject to Statutory protection in the Record of Monuments and Places established under section 12 of the National Monuments (Amendment) Act 1994. Recommend that an Archaeological Impact Assessment be prepared and requested as a condition of planning.
- Irish Water report indicates no objection.

5.2 Internal Reports

- Environment and Water Services report asserts that the application is unsatisfactory as regards information in relation to the Environment and water services, Further information required in relation to water demand, surface water management and EMS measures and monitoring, compliance certification in relation to the septic tank percolation area.
- A request for additional information issued to the applicant seeking a number of items of further information including
 - (i) Timeframe for implementation of quarry restoration plan and timeframe for quarrying to cease on site.
 - (ii) Western by pass route to be demonstrated in relation to the site. Visual mitigation measures.
 - (iii) Estimate of increase in demand from watermain network arising from the development.
 - (iv) Details for management of surface water run off accidental fuel spillage, surface and groundwater monitoring and sampling, details for management of air and noise pollution.
 - (v) Certification in relation to the septic tank and percolation area.
- Planner's report notes in relation to EIS that the development is not likely to have significant effects on the environment for a number of reasons. It is not considered that there are sensitivities relating to the characteristics and location of the development, nor are there potential impacts which would result in a likely significant effect on the environment.
- Following submission of additional information the report of Environment and Water Services Section indicates no objection subject to conditions.
- Final planners report recommends permission subject to conditions.

5.3 Decision

5.3.1 By order dated 19/2/2015 Offaly County Council decided to grant permission subject to 9 conditions which included the following of particular note:

- *Condition 2. The use of the site as a quarry shall cease within two years of the date of the issue of the Final Grant of permission unless a further permission shall have been obtained within that period.*
- *Condition 3. The restoration and landscaping of the site shall commence in accordance with the submitted restoration plan and shall be completed within fifty four months of the grant of permission in accordance with drawing PA03.*
- *Condition 4. The policies and procedures of the Roadstone Environmental Manual and Policies submitted in response to the request for additional information. Oil / petrol interceptor. Bunding. Septic tank to be upgraded. Roadstone EMS to be implemented.*
- *Condition 5 Hours of Operation.*
- *Condition 6. No blasting.*
- *Condition 7. Bond.*
- *Condition 8. Development Contribution of €34,335.*
- *Condition 9. Archaeological Impact Assessment.*

6.0 GROUNDS OF APPEAL

6.1 Third Party Appeal

6.1.1 The Third Party Appeal is submitted by An Taisce. Grounds of appeal are summarised as follows:

- Application was not subject to critical evaluation by the Council.

- There is a preliminary legal requirement to address the issue of compliance with the Environmental Impact Assessment EIA.
- The determination under Section 261A was made by the Council whereby no action was required as a post 1990 Environmental Impact Assessment was stated to have been carried out.
- The application demonstrates that a significant breach of the existing consent has been carried out due to extension of operations into an additional 2.25 hectares.
- Extension area affects the boundary and mitigation measures and hugely affects the restoration plan of the permitted quarry.
- Offaly County Council rejected the requirement for EIA solely on grounds that the extension area was below 5 hectares.
- Appropriate Assessment was not carried out.
- Case demonstrates continued disregard by the Irish quarry industry and the attitude that planning and site operating area breaches can simply be regularised by retention application. Case undermines the integrity of the Section 261 A process which was meant to create a new approach to regulatory compliance by the industry.
- Eiscir Riada is a landscape feature of European importance. It also assumed a strong cultural significance as an east west route across the country at a time when much of the midlands were impassable bog. The Eiscir is associated with the route between the early Christian Monastic sites.
- Importance of this feature recognised in the Offaly County Development Plan and Tullamore Town and Environs Development Plan 2010-2016 however Ireland has failed to implement the measures required in the European Landscape Convention to protect landscapes of European and National Significance.
- The proposed development for extraction is located in an area which would result in a reduction of the visual amenity of an

area of high amenity and damage the area which is of scientific importance in terms of geological, botanical, zoological and other natural value. The proposed development would contravene AHAP-01 of the Offaly County Development Plan.

- No assessment in relation to the impact of the proposal on the development potential of nature walks along the Eiscir Riada. Objective TTEO13-17.
- Policy NHO-23 of the County Development Plan. The further extension of quarrying would weaken any case for a UNESCO geo-park in Co Offaly.
- The requirement for EIA has not been properly addressed by the Council and the proposed development would have an adverse impact on an Area of High Amenity.

7.0 APPEAL RESPONSES

7.1 Planning Authority

7.2 The Planning Authority response asserts that the site is outside the designated Eskers as specified in the County Development Plan 2014-2020 Tables 7.8 and 7.17. The development was screened for EIS in the Planners report.

7.2 First Party Response to Third Party Appeal.

7.2.1 The submission by Tom Phillips and Associates on behalf of the First Party is summarised as follows:

- Offaly County Council carried out a thorough examination of this quarry in mid-2012, in accordance with the provisions of Section 261A of the Planning and Development Act 2000 as amended.
- EIA Screening and AA as well as post 3rd July 2008 development the Offaly County Council assessment concluded that the area of this quarry which occurs outside the area

authorised by a grant of permission can be addressed through a retention planning application.

- Council's robust assessment addresses the question of EIA.
- Section 261A process revealed unauthorised development by the previous owner. Planning Authority fully considered the legal implications of the unauthorised development.
- The 2.25 hectare extension for retention and continuation is below the 50% threshold. (2.5ha)
- Given the extent and quality of sand and gravel reserves in the existing quarry together with the significant capital investment already made at the site, the proposed extension and continuation of associated operations is appropriate and in accordance with the provisions of the Quarry and Ancillary Activities Guidelines.
- Quarrying reserves are not footloose and the application for permission is necessary to secure access to this valuable resource subject to appropriate protection of the Eiscir Riada.
- Development Plan seeks to balance the requirements of a variety of competing development objectives provide a framework for proper planning and sustainable development.
- The proposed quarry extension falls outside of the area designated for protection as either an esker or as an area of high amenity.
- Extraction within the extended area will not have a significant cumulative impact. Restoration plan provides for site to revert to a green field site.
- Continued extraction of sand and gravel at this location will release this valuable resource for a defined period. After the 2 year period of extraction, the restoration plan will be completed within a further 2.5 years and it is not expected to result in a significant reduction of the visual amenity of the area.
- No appreciable impact on the Council's policy to promote the protection and development of nature walks along the esker.

- Cumulative impact of 2.25hectare quarry area in combination with the overall quarry it adjoins and the proposed western bypass to the east is not significant and should not in itself impact on any potential future proposals to have the esker landscape designated.
- The requirement for EIA, either mandatory or sub threshold, has been comprehensively addressed by the Planning authority both in its section 261A assessment and as part of this application.
- Request that An Bord Pleanála uphold the well-considered decision of Offaly County Council and grant permission for the retention and continuation of the quarry extension,.

8.0 ASSESSMENT

8.1 From my review of the file, all relevant documents and inspection of the site and its environs I consider that the main issues for consideration may be considered under the following broad headings:

- Procedural matters.
- Environmental Impact Assessment
- Appropriate assessment

8.2 Procedural Matters.

8.2.1 I have a number of concerns in relation to the adequacy of the application. I note that as indicated in the further information response received by the Offaly County Council on 23 January 2015, ownership of the site apparently changed from Cemex (ROI) Ltd to Roadstone Ltd in late 2014, that is, during the

course of the application to the council. The applicant remains Cemex (ROI) Ltd. and therefore the question of sufficient legal entitlement to carry out the works arises. Having regard to the ambiguity on this issue, I consider that the application is unsatisfactory.

8.2.2 The second procedural issue of concern relates to the constricted nature of the site. The complex planning history on the lands of which the site forms part has been outlined in section 4 above. The incremental evolution of quarrying and related operations in the immediate vicinity of the appeal site is reflected in the planning history and I note an extensive reliance on retention applications. I note in particular 99/1129 “Permission for extension and restoration of sand and gravel pit (17.321ha) and retention of unauthorised extraction (10.6ha)” which was subject to Environmental Impact Assessment. Given the nature of the current appeal it is not appropriate to revisit the previous decisions of the Planning Authority and consideration is of necessity confined to the specifics of the development proposed.

8.2.3 As noted the documentation submitted by the First Party with the application, the current retention application emerged through the Section 261A process. The current appeal relates solely to a site area of 2.25 hectares which is located internally within the established sand and gravel quarry within an overall area estimated to be in the region of approximately 40 hectares.

8.2.4 I have a number of concerns in relation to the nature of the application and the restricted confines of the site area as defined on the submitted plans. It is not in my view appropriate to consider the appeal site in isolation from the established sand and gravel quarry operation of which it forms

part. I note for instance that issues of surface water management, pollution control, and wastewater treatment (as were raised in the Council's request for additional information) relate to or incorporate areas beyond the boundaries of the appeal site. I note that the Council imposed conditions requiring works outside the boundaries of the site for example in requiring the upgrade an existing septic tank by way of Condition 4(e). I would entirely concur with the third party appellant that the piecemeal effort to regularise the unauthorised extension of the quarry is contrary to the proper planning and sustainable development of the area. In the absence of a more holistic approach, issues of cumulative impact cannot be addressed and the level of detail provided on the appeal file is not sufficient to determine the effects on the environment and the characteristics of potential impacts arising from the development proposed to be retained and completed. Specific concerns arise in relation to water management, pollution control and the impact on the landscape and archaeological heritage impacts. I have noted above relevant objectives of the development plan which should also be addressed.

8.3 Environmental Impact Assessment

8.3.1 Category 2.2(b) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001 provides that an EIS shall be prepared in respect of a planning application for the following development:

“Extraction of stone, gravel, sand or clay where the area of extraction would be greater than 5 hectares”-

Category 13 Changes, extensions, development and testing:

(a) Any change or extension of development, which would:

(i) Result in an increase in size greater than

- 25 per cent, or

- *an amount equal to 50 per cent of the appropriate threshold, whichever is the greater.*

8.3.2 I note that the development relates to an excavation area of 2.25 hectares. The registered area under Section 261 of the Planning and Development Act 2000 as amended relates to a total area of 34.25hectares. On this basis I note that the proposed extension area would fall below the threshold therefore does not require a mandatory EIS.

8.3.3 Schedule 7 of the Planning and Development Regulations refers to the criteria for determining whether a development would or would not be likely to have significant effects on the environment as set out in Annex III of the Directive that is the characteristics of the proposed development, location of the proposed development and characteristics of potential impact. It is necessary for there to be a finding that there will not be any significant effects on the environment, having considered all of the above for a decision to be taken that sub threshold development does not require EIA.

8.3.4 I have noted above the concerns in relation to the adequacy of the application in terms of the limits of the site boundary. The question arises as to whether project splitting for the avoidance to undergo EIA arises. The matter of cumulative impact is also an issue of concern. The third party further raises issues in terms of the implications of the proposed development on the permitted development and particularly the mitigation measures as set out within the Environmental Impact Assessment of September 1999 carried out as part of permission 99/1129. I consider that the current application is unsatisfactory and that these issues would need to be addressed in a revised application.

8.3.5 I note the issues arising having regard to C-215/06 July 2008, which removed the facility in Irish law to apply for retention permission which would have required EIA. I consider that in any event the First Party would need to set the development in its context and address the implications of the proposed development on the wider mitigation measures previously outlined. I have noted specific areas of concern in relation to water and hydrogeology, landscape and visual impact and archaeological and cultural heritage impact. I consider that the passage of time and any updated baseline information, surveys and environmental monitoring should also be provided.

8.4 Appropriate Assessment.

8.4.1 The application includes a screening for appropriate assessment dated February 2014 by Golder Associates. The Screening identifies two Natura sites within 15 kilometres of the appeal site, namely Charleville Wood SAC (Site Code 00571) which is approximately 3km to the south of the appeal site, and Clara Bog SAC (Site Code 000572) which is approximately 4 kilometres to the west of the appeal site. (Site synopses included in pouch appended to this report)

8.4.2 The screening report notes that no water abstractions have been undertaken at the application site. (However no consideration is given to water abstraction in connection with associated operations on the larger quarry site of which the appeal site forms part.) Screening report also indicates that “Cemex (ROI) Ltd. have confirmed that there are no discharges to the Silver River from the application site.” As regards potential for impact on groundwater it is outlined that The Tullamore Groundwater Body beneath the site is not connected to Clara Bog SAC, however the wetland areas of

Charleville Wood SAC may depend to some extent on Tullamore Groundwater Body. It is noted that the Tullamore Body is currently rated as Good Status under the Water Framework Directive. It is asserted that potential impacts to groundwater have been identified from possible accidental spillages from machinery during extraction. Cemex (ROI) Ltd, has addressed this through the implementation of Best Practice - Environmental Management in the Extractive Industry (EPA, 2006) in its operational practices. The site is covered by an EMS which is accredited to ISO14001 standard. In relation to cumulative impacts of the existing quarry it is asserted that they are not likely to cause significant impacts on the designated features of the Natura 2000 sites. The rehabilitation of the extracted area aims to return the lands to low intensity agricultural calcareous grasslands. The development of vegetation on the quarry floor would also aim to provide a protective layer for the underlying groundwater body.”

- 8.4.3 As outlined above, I consider that the restrictions of the site and level of detail provided within the application and appeal does not enable full and appropriate consideration of the potential for impact on Natura 2000 sites in particular in relation to potential for impacts on key indicators of conservation value in particular changes in water quality. I consider that surface water management gives rise to potential for significant effect in terms of impact on water quality and in this regard the proposed development generates the need for appropriate assessment under the provisions of Article 6 of the Habitats Directive 92/43/EC. Based on the level of detail provided it is not possible to conclude that the development in itself, and in combination with other plans and projects would not be likely to have a significant effect on Natura 2000 sites.

9.0 RECOMMENDATION

- 9.1 Having read the submissions on file, visited the site and had due regard to the provisions of the Development Plan and all other matters arising, I consider that based on the deficiencies in the application as outlined above, permission should be refused for the following reasons and considerations:

REASONS AND CONSIDERATIONS

1. On the basis of the information lodged with the application and the appeal and having regard to the planning history of the lands in the vicinity of the site, the location of the subject site within a larger sand and gravel quarry site, the scale of the development proposed for retention which is below the mandatory threshold for Environmental Impact Assessment, the proposed development would constitute project splitting and the details lodged with the application are inadequate for the purposes of assessing significant effects on the environment . The Board is not satisfied that obligations in relation to Environmental Impact Assessment and Appropriate Assessment can be fulfilled. The Board is, accordingly, precluded from giving further consideration to the granting of permission for retention of the development the subject of the application and appeal

Brid Maxwell
Planning Inspector
16th July 2015