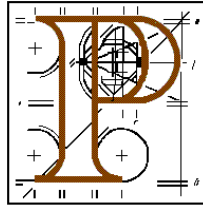


An Bord Pleanála



Inspector's Report

Planning Appeal No.:	PL26.245932
Development:	Erection and operation of a semi-mobile asphalt plant and related ancillary activities (bitumen storage tanks, fuel storage tanks, and generator) on an area of about 0.53ha within the Brownswood "Old Quarry, Brownswood, Enniscorthy, County Wexford.
Planning Application:	Permission
Planning Authority:	Wexford County Council.
Applicant:	Roadstone Limited
Appellant:	Roadstone Limited.
Planning Authority:	Reg. Ref.: 20150809
Planning Authority Decision:	Grant with Conditions
Type of Appeal:	Applicant vs Conditions
Site Inspection:	19 th June 2016.
Inspector:	Hugh Mannion

1. INTRODUCTION

This is one of three applications for development (PL26.245927, PL26.245932 and PL26.245934) all within an existing quarry operated by Roadstone in Brownswood, Enniscorthy, County Wexford. There are two further quarries, not covered by these applications, one to the east and one to the south.

These three applications (PL26.245927, PL26.245932 and PL26.245934) are adjacent to a site originally granted permission under PL26.202259 (file attached). That application was accompanied by an EIS and was subject to an EIA by the Board.

A further application for permission under PL26.231927 (file is missing) was made for the erection and operation of (a) a replacement semi-mobile asphalt/macadam mixing plant and (b) a replacement concrete batching plant on circa one hectare of lands at Brownswood quarry (register reference number Q3), Brownswood Townland, Enniscorthy, County Wexford. That application was determined by the Board under section 139 and the appealed conditions were removed.

This application, PL26.245932, is for the erection and operation of a semi-mobile asphalt plant and related ancillary activities (bitumen storage tanks, fuel storage tanks, and generator) on an area of about 0.53ha within the Brownswood "Old Quarry, Brownswood, Enniscorthy, County Wexford.

2. SITE DESCRIPTION

The site has an area of area of 0.53ha. The site is flat, hard surfaced and was used as a block yard for adjoining block making facilities. Immediately to the east of the site is the access road from the N11 Dublin/Wexford national primary route. There is also a wheel wash at the entrance to the overall development of which this site forms part.

To the south is a car park, weighbridge/offices/reception building. To the north, a partially wrapped around this site, is the site the subject of PL26.245934. To the east and elevated over this site is a concrete batching plant and area for the storage and grading of sand/gravel.

2. PROPOSED DEVELOPMENT

The proposed development comprises the erection and operation of a semi-mobile asphalt plant and related ancillary activities (bitumen storage tanks, fuel storage tanks, and generator) on an area of about 0.53ha within the Brownswood “Old Quarry, Brownswood, Enniscorthy, County Wexford

3. HISTORY

Relaying on the material submitted with this application and the available history documents it appears that this site is encompassed within a the “Old Quarry Property” which was described as ‘effectively worked out’ in the EIS that accompanied PL26.202259

4. PLANNING AUTHORITY DECISION

The planning authority granted permission subject to 14 conditions. Conditions 4, 5 6 and 7 are as follows:

4. Noise emanating from the development shall not cause to be measured at the facing elevation (outside) of any dwelling in the area, during the hours 0700 – 2100 a noise level of 55dB(A) (L_{aeq} 1 hour) and during the hours 2100 – 0700 and Sundays and Bank Holidays a noise level of 42dB(A) (L_{aeq} 1 hour). The noise is also not to be impulsive in nature or have an tonal element which is 5dB(A) above the adjacent frequencies.

Reason: In the interest of amenity and proper planning and sustainable development.

5. The total dust emission arising from the on-site operations when measured at any point along the site boundary (boundary with land not owned or under applicants’ control) shall not exceed 350 milligrams per square metre per day in accordance with German TA Luft Air Quality Standard.

Stockpiles of materials relating to the development shall be suitably enclosed and/or relocated in accordance with detailed proposals for

such to be agreed by the planning authority if this dust emission limit is being breached as a result of open air stockpiles.

Reason: In the interest of amenity and proper planning and sustainable development.

6. Total Suspended Particles (TSP) rising from the on-site operations when measured at any point along the site boundary (boundary with land not owned or under applicants' control) shall not exceed 150ug/m³ over a 20 hour averaging time period.

Stockpiles of materials relating to the development shall be suitably enclosed and/or relocated in accordance with detailed proposals for such to be agreed by the planning authority if this TSP emission limit is being breached as a result of open air stockpiles.

Reason: In the interest of amenity and proper planning and sustainable development.

7. Noise, dust and suspended particles generated by the development site shall be monitored in accordance with a detailed scheme for such which has been submitted for the agreement of the planning authority within 2 months of the final date of decision (unless as otherwise agreed with the planning authority).

Monitoring shall be carried out by suitably qualified persons. Dust is to be monitored utilising continuous monitoring equipment with 15 minute averaging intervals, which are capable of continuously indicating the concentration of Total Suspended Particulates and PM₁₀.

The planning authority reserve the right to seek/accept changes in the monitoring regime in the light of the results received and any changes in operations at the site.

Reason: In the interest of amenity and proper planning and sustainable development.

5. GROUNDS OF APPEAL

The grounds of appeal may be summarised as follows;

- Condition 4 in relation to noise levels does not reflect the advice set out in the EPA Environmental Management in the Extractive Industry (Non-scheduled minerals) Guidelines for extractive energy which recommends limiting noise as follows;

Daytime 08:00 – 20.00 LAeq (1 hour) = 55 dBA.

Night time 20:00- 08:00 LAeq (1 hour) = 45 dBA.

- Condition 5 relates to dust levels and is more properly dealt with under an Air Pollution Licence which has been applied for to Wexford County Council. The Board does not generally attach such conditions and the condition should be deleted.
- Conditions 6 and 7 relate to total suspended particles (TSP) and noise, dust and particulate monitoring. These are more properly dealt with under the Air Pollution Act 1987 and the Air Quality Standards Regulations 2001. Furthermore TSP should not be measured at the site boundary as such measuring could include ambient off-site sources

6. PLANNING AUTHORITY RESPONSE

The planning authority responded to the appeal as follows;

- The conditions follow the advice set out in the EPA Guidance Note for Noise: Licence Applications, Surveys and Assessments in relation to Scheduled Activities (NG4) 2012.
- The asphalt plant is regulated by an Air Pollution Licence but other activities (storage and movement of stone, material and fines) should also be subject to planning control.

7. APPLICANT'S RESPONSE TO THE PLANNING AUTHORITY'S SUBMISSION

The applicant responded to the planning authority's submission as follows;

- The EPA guidance distinguishes between areas of 'low background noise' and 'all other areas'. Lower noise thresholds apply in areas of 'low background noise' than in 'all other areas'. The application site is in an area designated 'all other areas' and therefore the applicable night time noise level limits is 45dB (A) (L_{aeq} 1 hour).
- The applicable standard for dust emissions is as set out in the EPA Environmental Management in the Extractive Industry Guidelines. An additional air quality assessment is submitted with this response. This assessment has looked at each potential receptor (houses) and addressed the potential for impact on air quality from dust and smaller particles arising within the application site but escaping the site to impact upon these receptors. This additional air quality assessment has incorporated dust management records for this site which demonstrate compliance with the EPA 2006 ELV of 350mg/m²/day and that there is no record of complaints in relation to dust emissions. Therefore conditions 7 should be revised.

8. OBSERVATIONS

There are no observations on file.

9. PLANNING POLICY

The Wexford County Development Plan 2013-2019 is the relevant county development plan for the area.

Objective ED11

To ensure that extractive industry developments are sited, designed and operated in accordance with best practice. Cognisance should be paid to the following guideline documents (as may be superseded and/or updated) which are of particular relevance:

- Environmental Management in the Extractive Industry (EPA, 2006),
- Quarries and Ancillary Activities: Guidelines for Planning Authorities (DEHLG,2004),
- Wildlife, Habitats and the Extractive Industry (Notice Nature/ Irish Concrete Federation / NPWS 2010),
- The Environmental Code (ICF, 2006),
- Geological Heritage Guidelines for the Extractive Industry (ICF and GSI, 2008),
- Archaeological Code of Practice (ICF and DEHLG, 2009)

10. ASSESSMENT

Imposing Environmental Management Conditions

The appeal makes the point that the planning authority should not have imposed environmental management conditions in relation to air quality because these matters are better left to regulation by licence under the Air Pollution Act 1987. Generally where a site is subject to an integrated pollution control licence under the EPA Act, a waste licence under the Waste Management Act or a licence under the Air Pollution Act the Board may not impose environmental conditions.

Condition 4 – Noise.

The planning authority imposed condition 4 as follows;

Noise emanating from the development shall not cause to be measured at the facing elevation (outside) of any dwelling in the area, during the hours 0700 – 2100 a noise level of 55dB(A) (L_{aeq} 1 hour) and during the hours 2100 – 0700 and Sundays and Bank Holidays a noise level of 42dB(A) (L_{aeq} 1 hour). The noise is also not to be impulsive in nature or have a tonal element which is 5dB(A) above the adjacent frequencies.

Reason: In the interest of amenity and proper planning and sustainable development.

The planning authority's Senior Executive Scientist recommended that a condition relating to noise be as follows;

Noise emanating from the development measured at the facing elevation (outside) of any dwelling in the area shall not exceed, during the hours 0800 – 1900, 55dB (A) (L_{aeq} 1 hour) and during the hours 1900-0800 and during Sundays and ban holidays 45dB (A) (L_{aeq} 1 hour). This shall be confirmed by annual noise monitoring report which shall include noise measures taken during one working day.

In the interests of public health and amenity.

The EPA Environmental Management in the Extractive Industry Non-Scheduled Guidelines advise (see page 13) that “quarry developments and ancillary activities” be subject to environmental limit values for noise of;

Daytime 08:00 – 20.00 LAeq (1 hour) = 55 dBA.

Night time 20:00- 08:00 LAeq (1 hour) = 45 dBA.

When the Board determined PL26.202259, on the adjoining site in the ownership of the same applicant, it imposed a condition (condition number 11) as follows;

During the operation and restoration phase of the proposed development the noise level from the operations measured at the site boundaries shall not exceed

(i) an LAeq T value of 55 dB(A) during the period 0800 hours to 1700 hours Monday to Saturday,

(ii) an LAeq T value of 45 dB(A) at any other time.

All sound measurements shall be carried out in accordance with the ISO recommendations 1996 (assessment of noise with respect to community response) as amended by ISO Recommendations 1996/1, 2 and 3 (description and measurement of environmental noise (as appropriate)).

All machinery and vehicles employed on the site and the conveyor shall be fitted with effective silencers of a type appropriate to the specification and at all times the best available technology, not entailing excessive costs, shall be employed to prevent or counteract defects of noise emitted by vehicles, plant machinery or otherwise arising from the quarry activities.

Reason: To protect the amenities of the properties in the vicinity of the site.

In a more recent case (PL04.244651 - copy attached) imposed a condition repeating the noise limits recommended by the EPA Guidelines but varied the hours within which they would apply. The Board's model condition does not specify the hours within which the restrictions on noise should apply.

Having regard to the following;

- This application relates only to the erection and operation of a semi-mobile asphalt plant and related ancillary activities and does not encompass quarrying or blasting which would be likely to generate significantly greater noise than that which is already carried out on site,
- The material submitted with the application and appeal especially figure 2 illustrating the location of noise sensitive receptors received by the Board on the 29th February 2016,
- The advice in relation to noise control set out in the EPA Environmental Management in the Extractive Industry Non-Scheduled Guidelines,

I recommend imposing an amended condition number 4 consistent with condition 11 imposed on the adjoining site under PL26.202259. This condition is set out below.

Conditions 5, 6 and 7.

Conditions 5, 6 and 7 may be considered together.

The Board imposed a condition (condition 9) in relation to the quarrying activity on the adjoining site in the ownership of the same applicant in appeal reference PL26.202259.

Dust outfall (maximum measured total dust deposition rate – soluble plus insoluble) measured at any point of the site boundary shall not exceed 350 milligrammes per square metre per day (DIN method).

Reason: To minimise the generation of dust and to protect amenities of adjoining properties.

As set out above I consider that, generally, conditions limiting environmental emissions are appropriately included in planning permissions where sites are not covered by integrated pollution control licences or air pollution licences.

The applicant distinguishes between emissions at the stack and emissions within the site boundaries. The emissions at the stack will be regulated by an air pollution licence. Contrariwise dust levels at the site boundaries is not under the control of the applicant as other factors may influence such concentrations – especially the proximity of the N11. The planning authority in its response to the appeal agrees with point that emissions to the air are regulated by a licence under Air Pollution Act but goes on to make the point that activities ancillary to the asphalt plant, for instance moving sand or gravel around the site, will be controlled by conditions attached to a grant of planning permission. The Quarries and Ancillary Activities Guidelines for Planning Authorities (DOEHLG April 2004) states¹ that any asphalt plant or tar macadam plant constructed after 1987 requires a licence under Air Pollution Act.

The EPA Environmental Management in the Extractive Industry Non-Scheduled Guidelines refers only to “dust” and does not refer to “total suspended particles”. The EPA in the US states that it ceased to use this term in 1987. The guidelines state (see paragraph 3.4.2)

“The impact of dust is usually monitored by measuring rates of dust deposition (DoE, 1995). There are currently no Irish statutory standards or EPA guidelines relating specifically to dust deposition thresholds for inert mineral dust. There are a number of methods to measure dust deposition but only the German TA Luft Air Quality Standards (TA Luft, 1986) specify a method of measuring dust deposition – The Bergerhoff Method (German Standard VDI 2119, 1972) – with dust nuisance. It is the only enforceable method available. Where this method is deemed unsuitable for use, and only in these circumstances, an alternative method may be agreed with the local authority”.

The Board’s standard condition in relation to dust within quarries references the Bergerhoff Method for measuring dust deposition but leaves the location of monitoring equipment to be agreed between the developer and the planning authority.

Additionally I consider that the planning authority makes a good case that activities related to this application, truck movements and movements of sand

¹ Page 14 of the Guidelines

and gravel, should be open to monitoring and control notwithstanding that this is currently a working quarry.

Having regard to the foregoing I recommend removing conditions 5, 6 and 7 and imposing a new condition 5 as set out below.

Environmental Impact Assessment

Schedule 5 Part 2 Article 2 (b) provides that the extraction of stone, gravel, sand or clay where the area of extraction would be greater than 5ha requires an EIA. The proposed development does not fall into this class.

Having regard to the characteristics including the size of the proposed development, the locations of the proposed development in a worked out quarry and the restricted geographical area and population affected I conclude that the proposed development is not a sub-threshold development to which Schedule 7 of the EIS regulations applies.

Appropriate Assessment (AA)

The application included an AA screening report (see the SLR Global Environmental Solutions report on file) which identified the Slaney River Valley SAC and the Wexford Harbour and Slobbs SPA as the two Natura 2000 sites with potential to be impacted upon by the proposed development by reason of being within 2kms radius of the site and the absence of a source-pathway-receptor relationship with any other site.

The AA screening report concluded (page 34 of the SLR Global Environmental Solutions report that the proposed project will have no significant effects on any Natura 2000 site or any of the qualifying habitats or species for which the sites have been designated alone or in combination with other plans or projects.

The planning authority sought further information in relation to the impact of light spill from the plant on the feeding behaviour of bats' and an expansion of the consideration of cumulative impacts beyond solely those of other plans or projects which required AA.

The applicant responded that the lights will be positioned and fitted with hoods in a manner to minimise any light spill into the Slaney River corridor. In relation to other projects a capacity to give rise to in-combination effects a research exercise on both the planning authority's website and the Board's website turned up no other projects within a 5kms radius of the site which

gave rise to in-combination effects and that radius was chosen because no air emissions from the plant could be anticipated beyond that.

Having regard to the information on the file, the material published by the NPWS in relation to the Slaney River Valley SAC and the Wexford Harbour and Slobs SPA, which I consider adequate in order to issue a screening determination, it is reasonable to conclude that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on Slaney River Valley SAC and the Wexford Harbour and Slobs SPA, or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

11. RECOMMENDATION

I recommend that the Board deal with this appeal under section 139 of the Planning and Development Act, 2000 as amended as follows;

Amend condition 4 as that it shall be as set out below and remove conditions 5, 6 and 7 and attach a new condition 5 as follows;

Condition 4

During the operation and restoration phase of the proposed development the noise level from the operations measured at the site boundaries shall not exceed

(i) an Laeq T value of 55 dB(A) during the period 0800 hours to 1700 hours Monday to Saturday,

(ii) an Laeq T value of 45 dB(A) at any other time.

All sound measurements shall be carried out in accordance with the ISO recommendations 1996 (assessment of noise with respect to community response) as amended by ISO Recommendations 1996/1, 2 and 3 (description and measurement of environmental noise (as appropriate)).

All machinery and vehicles employed on the site and the conveyor shall be fitted with effective silencers of a type appropriate to the specification and at all times the best available technology, not entailing excessive costs, shall be employed to prevent or counteract defects of noise emitted by vehicles, plant machinery or otherwise arising from the quarry activities.

Reason: To protect the amenities of the properties in the vicinity of the site.

Condition 5

- (a) Dust levels at the site boundary shall not exceed 350 milligrams per square metre per day averaged over a continuous period of 30 days (Bergerhoff Gauge). Details of a monitoring programme for dust shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Details to be submitted shall include monitoring locations, commencement date and the frequency of monitoring results, and details of all dust suppression measures.

- (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 site, 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 amenity of the area.

Reasons and Considerations

Having regard to the Quarries and Ancillary Activities Guidelines for Planning Authorities (DOEHLG 2004) and the Environmental Management in the Extractive Industry Non-Scheduled Guidelines (EPA 2006), to the existing established nature of the quarrying operation within the site and on adjoining lands in the ownership of the applicant, the location of the application site relative to nearby residential properties and to the N11 national primary route the Board considered that conditions numbers 5, 6 and 7 should be amended as set out in this order.

Hugh Mannion
Planning Inspector
8th June 2016