



An
Bord
Pleanála

Inspector's Report PL09.246822

Development	Retain entrance walls, piers, cappings and entrance gates at Knocknagalliagh, Ellistown, Co. Kildare.
Planning Authority	Kildare County Council.
Planning Authority Reg. Ref.	15/963.
Applicant(s)	Kildare Stone Ltd.
Type of Application	Retention Permission.
Planning Authority Decision	Grant subject to conditions.
Appellant(s)	Willie Behan (3 rd party vs. grant).
Observer(s)	Ken Maye.
Date of Site Inspection	22 nd September 2016.
Inspector	Ciara Kellett.

1.0 **Site Location and Description**

- 1.1. The appeal site is located in Ellistown, Co. Kildare. The site is c.2km due north of the R445 regional road which runs parallel to the M7 Motorway at this point. It is c.4.2km north-west of Kildare town and c.5.3km south of Rathangan. The area is predominantly rural in nature and the site lies on the western lower slope of a hill which reaches a height of c.197m, known as Redhills.
- 1.2. The subject application is for the retention of the entrance walls, gates, piers and capping at the entrance to a quarry. The quarry itself does not form part of the application. The local road where the entrance is located is in very poor condition and is not wide enough to permit two cars to pass. There are a number of residential dwellings and agricultural buildings in the area. The appellant lives in a relatively recently constructed bungalow on the opposite side of the road.
- 1.3. Appendix A includes maps and photos and aerial views of the site.

2.0 **Proposed Development**

- 2.1. Retention permission is sought for entrance walls, piers, cappings and entrance gates and all associated site works. There is no reference to the quarry the entrance serves in the development description on the statutory notices.

3.0 **Planning Authority Decision**

3.1. **Decision**

The planning authority decided to grant permission subject to 9 conditions, including condition no.2, which requires the applicant to submit photographic evidence that the wing walls and associated piers are reduced to 1.4m in height, within three months of the grant. Condition no.9 noted that this permission shall not be construed as permitting any other development.

3.2. Planning Authority Reports

The Planner's Report is the basis for the Planning Authority decision. It includes:

- The entrance structures have been applied for independently of, and without reference to the quarry use it is intended to serve.
- It is not possible to assess adequacy and safety of the entrance and impact on the local road, without considering the amount and nature of movements to and from the quarry.
- Refers to Enforcement Notice served on 8/9/15 due to non-compliance with a significant number of conditions of QR30 (section 261 registration).
- Concludes that Further Information (FI) should be requested. The FI request states that the quarry is unauthorised due to non-compliance, and that the applicant is required to take necessary steps to comply with the conditions of QR30 before the application can be considered further. Further Information for the Roads and Transportation department, including providing numbers and type of traffic movements, was also sought.
- Following the response to the FI request, the Planner's Report notes that the applicant states that all issues relating to traffic have been resolved, and that any outstanding issues are nearing resolution.
- The Planner recommends a grant of permission, and the decision was in accordance with the Planner's recommendations.

3.3. Other Technical Reports

The application was referred to:

- Area engineer – no objection subject to conditions.
- Transportation section – following FI response, no objection subject to conditions.

3.4. Third Party Observations

Two third party submissions were received by the Council. The submissions state: the development is part of an unauthorised development (Enforcement File Ref: UD5418); error on maps with location of site; and, entrance as constructed is not fit for purpose as traffic encroaches on the grass verge.

4.0 Planning History

- KCC Reg. Ref. UD3361 - Enforcement file opened in 2004 for unauthorised quarry/gravel pit.
- KCC Reg. Ref. 05/1265 – Planning Application for the intensification and use of a quarry. Deemed withdrawn following no response to request for Further Information.
- KCC Reg. Ref. QR30 – Quarry registered under Section 261 of the Planning and Development Act subject to 43 conditions.
- KCC Reg. Ref. QRA-22-001 – The Council decided that under Section 261A of the Planning and Development Act, a determination with respect to EIA and AA would have been required.
- ABP Reg. Ref. QV09.QV0209 – The Board decided to set aside the Council decision under Reg. Ref. QRA-22-001 but included a note in the Board’s Direction stating that “*The Board decision means that the requirement for EIA or AA does not arise in this instance; however, it does not make any finding in relation to the planning status of any past or future activities at this quarry*”.
- KCC Reg. Ref. UD5418 – Enforcement file opened due to non-compliance with conditions attaching to QR30.

5.0 Policy Context

5.1. Kildare County Council Development Plan 2011 - 2017

Chapter 10 of the Development Plan considers Rural Development. Chapter 14 refers to Landscape, Recreation & Amenities. Chapter 19 refers to Development Management Standards.

Section 10.5 refers to Rural Development Policy. Policies of the Council include:

***RRD 5:** To require new buildings and structures: To be sited as unobtrusively as possible; To be clustered to form a distinct and unified feature in the landscape; To utilise suitable materials and colours; and, To utilise native species in the screen planting in order to integrate development into the landscape.*

Section 10.7 refers to Sand and Gravel Extraction. Whilst the subject application does not include the quarry area, it is appropriate to consider the relevant policies and objectives.

Section 10.7.5 refers to Registration of Quarries. It states that Section 261 of the Planning and Development Act introduced a system of once off registration for all quarries (by April 27th 2005) except those for which planning permission was granted in the five years previous. It further notes that the registration system had two purposes, firstly, to give a snapshot of the current use of land for quarrying, and to permit the introduction of new or modified controls on the operation of certain quarries/pits. It is stated that Kildare received 67 valid registration applications.

Chapter 14, Table 14.1 lists major Landscape Character Types. The location of the proposed development is in the 'Uplands' and the character area is referred to as the Chair of Kildare. Redhill, Dunmurry Hill and Allen Hill are all listed. It is noted that some areas within these landscape areas have concentrations of quarries. The area is also considered a 'High Sensitivity Landscape'. Scenic route 14 lists views to and

from Red Hill and views of Central Kildare Plains and Boglands off the R401 Regional Road and adjoining roads.

With respect to Chapter 19, section 19.6.3 refers to Access onto Public Roads. It states that generally, where the capacity, width, alignment or surface condition of the road is inadequate, development will not be favoured.

5.2. Natural Heritage Designations

There are no designated sites within the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal mainly relate to the quarry itself which is being served by the entrance structures and can be summarised as follows:

- The quarry is subject to an Enforcement Notice for non-compliance with conditions of the Section 261 registration.
- Queries what the status of the entrance wall and piers will be, if the Board grants permission and the quarry cannot be regularised.
- Provides aerial views of the site indicating that the quarry is not a pre-1964 development as the developers claim.
- Questions who will be responsible for ensuring the quarry complies with conditions given that three companies have already been associated with this site to date.
- States that the Planning Authority based their decision on the response to the Further Information, therefore the third parties should have been given an opportunity to comment.
- The local road, referred to as a laneway, is not suitable for trucks.

6.2. **Planning Authority Response**

The Planning Authority responded stating that there are no further comments.

6.3. **First Party Response**

The first party responded to the appeal by stating that they restrict their comments to the development which is the subject of the appeal. In summary:

- It is stated that the application was made following the Enforcement Notice from the Council for breach of conditions of QR30.
- One of the issues related to the erection of the new entrance gates and side walls, which were erected to comply with condition no.30 of QR30.
- Having relocated the gates, the side walls that were constructed were deemed not to fall within any class of exemption, therefore the retention application was lodged.
- The gates and side walls are durable, necessary, proportionate and appropriate within their setting.

6.4. **Observations**

One observation on the appeal was submitted. The observer submitted a detailed report on the history of the site, and refers to judicial decisions and to the Board's decision in case PL16.222802 which it is stated are relevant to the subject proposal. It is their belief that it would be inappropriate for the Board to grant retention permission given that the application does not seek to regularise the quarry.

7.0 **Assessment**

- 7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate

assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Planning status of the quarry/unauthorised development
- Other Issues
- Appropriate Assessment

Planning Status of the Quarry

The applicant states, in response to the appeal, that they have restricted their comments to the development which is the subject of the appeal, namely, the entrance walls, gates, piers and capping, and not the quarry itself.

In the particular circumstances of this case, I am of the opinion that the planning status of the quarry should be considered herein. The entrance walls, gates, piers and capping are there to provide access to the quarry. The planning status of the quarry is therefore fundamental to this case.

I draw the Board's attention to the Planning History (section 4.0 above). I have reviewed the available information, including the Council's Planner's Report associated with this file, and the Board's Inspector's Report, and the Board's decision relating to QV09.QV0209. The quarry was registered under Section 261 by the Council, but the submission received by the Board from the Council on 24th October 2012 with respect to Section 261A registration, states that "*The Planning Authority could find no evidence of any quarrying activity on 1970's aerial photography. This clearly infers that the quarry commenced operation at this location post-1964*".

The aerial imagery provided by the appellant indicates that there has been substantial intensification of quarrying activity on the site since 2000. Regardless of the pre or post 1964 status of the quarry, there is no planning permission on file to permit this intensification. Following the opening of an Enforcement File (KCC Reg.

Ref. UD3361) in 2004 for an unauthorised quarry/gravel pit, the applicant lodged a planning application (KCC Reg. Ref. 05/1265). The planning application was for the intensification and use of a quarry. This file was deemed withdrawn following no response to a request for Further Information.

The Board in its examination of the file under Section 261A, ABP ref, QV09.0209, decided to set aside the Councils decision with respect to EIA and AA, but included a note in the Board's Direction stating that "*The Board decision means that the requirement for EIA or AA does not arise in this instance; however, it does not make any finding in relation to the planning status of any past or future activities at this quarry*".

The observer refers to the Board's decision under case PL16.222802. This case refers to development within a quarry in Mayo, i.e. retention of crushing, screening and washing plant and 2 no. ESB substations. The Board refused permission for the processing equipment, because the quarry itself did not have the benefit of planning exemptions because it commenced post October 1964. The Board considered it would be inappropriate to grant permission for retention of the processing equipment, since to do so would facilitate the continuation of unauthorised development of the site.

Registration of a quarry under Section 261 does not alter the planning status of the quarry. Compliance or not with conditions imposed under Section 261, will not provide an alternative means of regularising the development. Therefore, in my opinion I am satisfied that the quarry itself is unauthorised.

I am therefore of the opinion that it would be inappropriate to recommend that the Board grants retention permission for the entrance structures which would facilitate the continuation of unauthorised development on the site.

Other issues

The appellant states that the “laneway” is not suitable for trucks. From my site visit I noted that the local road is in a very poor condition. I accept that this is not necessarily entirely as a result of the quarry activities.

In response to the request for Further Information by the Council with respect to providing details on traffic movements, the applicant responds that this is dealt with in QR30 and that this information is confidential and only available upon request by Kildare County Council.

The Planner’s Report notes, following the response to the Further Information, that *“The Applicant states that all outstanding issues relating to traffic issues have been resolved and that the adjoining road has been undermined by 3rd party works to open a land drain adjacent to the existing quarry entrance. However, no specific details have been submitted regarding the Transportation report and items of Further Information (report on file dated 15/12/15).”*

I am satisfied that the condition of the road, which is an unsurfaced minor laneway, is inadequate in width, alignment and structural condition, and is unsuitable for quarry traffic and is therefore, impacting the residential amenities of the local residents.

Appropriate Assessment

Having regard to the nature and scale of development proposed (retention of entrance structures) and the distance to and lack of potential for connectivity to a European Site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that planning permission should be **refused** for the reasons and considerations as set out below.

9.0 Reasons and Considerations/ Reasons

On the basis of the submissions made in connection with the planning application and appeal, it appears to the Board that the proposed development relates to a site, the use of which is unauthorised for the carrying on of quarrying, and that the proposed development would facilitate the consolidation of this unauthorised use. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances.

Ciara Kellett
Senior Planning Inspector

23rd September 2016