



An
Bord
Pleanála

Inspector's Report PL10.246963.

Development	Recycling facility for C&D waste and for the importation of non-hazardous soils to existing quarry.
Location	Catrock & Rathglish, Glenmore, County Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority Reg. Ref.	15/366.
Applicant(s)	Kent Quarries Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	First and Third Party
Appellant(s)	Jim Dowdall Kent Quarries.
Observer(s)	None
Date of Site Inspection	16 th February 2017
Inspector	Philip Davis.

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1.0 Introduction

This appeal is against the decision of the planning authority to grant permission for a C&D recycling facility and the importation of soils to an active rock quarry in a rural area in south-east Kilkenny. The grounds of appeal relate mostly to the proposed rate of importation of material to the site. The applicant has also appealed the financial condition.

2.0 Site Location and Description

The townlands of Catrock and Rathglisk are located in the low hills and undulating uplands of south-east Kilkenny between Waterford City and the towns of Mullinavat and New Ross, just north of the border with Waterford County. It is 6-km directly south-east from Mullinavat and 8 km north of Waterford City. The area is served by a network of third class roads linking between the M9 and the N25 to the east. The area is relatively sparsely populated, with scattered houses along the road network and a few small villages, with the landscape characterised by mostly low grade grazing farmland interspersed with areas of conifer woodland and gorse scrub on outcrops and scarps.

The two townlands are located within a valley running south from higher ground to the north, with a river, the Smartscastle stream, and single third class road running along the valley base. The area is mostly woodland and scrub on the valley and scarp sides, with some grazing at the base. The area is mostly on the 100 metre AOD contour. There is a scattering of dwellings along the road, with a rock quarry eating into an outcrop on the east side of the valley the most prominent feature. This rock quarry (shale mudstones, used mostly for road metalling and construction) covers a landholding of around 15 hectares and includes one major extraction face on the eastern side, a separate plant compound, and a smaller extraction face closer to the road. There is a wheelwash and settlement pond next to the public highway. The appeal site, with a site area given as 0.26 hectares is a flat platform next to and overlooking the main excavation area. It is a largely flat area of exposed rock, mostly surrounded by spoil heaps. It shares the haul road to the main road with the main excavation area.

3.0 Proposed Development

The proposed development is described on the site notice as:

Planning permission is sought within part of an existing quarry for a C&D recycling facility for the recycling of construction and demolition waste and for the importation and recovery of non-hazardous soils, subsoil and other similar material. Material will be crushed and screened using existing mobile quarry plant and machinery and non-hazardous soils will be used in the existing rehabilitation scheme for the quarry.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission subject to 8 no. conditions. Condition 3 set a development contribution under S.48 of the Act for €5,200.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The first planning report notes that the quarry was granted permission under P06/1267 (retention) and registered under QR073. It is noted that the proposed development has potential to conflict with the permission whereby the cessation of quarry activities is required by the 18th March 2016. The NIS is noted and is considered adequate. A number of issues were considered outstanding, including the requirement of an EIS. This was subsequently provided on the 26th April 2016. In addition, further information on waste/soil quantities was submitted and additional information on managing for protected species such as peregrine falcon and controlling invasive plants.

A second report outlined the additional information, including the EIS and concluded that it was satisfactory. A recommendation to grant permission was made.

4.2.2. Other Technical Reports

Environment section: No objection subject to all activities being carried out in accordance with Waste Permits and Licenses.

Road Design: It is noted that not all of a special contribution for previous permission P.06/1267 was paid. A condition is recommended relating to cleaning of the local road (restated after submission of additional information).

4.3. **Prescribed Bodies**

The **Department of Arts, Heritage and the Gaeltacht** stated that concerns relating to potential impacts on designated sites have been met – it is recommended that it be conditioned that settlement ponds on site are cleaned and expanded to assimilate new loadings and that a new well monitoring system is established.

EPA Office of Environmental Enforcement: Notes that an EIS is required if the annual intake of a facility exceeds 25,000 tonnes.

4.4. **Third Party Observations**

Enviroguide Consulting objected on their own behalf for a number of reasons relating to lack of details in the submission document. The reasons for objection were restated and elaborated upon following the submission of the EIS.

5.0 **Planning History**

The main operating permission for the quarry is from 2008, for retention and operation (**06/1267**). This was appealed by the applicant but withdrawn (**PL10.227503**). The permission included conditions for a special development contribution of €692,115 for the strengthening of roads (condition 3) in addition to the S.48 contribution, the construction of a settlement pond (condition 12), and a condition on a twice weekly clean of the adjoining public highway (condition 19).

6.0 **Policy Context**

6.1. **Development Plan**

The site is in open countryside without a specific zoning designation. County waste policy refers (9.2.12.1 in the 2014 County Development Plan) to the Joint Waste Management Plan for the South East Region.

6.2. Natural Heritage Designations

The closest SAC is the River Nore and Barrow SAC site code 002162, about 4km to the northeast. The stream running through the site discharges to the Lower River Suir SAC at Waterford some 7 km to the south. There may be peregrine falcon (Annex 1 species) on or near the quarry side.

7.0 The Appeal

7.1. Grounds of Appeal

Third party – Enviroguide Consulting

- It is argued that the planning application does not give sufficient information on quantities or types of material to be imported on a weekly or annual basis, so the EIS is not complete.
- It is submitted that the insufficiency of information is contrary to Articles 18(1)(d), 22(4) and 27(2) of the Regulations.
- It is argued that there is insufficient information to assess the impact on the environment through inadequate descriptions of the materials to be imported.
- The lack of information does not allow the impact on traffic or road safety to be assessed.
- It is noted that several conditions of the parent permission P06/12167 have not been complied with, hence the quarry should be considered 'unauthorised development'.
- First party (financial contribution – Condition 6(a) and Condition 4.
- It is argued that Condition no. 6(a) which states that 'The applicant shall pay in full the outstanding special roads contribution associated with P06/1267 permission prior to the commencement of the C&D recycling operation' is inappropriate as neither the Planning Acts/Regulations, nor the Contribution Scheme provide for the imposition of this type of condition.
- It is further argued that Condition 4, with regard to the statement 'All other outstanding conditions and terms imposed under P06/1267 shall be complied

with prior to development commencing' is *ultra vires*. It is stated that the procedures for the recovery of any contribution is set out by law (And the Scheme).

7.2. Applicant Response

First party response

- It is argued that sufficient information in terms of quantities and types has been supplied and is in accordance with the relevant Articles in the Regulations. It is noted that detailed controls on the materials falls under the Waste Management (Facility Permit and Registration) Regulations 2007.
- It is argued that the proposed use is in accordance with the Southern Regional Waste Management Plan 2015, specifically section 11.2.2.
- It is noted that the application is for processing and is not a landfill.
- As regards the issue of financial contributions, it is noted that this is appealed by the applicant.

7.3. Planning Authority Response

- In response to the third party appeal it is stated that the planning authority are satisfied that all information required under the Regulations was submitted.
- It is noted that discharges from the site are authorised separately under a Water Pollution Licence issued under Section 4 of the Local Government (Water Pollution) Act 1977, as amended.
- It is stated that the Roads Design Section are satisfied that it will have a minimal impact on existing traffic volumes, and the existing access is satisfactory.
- The quarry is considered compliant under Section 261.

7.4. EPA response.

It is stated that it is not possible to determine from the documentation if the proposed activity will require a Licence from the EPA. No application for a licence has been received.

8.0 Assessment

8.1. General overview

The appeal site is an operating rock quarry, excavating into an outcrop of a shale-like mudstone, used in construction and road metalling. It was not operating during my site visit, and it appears to have been operating at a lower scale and intensity than intended when it was granted permission – although it was in operation well before that – a substantial quarry can be seen on the site in the 1995 aerial photograph series. It would seem that it has largely been operating at only a ‘ticking over’ level for most of the time since its permission in 2008, but the layout at present is consistent with the plans and specifications granted permission under 06/1267 (notwithstanding the apparent failure to pay part of the required special development contribution). This permission was for a period of 8 years from March 2008, with a further 2 years for restoration (condition 4 of 06/1267). The application documents stated that there was a calculated 2.6 million tonnes of stone reserves, which would be extracted at an annual output of 500,000 tonnes. Although no figures are provided, I would estimate that significantly less rock was extracted during the period to date. There are no indications that the applicants wish to extend the lifetime of the quarry – I would note that if this permission is granted it would not alter the requirements of condition 4 of 06/1267 so a further permission would be required to do this.

I noted during my site visit that the highway access to the site is well defined and appears to be suitable for a quarry of this size. The road north of the site is winding and not particularly suitable for heavy traffic, but to the south it is relatively wide. The road surface was in generally good condition and I saw no evidence of problems from dust or other arisings. The main settlement pond by the gate seems to be working well and I observed no evidence of contaminated run-off to the stream flowing south through the valley.

8.2. Legal issues

The appellant has highlighted what are claimed to be deficiencies in the information provided, and has argued that there is insufficient information with regard to the requirements for a planning application and for an EIS. I note that the site has a water discharge licence. The EPA confirmed that they have had no discussions about a licence. It is indicated by the applicant and planning authority that a waste permit will be required for the operation of the proposed development.

The application, with the revised information submitted with the EIS, outlines the nature and approximate quantities of materials to be brought to the site. The materials are specified to be non-hazardous and within the definitions of C&D materials set out in the relevant guidelines and regulations. I do not consider it reasonable to require more details with regard to weekly or monthly levels, or details of the materials, as this would be highly dependent on changing market conditions. I am satisfied that the details as submitted are reasonable and within the requirements of guidance and the Regulations.

8.3. Principle of development (regional and local policy)

The site is in open countryside and the quarry operations are permitted with an active planning permission. The importation of materials for restoration is consistent with the planning application. The C&D recycling is a different type of development than covered by the existing permission, but I would consider that it is a reasonable complement to a quarry, although ideally such facilities would be located closer to urban areas where most arisings would be likely to originate, but I would accept that there is an element of synchronicity between quarry activities and the recycling of C&D materials. As such, I would consider that the proposed development is consistent with Development Plan zoning objectives and policy and the planning history of the site.

Waste policy for the area is set out in the Southern Region Waste Management Plan 2015. Chapter 11.2 addresses C&D wastes. This chapter notes that the shutdown of landfills will likely increase the need for further processing facilities in the region (11.2.3). There are no specific policies for C&D wastes set out in the Management Plan, save the general statements that increased recycling (rather than its use for landfill cover) is a general objective and more processing facilities are needed. I

would therefore conclude that the proposed development is consistent with the general objectives and requirements set out in the regional WMD.

8.4. Environmental Impact Statement

Following a request by the planning authority, an EIS was submitted. This EIS is to an extent complementary with the EIS provided with the original permission, as there is significant overlap with the two developments – for example, the proposed recycling facility will use the water run-off protections constructed for the quarry. I consider that in general terms the EIS is satisfactory and in accordance with the Regulations.

8.5. Alternatives

The EIS briefly outlines alternative techniques for the proposed development, but does not look at other possible sites. But having regard to the overlap between C&D recycling and quarry activities, I consider that the site is a reasonable one for the proposed use and that the relatively simple processing activities are appropriate for the proposed use. I would note that the importation of soils and the use of some C&D waste for restoration overlaps with the restoration proposals briefly outlined in the planning permission for the quarry. I would note in this regard that a minimalist restoration using natural regeneration and the preservation of some exposed rock faces would appear most appropriate, especially given the apparent use of the site by peregrine falcon, a species which favours nest sites on cliffs in undisturbed areas.

8.6. Human Beings

The site is located in a sparsely located area, although there is a small scattering of houses to the north. The separation distance (4-500 meters from the nearest house) is such that I do not consider that there would be any direct impact by way of noise or dust or other arisings on local residents. There would be an increase in traffic in the area, although I would consider this to be relatively minor compared to levels already permitted by the quarry permission (it is likely that traffic levels from the quarry have never hit the levels predicted in the EIS for the quarry). No information is provided, but it would seem likely that the works would, if not generate jobs, at least provide greater job security for current employees. I would consider the impact

on human beings to be generally neutral and I do not recommend any additional conditions over the proposed mitigation measures.

8.7. Flora and Fauna

All the proposed works are on lands already cleared for the quarry operations. The working area for the C&D recycling is on bare rock or compacted hardcore which appears to be regularly used by vehicles. The primary indirect impact would be by way of surface water run-off to local watercourses – the nearby stream discharges to an SAC near Waterford City.

The EIS concludes that there would be no direct impact as there is no significant flora or fauna associated with the areas to be directly impacted by the works. I would concur with this conclusion.

With regards to the impacts on EU designated habitats/species, I will address this in the AA section below. I would recommend that in addition to the mitigation measures in the EIS and NIS, an additional condition relating to peregrine falcons and restoration would provide for enhanced habitat creation and protection.

8.8. Surface Water and Groundwater

The site is served by a well near the plant compound, with surface water treated in settlement ponds as part of the original quarry. Within the main quarry, water collects in a sump, which is pumped to the settlement pond. The area for which the recycling works are proposed appear to drain directly towards the entrance to the quarry where there is a wheel wash and interceptor for the main settlement pond. The discharge to the stream, across the road, is licensed. There are no indications on file that there have been any breaches of permitted limits. Due to the nature of the materials to be imported, I do not consider that there would be any significant alteration in the quantity or quality of run-off, so I would accept the conclusion of the EIS that existing controls for surface run-off are acceptable.

The site overlies a 'locally important aquifer'. The works on exposed geology lead to contamination risks from spillage from oils or other materials. This risk can be minimised through the usual controls. I would be concerned at potentially contaminated materials being brought in inadvertently with C&D waste, but I would consider that this is an operation matter – the EIS states (section 3.3.7) that lidded

skips will be provided in the event of material such as this being discovered – I consider this an adequate precaution.

The EIS does not address the issue of water for processing – I assume it will be from the existing well on site and that quantities used will not significantly differ from that permitted in the quarry permission.

Having regard to the existing processes on site I am satisfied that with the mitigation measures set out in the EIS there will not be a significant impact on ground or surface waters, but I would recommend an additional condition to provide greater certainty that any upgrades to the settlement ponds required are carried out.

8.9. Climate and Air Quality

The nature and scale of the proposed development is such that I do not consider that there would be any significant impact on climate, although any localised increased recycling of C&D material should be considered a minor positive impact.

The site is subject to ongoing dust monitoring using the standard Bergerhoff Method. The available evidence would suggest that dust arisings are kept within reasonable levels outside the site. The current quarry uses blasting and on-site processing of rock, so I do not consider that the proposed development, including the crushing and processing of C&D waste, is likely to have a significant impact over and above existing extraction works. The existing wheelwash and other controls appear to be working adequately. I would consider that existing controls and the mitigation measures set out in the EIS should be adequate to ensure there is no significant increase in dust arisings outside the site.

8.10. Noise

There is an ongoing noise monitoring program on the site in line with conditions for the quarry. The main quarry is quite deep and the working area is largely surrounded by rock faces and spoil heaps so there is some natural absorption capacity for the main processing works. I would have some concerns that the area for C&D processing is higher and has fewer natural barriers to the east and north for deflection or absorption of noise. But I would consider that the existing mitigation and monitoring measures and those set out in the EIS should be sufficient to ensure there are no noise levels sufficient to have an amenity impact on the area.

8.11. Visual Impact and landscape

In addition to the EIS, the applicant submitted a Landscape and Visual Impact Assessment and General Restoration Details report.

The overall area is moderately scenic with good rural amenities, but is not in an area known for tourism or recreational activities. The quarry is visible from a number of perspectives, in particular from the road and from houses to the north. It would also be visible from the one prominent area of high ground in the area, Tory Hill, about 2.5 km to the north-west. The dark colour of the exposed rock and the local vegetation reduces its impact significantly. The proposed development would put working plant on a slightly more visually exposed section of the quarry, and so very slightly increase the visual impact, but not, I consider, to a significant extent.

The restoration plan includes for infilling the base of the floor, while backfilling the excavation benches to visually soften the quarry face, while allowing natural regeneration on those benches and other exposed slopes. I consider that this would have significant wildlife value in addition to softening the impact on the landscape. The proposed development would likely help facilitate this restoration, although I note that it would be very difficult to implement within the previously permitted timescale.

8.12. Cultural heritage

There are a number of recorded ancient monuments in the area, including a ringfort on the northern edge of the quarry, but no national monuments. The original planning permission required archaeological monitoring of topsoil stripping – there are no records on file to indicate if this requirement was discharged.

As the proposed works are to be entirely contained within areas already soil stripped and worked, I do not consider that there would be any direct impacts on archaeology.

There are no buildings on the NIAH within the visual envelope of the quarry, nor are the recorded ancient monument of the type which could be affected by way of impacts on their settings or on alignments.

8.13. Material Assets

The main impact on material assets would be increased use of the local road network. In other respects, I would consider the impacts not to be significant.

8.14. Traffic

The quarry has an existing gated access which I would consider to be adequate for typical quarry traffic loads. The EIS, in section 3.10.2, assumes that the projected likely level would average 20,000 tonnes per annum of C&D waste, although in reality it is likely not to be evenly spread out over the operational life of the facility. It is stated that a worst case scenario is 17 loads per day, although in reality it will be much less than this. Having regard to the nature of the facility I would consider it reasonable not to have strict daily limits. In total, I am satisfied that the levels generated will be within the overall envelope of traffic envisaged when the quarry was granted permission, even if it changes somewhat the nature and pattern of the traffic load. Most traffic is likely to be to and from the south, from Waterford City, through an existing relatively good quality country road network.

8.15. Interactions, direct and indirect effects.

The EIS sets out interactions and indirect in section 3.11 of the EIS in tables in section 2.11 of the EIS. Having regard to the nature of the works within the overall context of the permitted quarry, in particular the nature and extent of the quarry as granted permission in 2008, I do not consider that these will be significant.

8.16. Appropriate Assessment

An NIS was submitted with the application. There are three SAC's within 15km of the development. Hugginstown Fen is some 14 km to the north-west, but there is no hydraulic continuity or other potential pathways between the site and this fen, so I do not consider that there are any potential impacts. The closest SAC is the River Barrow and River Nore SAC, with a tributary to the north-east about 6km away, but this is not part of the overall watershed, so I do not consider that there are any pathways for impacts. The Lower River Suir SAC is to the south – the adjoining Smartscastle stream flows to this SAC, so this is the only European Site which I would consider that there is any possibility of impacts. I note that the nearest SPA is the River Nore SPA (designated for kingfisher) just under 15km to the north – I would not consider this to be close enough for impacts as there is no habitat continuity or pathways for impacts (this SPA does not have peregrine falcon it its qualifying interests).

The quarry discharges its water to a local stream, the Smartcastle Stream, which flows south via a small lake (Lough Cuilin) to eventually meet the River Suir at Waterford as it flows into the tidal estuary. This area is part of the Lower Suir SAC, which has a number of qualifying interests including the pear mussel, shad, lamprey, and salmon. Of more relevance to the lower parts of the river are the Atlantic and Mediterranean salt meadows (qualifying habitats) at the estuary. The designated habitats are in excess of 5km downstream from the quarry. While there is plenty of attenuation due to the distance of the watercourse to the Suir, uncontrolled discharges could have the potential to have an impact, although in reality the lake would intercept all but the worst pollution. I am satisfied that the existing controls on site and the settlement ponds within the site prior to discharge to the stream are working adequately and will ensure no impact on the water quality in the Smartcastle Stream and so there would be no impacts on the qualifying interests of the SAC from run-off or via groundwater. I further note the potential for invasive species such as Himalayan Balsam to establish themselves by way of the importation of soils and colonise the watercourse. The applicant submitted a control plan which I consider to be adequate if implemented fully to prevent this occurrence. I note correspondence on file with regard to the possible nesting of peregrine falcon in the vicinity – the peregrine is an Annex I species in the Habitats Directive. There are no SPA's in the vicinity with the peregrine as a qualifying interest – the closest seems to be the Wicklow Mountains SPA. The peregrine nests on scrapes on cliff edges, so an undisturbed quarry face close to scrub and water (for prey) is an ideal habitat. Precise locations for nesting peregrines are usually not disclosed to protect from egg collectors. The quarry operator is apparently aware of this and the restoration plan would, if finalised as submitted, create potential nesting habitat. The operations as submitted would not interfere with the restoration or the existing main quarry face so I do not consider that it has any implications for this Annex I species, although I would recommend an additional condition relating to this to provide some certainty.

On the basis of the NIS, my site visit, and other information on file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, I conclude that the proposed development, individually or in combination with other plans or

projects, would not adversely affect the integrity of the European site no. 00237, or any other European site, in view of the sites Conservation Objectives.

8.17. Financial Contribution

The applicant has objected to conditions 4 and 6(a) of the planning authority's decision to grant permission, as both seek the discharge of what are apparently unpaid special development contribution sums for the upkeep of the nearby road as a condition of the proposed works commencing. The applicant argues that it is *ultra vires* to attach such conditions as such issues are solely a legal matter between the council and applicant with regard to the parent condition.

While there is an argument with regard to undischarged conditions that granting a permission is facilitating an unauthorised development, I do not consider that this applies with financial contributions. I therefore concur with the applicant on this point and if the Board decides to grant permission I would not recommend that those particular aspects of condition 4 and 6(a) are repeated.

Condition 3 of the decision set a S.48 contribution of €5,200. I consider this to have been correctly applied, so I recommend that this is the sole condition that should be applied with regard to financial contributions.

9.0 Recommendation

Having regard to the nature of the area and the planning history of the site, I recommend that subject to the conditions set out below, the Board grant permission for the proposed development for the following reasons and considerations.

10.0 Reasons and Considerations

Having regard to the policies and objectives of the Kilkenny County Development Plan 2014-2020 and the Southern Region Waste Management Plan 2005, the nature of the area and site, and the planning history of the site with particular reference to planning register ref 06/1267, it is considered that the proposed development would not seriously injure the amenities of the area or constitute a traffic hazard and would otherwise be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order 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 prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Construction and operational phases of the proposed development shall be subject to all existing relevant conditions under planning register reference 06/1267 and all mitigation measures set out in the Environmental Impact Statement, Natura Impact Statement and Invasive Species Management Plan submitted with the application and appeal.

Reason: In the interest of clarity.

3. Prior to the commencement of development, the developer shall submit for the agreement of the planning authority and NPWS a management plan for the protection of any peregrine falcons nesting in the vicinity of the site. This plan shall include any necessary revisions to the restoration plan for the quarry to facilitate the creation of appropriate and safe nesting locations within the quarry for peregrine falcon.

Reason: In the interest of environmental protection and ensuring a satisfactory standard of development.

4. Works shall not commence on site until the planning authority has confirmed in writing that all required alterations and management arrangements for the settlement ponds is completed to its satisfaction.

Reason: in the interest of preventing the pollution of nearby watercourses.

5. The developer shall pay to the planning authority a financial contribution of €5,200.00 (five thousand two hundred euro) in respect of public

infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Philip Davis
Planning Inspector

24th February 2017