



An
Bord
Pleanála

Inspector's Report PL15.247154

Development

Decommissioning and removal off site of the production elements and associated buildings, services, fixtures and fittings fencing and perimeter clay bank associated with an on-site rubber processing facility.

Location

Crumb Rubber, Mooretown,
Dromiskin, County Louth.

Planning Authority

Louth County Council.

Planning Authority Reg. Ref.

15/754.

Applicant

Crumb Rubber Limited.

Type of Application

Permission.

Planning Authority Decision

Grant.

Type of Appeal

Third Party -v- Grant

Appellant

William Morgan.

Observers

None.

Date of Site Inspection

19th October, 2016.

Inspector

Paul Caprani.

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1.0 Introduction

- 1.1. PL15.247154 relates to a third party appeal against the decision of Louth County Council to issue notification to grant planning permission for the decommissioning and removal off site of the production elements and associated buildings, services and fixtures for Crumb Rubber, a rubber processing facility at Dromiskin, County Louth. The grounds of appeal contend that the security bond attached to the grant of planning permission is inadequate to cater for potential environmental liability.
- 1.2. It was also argued that the reversion of the subject site back to agricultural land constitutes change of use and this should be referred to in the public notices. Finally it is argued that the applicant has no right to remove the perimeter fence around the facility, as it is on private property.

2.0 Site Location and Description

- 2.1. The subject site is located in East County Louth near the village of Dromiskin. The site is located approximately 750m to the east of the village on a local road which links Dromiskin with the R132 (former N1 National Primary Route). The R132 is located approximately 200 metres further east of the site. The subject site is located on the northern side of the local access road and is setback approximately 200 metres from the roadway. There are three dwellings fronting onto the local access road to the south-west of the subject site. The closest dwelling is approximately 150 metres from the south-western boundary of the site. There are no other dwellings or buildings within the vicinity of the subject site. The contiguous lands surrounding the site are all in agricultural use. There are a number of drainage ditches around the fields to the west and north-west of the subject site. A drainage ditch/stream runs along the north-eastern boundary of the site.
- 2.2. The site itself accommodates a single large building directly opposite the entrance. This building provides for a reception area and associated staff facilities while the rear of the building accommodates machinery and plant associated with the processing of rubber material on site. The remainder of the site comprises of a concrete apron and tarmacadam area together with open land which accommodates

the storage of tyres, the storage of processed rubber in containers and the storage of residual material arising from the processing of rubber namely steel wire and fibrous material. The north-western area of the site comprises of informal parking areas for HGV trucks as well as open air storage areas. An earthen berm runs around most of the perimeter of the site.

- 2.3. In terms of existing operations on site, rubber tyres are transported onto the site and are processed into residual rubber crumb (ie small particles of rubber, a couple of millimetres in diameter).
- 2.4. The residual metal wire and fabric contained in the fire is stored and removed by a licensed contractor. The residual rubber crumb is used in astro turf pitches and is also used for rubber mats particularly associated with equestrian activities. Products are not manufactured on the subject site but are transported elsewhere for manufacture. According to the information on file, currently there are 32 employees on the subject site.

3.0 Proposed Development

- 3.1. Planning permission is sought for the decommissioning and removal off site of all production elements and some of the associated buildings, structures, fixtures and fittings (see drawing no. 05-1186 indicating which buildings are to be removed and which ones are to be retained on site). Permission is also sought for the removal of fencing and the perimeter berm bank around the boundary of the subject site.
- 3.2. A covering letter submitted with the planning application indicates that the Managing Director of Crumb Rubber Ireland has commissioned KD Environmental Limited to complete a Closure, Restoration and Aftercare Management Plan (CRAMP) for the tyre processing facility. This CRAMP will be drafted as per EPA Guidelines. When completed the CRAMP will be submitted to Louth County Council for approval prior to commencing decommissioning, restoration and closure.

4.0 Planning Authority Assessment

- 4.1. An internal report from the Environment Section seeks further information in respect of the closure and restoration/aftercare plan.

- 4.2. An objection from the current appellant was also submitted the contents of which have been read and noted.
- 4.3. The planner's report notes that two of the larger buildings on site (Building No. 1 and Building No. 2) are proposed to be retained and all other buildings / walls / machinery / fittings are to be removed from site (see Drawing 05/1186) for details of buildings to be retained and to be removed from site. The planning report requested further information in respect of the following:
- Further information in relation to the closure, restoration and aftercare plan including the timeframe and costs involved in the decommissioning of the site.
 - The applicant is requested to clarify the end use of the site.
 - The applicant is requested to submit an appropriate assessment screening report and if appropriate a full Natura Impact Statement based on the screening assessment.

This further information request was dated 7th January, 2016.

On 6th July, 2016 the applicant submitted the following further information response. A response was received on behalf of the applicant from Declan Walsh and Company, Consultant. The response is briefly summarised below.

- A Closure, Restoration and Aftercare Management Plan was submitted as Appendix A of the submission. This Plan was carried out by KD Environmental Limited and was prepared in accordance with EPA Guidelines and includes full costings and timescales for all activities identified and associated with the closure, restoration and aftercare of the facility.
- The applicant confirms that the site is to be returned to agricultural use as per the use of the lands prior to the lodgement of the application in 2002.
- Appendix C of the response sets out an appropriate assessment screening report. This report concludes that the proposed plan is unlikely to comprise the conservation objectives of the Dundalk Bay SPA and SAC. It is also concluded that in the long-term, the removal of this facility on site may improve the biodiversity in the immediate area and beyond and should be

viewed as a positive from an ecological point of view. On this basis it is concluded that a Stage 2 Appropriate Assessment is not required.

- Finally, it is stated that the additional information is not resulting in a significant alteration from the original proposal and therefore revised public notices would not be warranted.

4.4. Further Assessment from the Planning Authority

- 4.5. A report from the Environmental Section states that there is no objection to the proposed development subject to a condition being attached in respect of the closure and restoration/aftercare plan, namely that the site be returned to a condition that is suitable for agricultural use.
- 4.6. A further planner's report notes the additional information submitted and sets out details contained in the restoration and aftercare plan. It states that one of the major concerns about remediation to appropriate standards is ensuring that the works are carried out. It is essential that acceptable security is provided by way of a bond or cash deposit to ensure the satisfactory completion. It is considered appropriate that a bond be put in place to the amount of €500,000.
- 4.7. In relation to appropriate assessment, the planning report agrees with the conclusion of the screening that the proposed plan is unlikely to compromise the conservation objectives of the Dundalk Bay SPA or SAC.
- 4.8. It is concluded therefore that the decommissioning of the site and the removal off site of the production elements together with the reinstatement of the lands back to agricultural use accords with the proper planning and sustainable development of the area and it is therefore recommended that planning permission be granted for the decommissioning of the facility. In its decision dated 29th July, 2016 Louth County Council issued notification to grant planning permission subject to 8 conditions.

5.0 Grounds of Appeal

5.1. The decision was appealed on behalf of the owner of the site Mr. William Morgan by P. Hehir and Associates, Civil Engineers and Building Surveyors. The grounds of appeal are outlined below. While the applicant welcomes the decision of Louth County Council to grant planning permission there are three concerns in respect of the decision.

- Firstly, it is argued that the submitted CRAMP report is totally inadequate. It is argued that the CRAMP report must detail measures to return all areas of the subject site and adjacent lands that are impacted by environmental pollution to a satisfactory state. The appellant has become aware that adjacent landowners are claiming that their lands have been contaminated due to activities carried out by Crumb Rubber Ireland Limited. Cost estimates submitted as part of High Court proceedings indicate that the cost of remediating adjacent lands would be c.€1.7 million. The appellant states that the applicant's insurance company has refused to indemnify the applicant for damages suffered to adjacent landowners.
- Planning Condition No. 8 attempts to offer security against non-performance by the applicant requiring a bond of €500,000. It is argued that this is totally inadequate and the grounds of appeal request that the Board increase the amount to €5.6 million to match the public liability insurance amount set out in the Waste Permit associated with the facility.
- Reference is made throughout the application that the lands are to revert back to an agricultural use on completion of the decommissioning of works. While not specifically stated in the planning permission granted, it can be inferred from Condition No. 1 that reverting the land use back to agriculture is a requirement or a condition of planning. It is the appellant's view that reverting back to agriculture constitutes a change of use from the current industrial use. No reference is made to the change of use in the description of the development and the planning application form or public notices. The appellant did not at any state give his written approval for such a change of use and wishes to retain the industrial use on the site following the decommissioning of the current industrial use.

- Finally, the planning application refers to the removal of perimeter fencing. This fence is the private property of the appellant and he does not consent to its removal.

6.0 Planning History

- 6.1. One history file is attached under PL15.266130. Louth County Council granted planning permission for Crumb Rubber Ireland Limited to construct external waste tyre storage bays, shredding material and all associated works together with retention of planning permission for existing hardstanding for storage. The decision was subject to a first party appeal against the financial contribution. On foot of the grounds of appeal the financial contribution condition was reduced from €370,618 to €220,274. This decision was dated 23rd May, 2008.

7.0 Appeal Responses

Planning Authority's Response to the Grounds of Appeal

- 7.1. The Planning Authority are satisfied that the site notice was procedurally correct and was the intent of the application is to decommission the current use on site. The size and scale of the operations fall within the remit of planning permission and cannot be considered exempt works as defined under the Planning and Development Act, 2000.
- 7.2. There would be appear to be a civil issue between parties in relation to the question of consent. Reference is made to the Development Management Guidelines for Planning Authorities and specifically Section 5.13 of these Guidelines that state "*the planning system is not designed as a mechanism for resolving disputes about the title to the land or premises or rights over the land*". These are ultimately a matter for resolution in the Courts. With regard to the fencing, the Council are not opposed to the fencing being removed.
- 7.3. With regard to the placing of a bond by way of condition, this bond ensures the satisfactory completion of the development.

Applicant's Response to the Grounds of Appeal

- 7.4. A response was submitted by Declan P. Walsh.
- 7.5. The appellants' reference in the grounds of appeal, reported complaints from surrounding landowners and High Court case proceedings together with third party hearsay on insurer's dealings are outside the remit of the planning application process. The planning application was submitted to and reviewed in detail by the professional and technical staff within the Planning Authority. The application was then subjected to further scrutiny through a Further Information request. The application includes detailed breakdown of commissioning and aftercare costings which deem to satisfy the requirements of Louth County Council.
- 7.6. In relation to reverting the land back to agricultural use the applicants have no objection to the proposal retaining its commercial/industrial use post decommissioning.
- 7.7. In relation to the perimeter fencing likewise the applicants have no objection to retaining the perimeter fencing after decommissioning.
- 7.8. This response was further circulated to the appellant for comment. It appears that no response was received.

8.0 Development Plan Provision

- 8.1. The site is governed by the policies and provisions contained in the Louth County Development Plan 2015 – 2021. The site is not specifically zoned for development but it is located within Development Control Zone 4 to provide for a greenbelt area around the urban centres of Dundalk, Drogheda and Ardee. The objective for Development Zone 4 is to preserve a clear distinction between the built-up areas of settlements and the surrounding countryside. In this regard greenbelt areas are proposed surrounding the main urban settlements of Dundalk, Drogheda and Ardee.
- 8.2. Policy RD8 states that multi-unit residential, largescale industrial and commercial developments or other developments of a similar scale or nature would not be considered appropriate within this zone.

8.3. The following policies are also relevant.

ENV2 – to pursue the precautionary and the polluter pays principle in relation to permitted development in the county.

ENV3 – to promote and maintain the highest achievable standards of air, noise and water quality in the county.

ENV28 – to implement the provisions of the Derelict Sites Act 1990 in respect of derelict and obsolete areas and to implement the provisions of the Local Government (Sanitary Services) Act 1964 in respect of dangerous structures in places.

9.0 **Assessment**

9.1. I have read the entire contents of the file, visited the site and have particular regard to the issues raised in the grounds of appeal. I consider the pertinent issues in determining the application and appeal before the Board are as follows:

- Financial Bond Condition.
- The Issue of Change of Use.
- Perimeter Fencing.

Financial Bond

9.2. I would agree with the Planning Authority's overall conclusion that the decommissioning of the facility in accordance with the defined and agreed Closure Restoration and Aftercare Management Plan is a positive development from an environmental perspective and is in accordance with the proper planning and sustainable development of the area. The grounds of appeal argue that a bond of €500,000 is insufficient to ensure that the decommissioning, restoration and aftercare is carried out appropriately in accordance with the highest standards. The grounds of appeal suggest that the bond should be placed at a higher value of €6.5 million. The view set out in the appeal appears to be primarily predicated on Condition 9.3 of the Waste Facility Permit (contained within the grounds of appeal)

which requires the permit holder to maintain a public liability insurance policy which is at least equal to €6.5 million. I would consider that financial provisions in relation to insurance liability are a separate consideration from a financial bond required to ensure that the aftercare and restoration is carried out in accordance with closure, restoration and aftercare management plan. This plan sets out details of the decommissioning procedures, closure tasks and programmes to be implemented as part of the application. The combined decommissioning and aftercare costs are also set out in detail in Table 6 of the Plan. Table 6 indicates that the total decommissioning costs are €483,744 with an additional €48,300 required as a 10% contingency provision. The total funds therefore required are not as indicated in Section 8 of the plan (€429,268) but are in fact €532,118. I consider that the financial security condition attached to any grant of planning permission should at least cover the costs of the total decommissioning and in this regard I recommend that the Board consider increasing the financial security condition from €500,000 as stipulated in the Planning Authority's decision to €550,000 in order to adequately ensure that all costs associated with the decommissioning are covered in the grant of planning permission.

Change of Use

- 9.3. The grounds of appeal argue that the proposed development will result in the site reverting back to agricultural use and this constitutes the change of use under the Planning and Development legislation. As such the public notices should have referred to the proposed change of use under the Planning Acts. The Board will be aware that the use of land for agricultural purposes constitutes exempted development under the provisions of Section 4(1)(a) of the Planning and Development Act, 2000, (as amended). Thus using the land for agricultural purposes does not in itself require planning permission. The application before the Board seeks to decommissioning and existing industrial facility on site. A grant of planning permission in this instance does not confer a particular zoning provision on the lands in question. As already stated in the previous section above, the subject site does not incorporate any specific land use zoning objective other than the site being located within Control Zone 4 of the Louth County Development Plan which seeks to protect in a general manner lands surrounding the largest settlements within Louth for the purposes of a greenbelt. Any subsequent application on the subject lands will

be evaluated on its merits and in accordance with the proper planning and sustainable development of the area.

Perimeter Fencing

- 9.4. The grounds of appeal argue that the fence is located within the private property of the appellant and he does not consent to its removal. I note that neither the applicant nor the Planning Authority raise any objection in terms of the retention of the fence in question. Therefore, the Board if it considers it appropriate, could include a condition requiring that the perimeter fencing around the site be retained as part of any decommissioning plan.

10.0 Conclusions and Recommendations

I agree with the Planning Authority that the removal of buildings, equipment, machinery and associated fitting and fixtures to be acceptable in principle on the subject site and is likely to represent a positive environmental impact as opposed to leaving plant and equipment on site in the absence of any aftercare or restoration plan. The Board if it agrees with the principle of the development in terms of removal of buildings, plant and machinery which would otherwise fall into a state of disrepair and present a pollution threat, it can in my view restrict its deliberations to the issues raised in the grounds of appeal.

11.0 Appropriate Assessment

- 11.1. I note that an Appropriate Assessment Screening Report was submitted by way of additional information to the Planning Authority. Proposed works to be undertaken as part of the development involve the demolition and removal of existing equipment and buildings on site and the removal of any contaminated land particularly in the berms surrounding the site. The nearest designated Natura 2000 sites is the Dundalk Bay SPA and SAC. At its closest point the SPA is located approximately 250 metres east of the subject site. The SAC at its closest point is approximately 400 metres from the subject site. The site is connected hydrologically to both the SAC and SPA by a series of drainage ditches which generally drain eastwards towards

Dundalk Bay. The Screening Report notes that hydrologically the site is located between 1 to 2 km from the designated Natura 2000 site as the channels do not flow directly eastwards towards the SAC. It is possible that some contaminants on site including heavy metals and hydrocarbon could be transported this distance particularly in the event of an exceptional weather event.

11.2. However, the screening report reasonably points out that due to the distances involved and the slow moving nature of water within the drainage ditches and drainage channels, that no likely impacts will result on the conservation objectives of the Natura 2000 sites in question. Furthermore, the demolition projects will be undertaken under a relatively short duration and this will also limit potential impacts. Mitigation measures include the avoidance of working on wet and windy days. The screening report in my view therefore correctly concludes that the proposed plan is unlikely to compromise the conservation objectives of Dundalk Bay SPA or SAC either directly or indirectly. It is also noted that there are no other projects that could concurrently or otherwise contribute to any possible combined impact. It is reasonable to conclude on the basis of the information contained on file which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on Dundalk Bay SPA (Site Code: 004026) and Dundalk Bay SAC (Site Code: 00455) or any other European site in view of the site's conservation objectives and a Stage 2 Appropriate Assessment and the submission of an NIS is not therefore required.

12.0 Decision

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

13.0 Reasons and Considerations

It is considered that the proposed decommissioning of the facility including the removal of buildings, machinery, fixtures and fittings would, subject to conditions set out below, not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

14.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the plans and particulars received by the planning authority on the 6th day of July 2016, except as may otherwise to 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 the 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. (a) Prior to the commencement of work the applicant shall submit for written approval of the planning authority a comprehensive Closure and Restoration/Aftercare Plan (CRAMP). The CRAMP shall be prepared in accordance with the EPA document "Guidance on Assessing and Costing Environmental Liabilities 2014" and shall include all measures necessary to avoid any risk of environmental pollution. All drawings shall be to a scale clearly indicating trial pit locations and groundwater monitoring points.
- (b) A programme for the remedial works shall be clearly set out in sequence and a timetable for each work element shall be submitted for approval prior to commencing work. Any variation from the

approved work plan shall be notified to the planning authority as soon possible after it becomes evident to the applicant.

- (c) Prior to commencement of decommissioning works, a construction and demolition waste management plan shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. This plan shall be prepared in accordance with “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects” published by the Department of Environment, Heritage and Local Government in July, 2006. The plan shall include the details of waste to be generated during site clearance and details of the methods and locations to be employed in the prevention minimisation and recovery and disposal of this material in accordance with the Waste Management Plan for the Region in which the site is situated.
- (d) On- site construction works shall be limited to between the hours of 0800 to 2000 hours Monday to Friday and 0800 to 1600 hours on Saturday and shall exclude Sundays and Bank Holidays.

Reason: In the interest of sustainable waste management.

- 3. The development shall be operated such that there will be no emissions in terms of odours, fumes, gases, dust or other deleterious materials which would give rise to amenity issues for any residence in the vicinity of the development.

Reason: In the interest of residential amenity and public health.

- 4. The noise levels generated during the decommissioning phase shall not exceed 55 dB(A) Leq 1 hour when measured at the nearest occupied house. When measuring the specific noise emission, the time shall be any 1 hour period during which sound emissions from the decommission is at its maximum level.

Reason: In order to protect the residential amenities of property in the vicinity.

5. (a) The applicant shall, if directed by the planning authority, monitoring and record the total emissions arising from all site operations associated with the development during the decommissioning phase.
- (b) The number and location of the monitoring and recording stations for dust deposition necessary to comply with the requirements of Part A of this condition shall be in accordance with the requirements of the planning authority for such monitoring of sound and dust deposition.

Reason: In the interest of residential amenity.

6. The planning authority shall be afforded access to the site at all reasonable times in order to inspect, examine or have persons inspect, examine and check all apparatus and equipment used or required to carry out the monitoring of dust and noise.

Reason: In the interest of residential amenity.

7. If requested the applicant shall pay a financial contribution to the planning authority if requested towards the cost incurred by the said Council in the carrying out or in having carried out check monitoring and recording of any or all of the matters required to be monitored and recorded in respect of dust and noise. The amount of the contribution and the arrangement for payment shall be agreed between the applicant and the planning authority or in default of such agreement the matter shall be referred to the Board for determination.

Reason: In the interest of orderly development and public health.

8. The applicant shall liaise with any public utility authorities and carry out all diversions, rerouting, modifications as required by the public utility

authorities during the construction of the works. Prior to the commencement of works, the applicant/developer shall arrange to carry out any works required by the public utility authorities and schedule a programme for the proposed development accordingly.

Reason: In the interest of orderly development.

9. During the decommissioning phase the site shall be maintained in a tidy condition and free from litter or accumulated wastes. All wastes and bi-products shall be collected and stored in designated and controlled storage areas prior to ultimate removal and disposal from the site. Waste storage areas shall be suitably screened from roadways and footpaths and adjacent properties.

Reason: In the interest of visual amenity.

10. The public road at the entrance to the site shall be kept free of soil, clay, gravel and any other such material during the decommissioning works. Care should be taken to ensure that all vehicles leaving the site are free of any material that would be likely to deposit on the road and in the event of such deposition occurring immediate steps shall be taken to remove the material from the road surface.

Reason: In the interest of traffic safety and visual amenity.

11. The applicant shall undertake and be responsible for the full cost of carrying out any road/footpath cleaning work throughout the course of the decommissioning works.

Reason: To protect the amenities of the area.

12. Prior to the decommissioning of works the developer shall lodge with the planning authority a bond of an insurance company or other such security as may be acceptable to the planning authority for the sum of €550,000 to secure the satisfactory reinstatement of the site so as to ensure the satisfactory implementation of the closure and restoration/aftercare plan as set out in the requirements of Condition No. 2 above coupled with an agreement empowering the planning authority to apply such security and part thereof to the satisfactory completion of the said works. The insurance company bond or any such other security will be refundable to the applicant following full compliance with Condition No. 2 and the remediation of the said lands to the satisfaction of the planning authority.

Reason: To ensure the satisfactory decommissioning and reinstatement of the site upon the cessation of the project.

Paul Caprani
Senior Planning Inspector

14th November, 2016.