



An
Bord
Pleanála

Inspector's Report 06F.248402

Development	Decommissioning of the existing concrete plant and erection of a proposed concrete plant.
Location	Feltrim, Swords, Co. Dublin.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F16A/0471
Applicant(s)	Roadstone Limited.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First v Condition
Appellant(s)	Roadstone Limited.
Observer(s)	None
Date of Site Inspection	27 th June 2017
Inspector	Patricia Calleary.

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1.0 Site Location and Description

- 1.1. The appeal site, with a stated area of 2.25 ha, forms part of an established quarry site which is located between the built-up areas of Dublin city to the south and Swords and Malahide to the north. The lands adjacent to the site are mostly in agricultural use and there is a golf driving range to the north. The site is accessed off Feltrim Road, which links the R107 Malahide Road and Swords. There are a number of houses to the north and north-west of the site along the L2060 and there is a small cluster of houses whose curtilages lie between the site and the Feltrim Road to the east of the overall quarry site.
- 1.2. The overall quarry site extends to 42 hectares and includes the quarrying operations where aggregates are extracted and used for concrete production. Other ancillary buildings exist on site. The proposed concrete plant would be located to the western portion of the overall quarry site and there is an area of the appeal site to the east which would host the excavated soil from the site development works.

2.0 Proposed Development

- 2.1. As described on the public notice, the proposed development would involve the decommissioning of the existing concrete crushing and screening plant, the erection and operation of a concrete plant consisting of a concrete-mixer plant, conveyors, 4 no. aggregate silos, 8 no. cement silos, tip-in bin, 2 no. water-storage tanks and a control cabin (c. 849.2m² and with a maximum height of 23.0m), a truck wash out (c. 187.0m²), aggregate storage bays (152.0m²) and ancillary facilities (connections to the existing water-discharge system, electricity supplies and proposed downward lights) on a hardstanding area with a reduced floor level to 23mOD, over c. 0.94 ha of the site and a proposed overburden storage area within the quarry site (c. 0.58ha), with an overall application area of c. 2.25 ha at the existing quarry landholding.
- 2.2. It is proposed to operate the concrete plant between the hours of 2 a.m. to 10 p.m. Monday to Saturday and on 20 occasions per year outside these hours subject to prior agreement with Fingal County Council.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. A decision to **grant permission** was made by Fingal County Council on this application subject to 20 conditions, most of which were of a standard nature for an application of this type, but also including the following condition (No. 2) which is the subject matter of the appeal.

Condition No.2 reads as follows:

This is a temporary permission only, and shall expire 5 years from the date of the final grant of permission, unless at that time, permission for its retention has been granted by the Planning Authority or An Bord Pleanála on appeal. In the event of retention being refused, the concrete plant and all associated features as indicated within the red site outline on SLR drawing D05A shall be removed within 6 months of the date of refusal and the site restored in agreement with the Planning Authority.

Reason: *To permit the Planning Authority to re-assess the situation in light of the circumstances at this time, with specific regard to the impact of noise, dust and hours of operation on nearby properties.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The first planning report recommended seeking additional information on various matters including information about operating times.
- The second planning report recommended seeking clarification of the addition information received on matters relating to noise monitoring, noise liaison, mitigation proposal where noise levels would be in excess of 45dB L night during night time hours.
- The third planning report concluded that the applicant had demonstrated that the baseline noise levels in the area would not be unduly affected by the proposed development and that the proposed development of a concrete plant would not unduly affect the existing amenity in the surrounding area by

way of noise, dust or traffic movements particularly having regard to night time operations.

3.2.2. Other Technical Reports

- Water Services – **No objections** subject to conditions;
- Environmental Health Officer (Air pollution and Noise Control Unit) – Following receipt of further information and clarification requests, were **satisfied with applicant’s response**;
- Public Lighting Section – Following receipt of further information, **no objections**;
- Heritage Officer – Further information required. **No response** on file following receipt of further information;
- Water services – Following receipt of further information, **no objection** subject to conditions;
- Environment and Water Services– Requested **further information, no response** on file following receipt of further information;
- Biodiversity Officer – **No response**;
- Transportation Planning – **No objections**;
- Parks Planning - **No objections**.

3.3. Prescribed Bodies

- Irish Water – **No objections** subject to standard conditions;
- Irish Aviation Authority – **No response**;
- Dublin Airport Authority – **No objection** subject to conditions.

3.4. Third-Party Observations

- None

4.0 Planning History

Appeal site and / or adjoining quarry site

- 716 – Permission **granted** for rock processing and ready mixed concrete and mortar plants on 7th May 1965;
- 06F.SU0039 – Substitute consent **granted** by the Board on 27th August 2014;
- F15A/0291 – Permission **granted** for the continuation of limestone quarry operations on 14th June 2016;
- F16A/0049 – Permission **granted** for the construction of a concrete plant (604 sq.m) with maximum height of 18m, replacing existing concrete plant on 10th October 2016.

5.0 Policy Context

5.1. Development Plan

- **Fingal County Development Plan 2017-2023** is the applicable statutory development plan for the area. The site is zoned **GB – Greenbelt**, with a corresponding objective to **‘protect and provide for a greenbelt’**;
- The appeal site is located within the ‘outer airport noise zone’ and partially located within the outer public safety zone;
- A protected structure (RPS No. 451 - stone limekiln) is located to the east of the appeal site and there are two recorded monuments within the quarry site;
- Under Table GH01, Feltrim Quarry is listed as one of 21 county geological sites;
- There are no specific planning objectives within the Plan directly relating to concrete plants. However, Objective RF96 supports the processing of aggregates in a manner which minimises the impact on natural environment and residential amenities;

- Objective EE57 (promote appropriate land use patterns in the vicinity of the flight paths serving the airport). Objective EE58 (Implement policies in relation to public safety zones for Dublin Airport);
- Page 249 of Chapter 7 of Fingal Development Plan 2017-2023 references the recently published Government Capital Programme (Building on Recovery: Infrastructure and Capital Investment 2016-2021), which includes a number of significant transport infrastructure projects what are of critical importance to Fingal.

5.2. Natural Heritage Designations

- Feltrim quarry is not in or beside any Natura 2000 sites. It is upstream of the SPA (Site Ref. 004016) and SAC (Site Ref. 000199) at Baldoyle Bay, which are located c.4 km to the south east of the site;
- The site is located within Feltrim Hill, a proposed NHA (Site Ref. 001208).

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A first-party appeal was lodged by SRL Consulting on behalf of the applicant, Roadstone Ltd. The appeal is made solely against Condition No. 2 attached to the Planning Authority's decision and requests that the Board deal with the appeal under Section 139 of the Planning & Development Act, as amended. The grounds of appeal can be summarised as follows:

- Permission was granted under F16A/0049 with restricted operation hours (07.00 – 18.00 Monday to Friday and 07.00 – 14.00 on Saturday). Rather than appealing that decision, a new application was lodged for permission for a larger capacity replacement plant following a more detailed noise assessment;
- Proposes to operate the plant from 02.00 am – 10.00 pm to meet demand for concrete in the Greater Dublin Area;

- Applicant consulted with and agreed a number of items with the Environmental Health Officer including noise monitoring, proposal for a noise liaison officer and mitigation measures to be put in place if noise levels exceed a 45 dB level during night time. Furthermore, noise results would be made available to the Air Pollution and Noise Control Unit of Fingal County Council;
- Development would not unduly affect property;
- There is an ongoing programme of dust deposition monitoring as part of the overall environmental management programme, the results of which demonstrate compliance with the relevant grants of permission;
- Proposed plant would have a sealed cement silos and a fully contained concrete-mixing unit which together would ensure elimination of fugitive dust emissions;
- There have been no historical complaints around noise or dust and accordingly these do not form the basis for limiting the duration of the permission to 5 years.
- No basis for the categorisation of the quarry and concrete plant as a bad neighbour;
- The quarry site provides a sustainable location for a concrete plant and requires a heavy capital investment of €2 million and Roadstone could not proceed with the investment on the basis of a temporary permission.

6.2. Planning Authority Response

The Planning Authority's response is summarised as follows:

- No new issues raised beyond those which were considered in detail in the assessment of the impacts of the proposed development;
- Applicant has applied for a significant extension of the hours of operation of the facility along with a significant increase in the volume of material to be produced;

- Concrete plant is considered a heavy industry category (with potential to be a bad neighbour) and the site has a number of sensitive receptors;
- EHO comments are one of a number of consultations on the proposal which must be balanced against the potential for impact on adjoining lands;
- Temporary permission is considered appropriate with reference to Section 7.5 of the Development Management Guidelines.

The Planning Authority response also highlights that the temporary permission was exempt from development contributions and requests that in the event of a grant of permission that the Fingal Development Contribution scheme be applied.

6.3. Observations

6.3.1. The Board invited comment from a number of prescribed bodies. No responses were received.

7.0 Assessment

7.1. Introduction

7.1.1. Permission was sought for the decommissioning of existing crushing and screening plant on site and the erection and operation of a new concrete batching plant. It is proposed to operate the new concrete plant between the hours of 2 a.m. to 10 p.m. Monday to Saturday and on 20 occasions per year outside these hours subject to prior agreement with Fingal County Council. The applicant has lodged a first-party appeal solely against Condition 2 attached to the Planning Authority's decision to grant permission. Condition 2 restricts the permission to a temporary period of 5 years from the date of the grant of permission, unless at that time, permission for its retention has been granted.

7.1.2. Having regard to the nature of the appeal concerning one specific condition, and also noting the absence of third-parties during the application and appeal stage, I am of the opinion that a *de novo* consideration of the application is not warranted in this instance. Accordingly, I recommend that the Board consider the appeal under s.139 of the Planning & Development Act 2000, as amended.

7.1.3. I consider the key issues in determining this appeal are as follows:

- Five-year temporary permission (Condition No.2)
- Appropriate Assessment
- Other Matters

7.2. Five-year temporary permission (Condition No.2)

7.2.1. Introduction

As described on the public notice, the proposed development would involve the removal of plant used for concrete crushing and screening together with the erection and operation of a new concrete batching plant. Based on other written information on file and as shown on the site layout plan, the existing concrete plant on site would also be decommissioned within six months of the new plant becoming operational. It is stated that the existing concrete batching plant was granted permission in 1965 and has operated for over 50 years since without any restriction on the hours of operation and that concrete has been supplied on a 24-hour basis without any complaints in relation to noise, dust or hours of operation. Permission was recently granted for a replacement concrete plant on broadly the same site as the current appeal site under planning reference no. F16A/0049, however the hours of operation permitted were considered by the appellant to be unduly restrictive and subsequently the appellant lodged an application for a larger capacity replacement concrete plant at the Feltrim quarry site, which is the subject matter of this appeal. Under the current proposal, it is intended to operate the concrete plant between the hours of 2 am and 10 pm on Monday to Saturday and to operate the plant outside of these hours on 20 occasions per year with prior written agreement from Fingal County Council. It is submitted that these extended hours are required to service the construction of infrastructure in and around Dublin city including projects which require ready-mix concrete at night time. It is also submitted that the capital investment required would be €2 million and that it would not be economically viable to proceed with the level of investment based on a temporary permission. The Planning Authority notes that under Section 7.5 of the Development Management Guidelines for Planning Authorities 2007, use of temporary permissions may be considered acceptable in cases of *'a use which may possibly be a **bad neighbour to***

uses already existing in the immediate vicinity, in order to enable the impact of the development to be assessed, provided that such a permission would be reasonable having regard to the expenditure necessary to carry out the development'. The Planning Authority consider that the development type proposed is heavy industry and would have potential to be a 'bad neighbour' in the context of generating noise and dust over extended operation hours. Accordingly, the Planning Authority considered the attachment of the condition to limit a grant of permission to a five-year initial (temporary) period was warranted to allow for effective review of noise and dust generation caused by the hours of operation.

7.2.2. Noise

The appellant submitted a noise assessment with the planning application which was updated by way of further information and clarification responses. It included monitoring at 5 sensitive receptor locations. It is evident from the information on file that the Environmental Health Officer of Fingal County Council was satisfied with the proposals subject to a number of requirements around monitoring, mitigation measures and the appointment of a designated noise liaison officer. The Planning Officer's report stated their satisfaction with the proposal when balanced with the need for concrete manufacturing to service larger infrastructural development. It is of relevance that Condition No.5 attached to the planning decision sets appropriate day and night time noise limits¹ and Condition No. 9 requires noise monitoring. Where non-compliance would arise, mitigation measures proposed would be implemented and this requirement is regulated by attachment of Condition No.8. It is also stated that the existing concrete plant has historically operated without complaints from neighbours around noise. Having regard to the above, I consider that the limiting of the permission for a temporary 5-year period on the basis of noise emissions is not required.

7.2.3. Dust

The appellant states that there is a monitoring programme in place in the overall quarry site, including dust deposition. The appellant contends that the monitoring results demonstrate that the operations of the quarry comply with dust emission

¹ Daytime 08.00 – 20.00 h LAeq (1 h) = 55 dBA and Night-time 20.00-08.00 h LAeq (1 h) = 45 dBA limits have been applied.

limits set out in the respective planning permissions and a limit of 350 mg/m²/day averaged over a 30-day period at the site boundary set out in the Environmental Management Guidelines for the extractive industry (2006). While this monitoring refers specifically to the quarrying activities, I note that the concrete plant would be located within the overall quarry site and the emission limit is set at the site boundary which would therefore capture dust emissions from the intended concrete plant. The proposed concrete plant would have sealed cement silos and a fully contained concrete contained mixing unit which would eliminate fugitive-dust emissions. It is also stated that the existing concrete plant has historically operated without complaints from neighbours around dust emissions. Based on the information on file, I am satisfied that dust emissions are evidently regulated within a set limit at the overall quarry site boundary within which the concrete plant would be located. I therefore conclude that the limiting of the permission for a temporary 5-year period on the basis of dust emissions is not warranted in this instance.

7.2.4. Conclusion on Condition No.2

Having regard to the assessment above and noting the provisions of Section 7.5 of the Development Management Guidelines for Planning Authorities 2007, it has not been established that the development, subject to conditions, would give rise to adverse impacts on the amenities of the area or would result in being a 'bad neighbour' to uses in the immediate vicinity. Noting also the provisions of Section 7.5 whereby temporary permissions may be acceptable provided that they would be reasonable 'having regard to expenditure necessary to carry out the development', given the significant investment required in this instance, the use of a temporary permission would not be appropriate.

Accordingly, I recommend that it would be reasonable to amend Condition No.2 to remove the restriction of the temporary duration of the permission.

7.3. **Appropriate Assessment.**

7.3.1. An Appropriate Assessment (Stage 1) was submitted with the planning application. It initially identified 16 Natura 2000 sites within a 15km radius of the appeal site, 14 of which were screened out from further assessment, because they lie outside the potential zone of influence of the project and there are no source-pathway-receptor

(S-P-R) links between the project and the identified sites. In considering the remaining two sites (Baldoyle Bay SAC and Baldoyle SPA), potential S-P-R links were identified and these were considered in the screening assessment. The result of the assessment was that the development and operation of the proposed concrete batching plant would not have any effects on the integrity of any Natura 2000 sites, or on any of the qualifying habitats and/or species for which the sites have been designated as being of European importance, either as a stand-alone project or in combination with other plans or projects.

7.3.2. Following a review of the AA stage 1 screening report by the Heritage officer, additional information was sought in relation to water uses and associated water discharges. The applicant's response included a summary water balance which provided evidence that the proposed plant would not result in an increase in the volume of water discharged from the overall quarry site, of which the appeal site forms part of. On that basis it is stated that there is no requirement to alter the conclusions of the Stage 1 Screening for Appropriate Assessment originally submitted with the application. Following receipt of the further information, the Heritage Officer's subsequent report concludes that the proposed development, either alone or in combination with other plans and projects, would not give rise to significant adverse effects on European sites.

7.3.3. Having regard to the information on file, I concur with the conclusions. Noting that the Stage 1 assessment was based on the project over a long term rather than a temporary 5-year time period, I see no reason that amending Condition No.2 and increasing the operating life of the concrete plant would lead me to arrive at a different conclusion. Neither would the attachment of the 2 new recommended conditions alter my conclusion on appropriate assessment.

7.3.4. It is reasonable to conclude that on the basis of the information on the 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 European Site No. 000199 – Baldoyle SAC, Site No. 004016 – Baldoyle 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.

7.4. Other Matters

7.4.1. Environmental Impact Assessment

As the category of development is not one which is listed in either Part 1 or Part 2 of Schedule 5 of the Planning & Development Regulations 2001-2017, I consider that neither EIA screening nor the requirement for an EIS is required, and this would not alter should Condition No.2 be amended to remove the temporary restriction on the permission or with the addition of the 2 new recommended conditions.

7.4.2. Replacement of existing concrete plant.

The appellant makes various references to the current proposal being a replacement concrete plant and that it is proposed to decommission the existing concrete plant within six months following the new plant becoming fully operational. The existing concrete plant on site was not operational on the day of my site inspection and appeared not to have been in operation for some time. I note the decommissioning of the existing concrete batching plant did not form part of the development description as set out in the public notice (which instead referred to decommissioning of the existing concrete crushing and screening plant). Nonetheless, I am satisfied that the decommissioning of the existing concrete plant is adequately referenced as part of the written information and drawings on file and its decommissioning is also regulated under Condition No.11 attached to the Planning Authority's planning decision which would not be altered as a result of my recommendation on this appeal.

7.4.3. Development Contributions

In their response to the appeal, the Planning Authority make reference to section 10(q) of the Fingal Development Contribution scheme 2016-2020 which provides for temporary planning permissions (up to 5 years) being exempt from development contributions. The Planning Authority requests that a Section 48 development contribution condition would be attached in the event that permission is granted. Having reviewed the applicable Fingal Contribution Scheme, contributions are applied based on gross floor area. Note 2 of the scheme sets out that the gross floor area is determined from the internal dimensions of proposed buildings, including the gross floor area of each floor and mezzanine floors. It would appear that the majority of the proposed development would consist of plant and equipment. However,

reference is made on the public notice to a control cabin which I consider might attract development contributions based on its gross floor area. I note that no details of the floor layout of the control cabin appear to have been submitted with the planning application. However, it is represented on Drawing No. D-05A - Proposed Site Layout Plan and it is also represented on Drawing D07 as 8 sq.m. This is substantially at variance with the size of the cabin referenced on the public notice (849.2 sq.m). In any event, it is likely that the size is as represented on the drawings and I recommend that the Board direct the Planning Authority to attach a standard S.48 development contribution.

8.0 Recommendation

- 8.1. I recommend that the Board consider the appeal in the context of section 139 of the Planning & Development Act 2000, as amended. I also recommend that the Board direct the planning authority to **AMEND Condition Number 2** and **ATTACH 1 new condition (Condition No.21)** for the reasons and considerations hereunder, as follows:

Amended Condition No 2:

The planning permission shall expire on permanent cessation of extraction of stone from the quarry site, following which the concrete plant and all associated features shall be removed within a period of 6 months and the site shall be restored in agreement with the Planning Authority.

Reason: In the interest of visual amenities and orderly development.

New condition No.21

The developer shall pay to the planning authority a financial contribution 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. The contribution shall be paid prior to the 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. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development within an established quarry site, to the planning history and the existence of a concrete plant which is proposed to be decommissioned following commencement of the proposed new concrete plant, to the regulation of noise and dust emission limits and monitoring and mitigation requirements as set out in particular under Conditions 5, 8 and 9 attached to the decision to grant permission and to the provisions of Section 7.5 of the 'Development Management Guidelines for Planning Authorities' (2007) in relation to the use of temporary permissions, it is considered reasonable to amend Condition No.2 to allow for a longer term duration of the proposed development. It is also considered reasonable to attach Condition No. 21 requiring a S.48 development contribution.

It is considered that the proposed development with the amended Condition No.2 and the addition of a new condition (Condition No.21) would not seriously injure the residential amenities of the area by virtue of excessive noise or dust emissions during day or night time day operations proposed and would therefore be in accordance with the proper planning and sustainable development of the area.

Patricia Calleary
Senior Planning Inspector

15th July 2017