



An
Bord
Pleanála

Inspector's Report ABP-300489-17

Question

Whether the soil importation and use for the purpose of pit restoration in accordance with An Bord Pleanála 19.SU0095 are development and where they are exempted development

Location

Cartron Durrow Tullamore co. Offaly

Declaration

Planning Authority

Offaly County Council

Planning Authority Reg. Ref.

Dec 17/11

Applicant for Declaration

Offaly Co. Co.

Planning Authority Decision

Referred to the Board

Referral

Referred by

Offaly Co. Co.

Owner/ Occupier

Trevor Hinch

Observer(s)

None

Date of Site Inspection

10th of May 2018

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1.0 Site Location and Description

- 1.1. The site is located in the townland of Cartron, approximately 8km north-west of Tullamore, Co. Offaly, along the southern back of an esker ridge.
- 1.2. It is a former quarry site covering an area of approximately 6.46Ha, incorporating sand and gravel extraction, associated plant, and previous extraction areas undergoing recolonization.

2.0 The Question

- 2.1. The question relates to a site registered under Section 261 of the Planning and Development Act 2000 as a pre-63 development. The required application under Section 177 was made directly to An Bord Pleanála and was accompanied by a Remedial Environmental Impact Statement and a Remedial Natura and Impact Statement, and it was granted on 29th of June 2015.
- 2.2. The following questions have been asked by Offaly County Council
 - (i) Importation of inert soil for the purposes of site restoration at the site is or is not development;
 - (ii) Restoration works using imported inert soil in relation to authorised quarry lands is or is not development.

3.0 Planning Authority Declaration

3.1. Declaration

The planning authority referred the issue to the Board. It has an Enforcement file relating to the 'unauthorised' importation of material at this subject site.

3.2. Planning Authority Reports

3.2.1. Planning Reports

There is no planning report on file.

3.2.2. Other Technical Reports

There are no other technical reports on file.

4.0 Planning History

SU 19.SU0095

As stated the site was registered under Section 261 and had conditions imposed under Section 261(6)(a)(i) of the *Planning and Development Act*, as a pre-63 development. The case was **SU 19.SU0095**

. According to the Remedial Environmental Impact Statement, Hinch Plant Hire (The Referrer) operates a waste facility permit importing soil and stone for use in the soil's restoration programme. The Board granted the substitute consent subject to 5No. conditions, Condition No. 2 required a programme for the implementation of a progressive restoration plan for the site.

5.0 Policy Context

5.1. Development Plan

Offaly County Development Plan 2014-2020

5.2. Natural Heritage Designations

The subject site is not included in an Natural Heritage designations.

6.0 The Referral

6.1. Referrer's Case

Under the Substitute for Consent permission, **19SU.0095**, which was permitted by the Board on 29th of June 2015, there were five conditions attached. The compliance of the condition is well in hand to an agreed timetable. It is not clear why the restoration proposals are unacceptable to the planning authority as they are in line with the Remedial Environmental Impact Statement.

Condition No. 2

Within 3 months of the date of the order, the developer shall submit to and agree in writing with the planning authority details of an implementation programme for the progressive restoration of the site in accordance with section 9.4 of the submitted Remedial Environmental Impact Statement and drawings number CD014/02. Restoration works shall be implemented in accordance with agreed programme.

Two letters were submitted to the planning authority. The first was on 30th of September 2015, which included restoration proposals for compliance. The suggested timeframe was mid-2018, depending on the availability of inert material to be imported under the site waste facility permit for that purpose.

The work continued steadily at a small scale until the planning authority alleged the importation of inert material was unauthorised development.

Following the lodging of a restoration bond required by the substitute consent permission (for 4.78Ha which remained unrestored at the time), the planning authority requested a fully itemised restoration plan in 2017. This developed into a multitude of letters from March 2017 onwards, stating the restoration and landscaping works are proceeding in line with proposals set out under 9.4 of the REIS.

Importation and Recovery of Inert Material

In the intervening time since grant of 19.SU.0095 the existing Waste Facility Permit on the site was up for review in 2016. The permit was granted for a further 5 year period, WFP-OY-0167-03.

The main material imported over successive permits has been soil and stones and this has been used to restore the site on an ongoing basis. The restoration plans include the continuing practice of dead sand first, then overlaying with imported materials which support grass and vegetation.

There was very little overburden from the original development of the site, and it has been used in bench construction around the site.

The existence of a waste facility permit (then for soil only) was included in the substitute consent application which successfully underwent both EIA and NIA, therefore the works were open to consideration as exempt development.

The amounts of soil imported and recovered through site restoration were relatively small (significantly below the EIA threshold for activity) but sufficient to support a decent standard of restoration for best environmental benefit.

The inert material comprises of topsoil, clays and stones, and may be classified as waste or not depending on the source of individual loads. If the material is a waste then an environmental facility authorisation is required in addition to the right to import and spread the material. When not waste, the material might be purchased for use and imported. The materials are the same only the environmental laws differ.

A concrete waste stream was added to the permit, and the importation and processing of such materials was alleged to be unauthorised by the planning authority. The company ceased that activity upon notice by the planning authority, but informed the planning authority that the importation of inert soil and stone would continue. The planning authority now alleges that this too is unauthorised, hence the Section 55 application.

Conclusion

The restoration works have been in compliance with REIS in 19.SU.0095. The use of imported material (under the permit) was included in the particulars associated with 19.SU.0095. On this basis the importation of materials and the use of those materials may not constitute development. If they are development, then they are exempt being required to comply with Condition No. 2 of 19.SU.0095. The land improvement works may also be exempt by virtue of S4 of the Planning and Development Act.

6.2. Planning Authority Response

Offlay Co. Co. responded on 10th of January 2018. The submission stated that correspondence was carried out between the planning authority and the owners on a number of enforcement files, UD03/10, UD07/033 and UD17/44, in addition to the substitute consent Offaly reference EU QY 41, and Quarry Reg QY41.

Two planning application references were deemed incomplete, PL2/17/283 and PL2/17/234.

7.0 **Statutory Provisions**

7.1. **Planning and Development Act, 2000**

S.2(1) Defines, among other things, “**works**” – as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

S.2(1) Defines, among other things, “use” – in relation to land, does not include the use of the land by the carrying out of any works thereon;

3.—(1) In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

7.2. **Planning and Development Regulations, 2001**

Article 9 of the Planning and Development Regulations 2011, as amended, provides for exceptions to the classes of exempted development provided for in Article 6. Article 9(1)(c) provides that development is not exempted development if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive. Part 10 refers to the requirement to carry out EIA.

8.0 **Assessment**

8.1. **Is or is not development**

8.1.1. The Referrer, Mr. Trevor Hinch claims the importation of soil at the site is part of an overall permitted restoration plan, granted under SU19.SU0095, and the soil is

required to restore the site, regardless of the finer details of the restoration plan, and that this activity may not constitute development.

S.2(1) Defines, among other things, “**works**” – as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

Therefore, in my opinion, the importation of large quantities of soil and rubble onto the site comprises of an alteration to the site and is therefore, works.

In accordance with section 3(1) of the Act works become development when they are carried out on, in, over or under land. I conclude therefore that the ‘works’ the subject of this referral comprise development. It is furthermore noteworthy that in accordance with section 3(2)(b)(iii) the deposit of mining waste or industrial waste, builders’ waste, rubbish or debris on land comprises development.

8.2. Is or is not exempted development

The Referrer claims that by virtue of the land improvement works (restoration) the development may also be exempt by virtue of Section 4 of the Planning and Development Act. I note Section 4 of the Act sets out certain forms of development which shall be exempted development, certain agriculture related works, certain tree plant in activities and other developments. The referral includes no case that the bringing of fill to the site comprises an activity included in section 4, other than a statement.

8.2.1 Article 6(1) of the Regulations provides that, subject to Article 9 classes of development specified in Column 1 of Part 1 of Schedule 2 shall be exempted development provided they comply with the conditions set out in Column 1 of Part 1 of Schedule 2. Having reviewed these classes of development I conclude that the works referred to in this referral do not fall within any of these classes.

8.2.2 The main case presented by the referrer are that the works are in compliance Condition No. 2 Substitute of Consent granted by the Board under 19.SU.0095.

Condition No. 2

Within three months of the date of this order, the developer shall submit to, and agree in writing with. The planning authority details of an implementation programme for the progressive restoration of the site in accordance with Section 9.4 of the remedial Environmental Impact Statement and Drawing Number CD014/02.

Restoration works shall be implemented in accordance with the agreed programme.

The grant of Substitute Consent covers an area of 6.46hectares. According to the Referrers letter there were two letters submitted to the planning authority regarding

compliance with condition No. 2 on 30th of September 2015, which the Referrer considered to be in compliance with the REIS and a suggested timeframe to mid-2018 depending on the availability of inert material to be imported under the site's waste facility permit for that purpose. The work continued on the site on a small scale until the planning authority alleged the works were unauthorised.

I do not see any evidence on file that the planning authority agreed in writing to the restoration works as required by Condition No. 2. Furthermore, there are no copies of the correspondence between the parties relating to compliance of Condition No. 2. Therefore, it would appear the planning authority may not have agreed a restoration programme for the site.

Having inspected the site, I noted soil mounds and rubble mounds located along the southern axis of the site. From my crude calculations these deposits are not within the highlighted areas of Drawing No. CD01402 as prescribed by the condition. I did not have the benefit of accurate up to date drawings of the filling and deposits on site during my inspection, however it would appear the mounds are located along the southern axis of the site above and alongside the quarry face.

It is solely within the competence of the planning authority to determine if planning conditions have been complied with and such compliance is not a matter for the Board. It would appear the planning authority's conclusion is that the conditions of substitute consent have not been complied with, and that the requirement agreement period between the parties has expired under the terms of Condition No. 5

8.3. Restrictions on exempted development

8.3.1 Article 9 of the Regulations provides restrictions on exempted development. These include, but are not limited to, contravention of a condition attached to a grant of permission, giving rise to traffic hazard, interference with landscapes designated for protection in a development plan, excavation, alteration or demolition of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan, fencing or enclosure of lands habitually open to the public for 10 years, obstruction of rights of way. The planning authority screened the development whereby it was indicated the site and the works were not within or close to a European Site or Natural Heritage Area. The development did not require an EIA. There is no reference to this type of development under the Exempted Development listings provided for under Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.

8.3.2 Section 172 of the Planning and Development Act, 2000 (as amended) requires an environmental impact assessment, if the proposed development falls within Part 1 or 2 of Schedule 5 of the Planning and Development Act, 2001 (as amended), or is below the thresholds set out in Part 1 and Part 2 but is likely to give rise to significant environmental effects. The proposed development, does not comprise a type of development which is referred to in Part 1 of Schedule 5 of the Regulations.

8.3.2 The subject site was the subject of Appropriate Assessment Screening. It was stated that Clara Bog Site Code : 000572 is located 2.5km from the site. It was concluded that an AA was not required as the quarry is not directly or indirectly connected with and European site and significant impacts to the European site were unlikely. There was no Appropriate Assessment Screening carried out regarding the importation of materials to the site, and possible potential impacts to ground and surface water which may or may not impact on a Clara Bog.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the importation of inert soil for the purposes of site restoration, and restoration works using imported inert soil, in respect of a quarry at Cartron, Durrow, Co. Offaly is or is not development or is or is not exempted development:

AND WHEREAS Trevor Hinch of Hinch Plant Hire, Mountmellick, Co Loais requested a declaration on the said question from Offaly County Council on 30th of November 2017 and the Council referred a determination on the issue from An Bord Pleanála on the 20th of December 2017;

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

(a) Section 2(1) of the Planning and Development Act, 2000, as amended,

(b) Section 3(1) of the Planning and Development Act, 2000, as amended,

(c) Section 4(1)(a) and Section 4(4) of the Planning and Development Act, 2000, as amended,

(d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,

(e) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and

(f) the planning history of the site:

AND WHEREAS An Bord Pleanála has concluded that -

(a) the works the subject of this referral are development within the meaning of Sections 2 and 3 of the Planning and Development Act 2000, as amended,

(b) the subject works involves the importation and deposition on land of inert soil (whether or not it is deemed to comprise a waste or a by-product) and therefore, pursuant to section 3(2)(b)(iii), the use of the land has materially changed and this constitutes development,

(c) the Substitute Consent granted under reference SU 19 SU0095 by An Bord Pleanála and the conditions of that consent were not complied with to the satisfaction of the planning authority, and

(d) the works are not directly connected with or necessary to the management of a European Site in accordance with article 6(3) of the Habitats Directive., it has not been established, beyond reasonable scientific doubt, that the subject works would not have significant effects on this European Site and, in the absence of a Natura impact statement or Appropriate Assessment Screening, that the subject works would not have adverse effects on the integrity of the European Site. Therefore, the works are not exempted development in accordance with Section 4(4) of the Planning and Development Act 2000, as amended:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the importation of inert soil for the purposes of site restoration, and restoration works using imported inert soil, in respect of a quarry at Cartron, Durrow, Co. Offlay is development and is not exempted development.

Caryn Coogan
Planning Inspector

24th of May 2018

