



An
Bord
Pleanála

Inspector's Report ABP-300817-18

Development	Erection of an aggregate storage shed and all associated ancillary facilities. Gross floor space of proposed works 886.4sqm.
Location	Ardgaineen, Claregalway, County Galway
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	17/1590
Applicants	Harrington Concrete & Quarries
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Corrandrum District Residents Association
Date of Site Inspection	25 th June 2018
Inspector	Dolores McCague

1.0 Introduction

- 1.1.1. Another development proposed at this location is currently before the Board:300740.

2.0 Site Location and Description

- 2.1.1. The site is located Ardgaineen, Claregalway, County Galway, a rural part of east Galway c.11km southwest of Tuam and c.12.75km northeast of Galway City.
- 2.1.2. The quarry is accessed via a local road (L6182) which connects to the N17 c.1.25km to the east of the site entrance. A national school adjoins the local road at the junction with the N17.
- 2.1.3. There is significant one-off housing in the area.
- 2.1.4. There is an existing quarry at this location and various items of plant are located within the quarry void, including asphalt plant and concrete manufacturing plant. The site is within the quarry void close to an asphalt plant.
- 2.1.5. The site is given as 0.09ha.

3.0 Proposed Development

- 3.1.1. The proposed development is the erection of an aggregate storage shed with a gross floor area of 886.4sqm, and all associated ancillary facilities.

4.0 Planning Authority Decision

4.1. Decision

- 4.1.1. Galway County Council decided to grant permission subject to 6 conditions, including:
- 4 the shed hereby permitted shall be utilised for the storage of existing extracted and stockpiled aggregate on site unless otherwise agreed in writing with the planning authority and shall not be construed as a permission for any intensification of use of the site for quarrying or any other purpose.
 - 6 development charge of €12,400.

4.2. **Planning Authority Reports**

4.2.1. Planning Reports

The purpose of the shed is to store the aggregate on site which is currently stockpiled and exposed to the elements. The structure will reduce the energy required to dry the material and will reduce the air pollution associated with dust. Recommending permission.

4.2.2. Other Technical Reports

There are no other technical reports on the file.

4.3. **Third Party Observations**

4.3.1. Third party observations on the file have been read and noted.

5.0 **Planning History**

300740 Appeal currently before the Board against the planning authority's decision on reg. ref. 17/1403, to grant permission for upgrading an existing quarry entrance comprising of new entrance gate, stone wall, signage & road markings and all associated ancillary site development works.

07.SU.0053, PA Register Reference Number: QSP55, substitute consent granted by the Board, 17/02/2017.

Quarry Review:

QSP55: A notice issued from Galway County Planning Authority on 03/08/12 under section 261A(3)(a). It was determined that section 261A(2)(a)(i) applies and it was decided that section 261(3)(a)(i) and (ii) were fulfilled. The owner / operator was directed to apply to An Bord Pleanála for substitute consent under 177E accompanied by a remedial environmental impact assessment. The determination and decision were confirmed by the Board on review (02/05/13).

Quarry Registration:

QV0056 / QC2193: The quarry was registered under section 261 of the Act, as amended, and the planning authority decided to impose conditions on the quarry under section 261. The quarry owner / operator appealed conditions nos.2 and 6 but subsequently withdrew the appeal. The total landholding area was stated as 31.8ha, the area extracted as 7.7ha and the total extraction area as 22 ha in a further information response received 21/09/05.

15/342: Permission granted by Galway County Council to Harrington Concrete & Quarries for the erection of an aggregate storage shed and all associated ancillary facilities (800-sq.m GFA).

Reg.ref.13/575: Permission granted by Galway County Council (11/11/13) to Harrington Concrete & Quarries for the erection of an aggregate storage shed and all associated ancillary facilities (1104-sq.m GFA).

Reg.ref.65913: Permission granted by Galway County Council to Frank Harrington Ltd for retention of existing aggregate stockpiling area in the townland of Ardgaheen.

PL7/5/088667 / Reg.ref.65144: Permission for the erection of a concrete batching plant for production of readymix concrete, concrete blocks and stock piling area, granted on appeal (30/11/92).

PL7/5/088665 / Reg.ref.65141: Permission for the erection of a macadam / asphalt plant, office building and a septic tank, granted on appeal (30/11/92).

PL7/5/088562 / Reg.ref.65041: permission for retention of stone crushing and screening plant and stock piling areas at Ardgaheen, granted on appeal (30/11/92).

Reg.ref.24002: Permission granted (22/07/77) to Mr Thomas Herson to open and operate a rock quarry.

Enforcement:

EN 16/212 warning letter (now withdrawn).

6.0 Policy Context

6.1. Development Plan

- 6.1.1. Galway County Development Plan 2015-2021 is the operative plan relevant provisions include support for quarrying subject to appropriate controls, noting that County Galway has extensive deposits of material which is a resource for the building industry. It is recognised that the winning and processing of these materials are key factors in the economic life of the county.
- 6.1.2. Other relevant provisions include those directed at the protection of biodiversity and protection for European sites.

6.2. Natural Heritage Designations

- 6.2.1. Lough Corrib SAC site code 000297, is the nearest Natura Sites located some 2.3 km away.

7.0 The Appeal

7.1. Grounds of Appeal

The third party appeal against the decision to grant permission has been made by Stephen Dowds Associates on behalf of Corrandrum District Residents Association.

The grounds includes:

The planning history is set out.

The only previous planning permission for quarrying on the site is 24002 and that was restricted to the limited area (3.8ha) delineated on the plan attached.

The quarry was registered under S 261. The area registered 30.24ha was much more extensive than the planning permission.

The quarry owners were served with a notice under S 261A requiring that activity cease and that an application be made for Substitute Consent.

As the Board will be aware substitute consent only covers quarrying that had already been done and does not permit any subsequent quarrying. This led to an application to An Bord Pleanála for further quarrying 07QD0014, which was refused; and an application to Galway Co Co for quarrying, 17/363, which was withdrawn; and there is therefore no live permission for quarrying on this site. Any quarrying carried out after confirmation of the notice requiring an application for Substitute Consent, that is after 2/05/2013, is unauthorised.

It is noted that the area covered by the substitute consent process exceeds that of the original quarrying planning permission. This is referred to in some detail in the further information lodged by the applicants under 17/1403. This concluded that there was 3.9ha of quarry which never had the benefit of planning permission. The third parties find it difficult to understand how this area crept into the substitute consent process when it never had a planning permission in the first place. This is contrary to the terms of S261A.

The planning permissions for the other related works (concrete batching, asphalt production etc) are still live and valid. However, some of these – namely the batching plant (65144) and the asphalt plant (65141) – are subject to conditions tying them to use crushed stone only from the quarry on site, so if the quarry must close, then so must they.

The current application is for a shed for the storage of aggregate. In permitting these works, it is contended that the council is permitting works that facilitate an unauthorised and illegal operation.

There is no permission on this site for quarrying. The original permission 24002 is now of no more than historic interest, because the quarry was subject to a notice under S261A. Following service of that notice, the developers did succeed in obtaining substitute consent for the quarry but the substitute consent only regularised past activity. The applicants are well aware of this as they subsequently

submitted applications to the Board and to the Council for future quarrying: one of which was refused and the other withdrawn.

The basis of the decision per planner's report is that the shed is to store aggregate already stock piled on the site and that this will result in an energy saving obviating the need to dry the material and will also reduce dust. There should be no aggregate on site and any aggregate that is there, unless it has been on site a long time, was obtained without planning permission. The grounds has attached a list of dates on which blasts have occurred. They contend that the material was obtained without the benefit of planning permission.

They attach a copy of a warning letter.

7.2. Applicant Response

- 7.2.1. Earth Science Partnership (Ire) Ltd Consulting Engineers, Geologists & Environmental Scientists have responded to the grounds of appeal on behalf of the first party. The response includes:

Planning history is listed.

The Section 261 A assessment is referred to including the inspector's report which concludes that an area of approximately 3.9ha outside the original 3.8ha has been excavated which does not have the benefit of planning permission. Prior to submitting the substitute consent application, the first party sought to clarify the area to be included in the substitute consent application and as part of the remedial EIS a topographical survey was undertaken by Earth Science Partnership. This was drawn up and the relevant planning permissions overlaid on a drawing and submitted to the Board for clarification. The Board reviewed the request for clarification and confirmed that the area to be included as part of the substitute consent application should include 4.35ha which relates to the area of the quarry which was subject to extraction and which did not have a relevant permission attached. The substitute consent application was based on 4.35ha. The substitute consent application, SU0053, was not decided prior to the enactment of SI no 301 of 2015, which permits quarries to submit an application to the Board for further development of their quarry subject to compliance with Section 37L. A Section S37L application was made,

QD0014, and assessed by the Board in tandem with the substitute consent application.

Two recent applications for aggregate storage sheds were granted in 2013 and 2015: 13/575 and 15/342.

A planning application was recently submitted, 17/1403, for the upgrading of existing quarry entrance, now subject to an appeal.

Quarrying is currently taking place in the authorised areas, with extraction within the 3.8ha area authorised by planning permission Ref 24002; with ancillary activities such as processing, concrete and asphalt production being carried out under various permissions granted. There is no limit on the permission in the area authorised by planning permission Ref 24002 and significant reserves remain in this area.

A warning letter was received, followed by a site visit from Galway Co Co Planning Enforcement. The quarry was found to be operating within its planning permission and a further letter is cited in the submission and a copy enclosed.

Re. contention that residents have experienced major problems. Environmental monitoring for noise and dust is undertaken on a regular basis and results are within the recommended guideline values. Peak particle velocity and air over pressure associated with all blasting events is monitored and readings are within the recommended guideline values.

Tobin Consulting Engineers were retained to carry out an assessment of traffic levels associated with the quarry and assessed that traffic associated with the quarry during peak times operates within the carrying capacity of the L6182 and represents less than 20% of total traffic on the road between 7 am and 7 pm, which is relatively low.

Re. facilitating an unauthorised development – the quarry is authorised.

Re. that the area included as part of the substitute consent application is suggested to be incorrect – the area was clarified with the Board prior to submitting the application.

Re. that there is no live permission – the permission 24002 is valid and authorises the extraction of rock from the quarry.

They agree with the third parties that the substitute consent was only for the previous quarrying and does not authorise and future development. There is no extraction taking place within the area the subject of substitute consent.

Re. that the original permission 24002 was for a very limited area and the quarry has long since expended beyond that – permission 24002 although reviewed under Section 261 and Section 261A was not for a limited period and there are significant reserves of material remaining in this area which the applicant proposes to extract.

Re. the quarry was subsequently served with a notice under Section 261A (QSP55 / SU0053) which had the effect of ending the original permission. This is incorrect, the quarry was reviewed under Section 261A and the areas which were unauthorised at that time were the subject of an application for substitute consent. The area which was to be included as part of the substitute consent application was confirmed with the Board prior to submission of the application.

Re. the substitute consent does not permit future activity. The first party agrees, however, the third party is incorrectly applying this to areas which were outside the substitute consent application area and which are authorised for quarrying.

Reference to later attempts to secure permission for continuing quarrying is of no relevance.

Re that there is no need to build an expensive shed to facilitate short term storage of material or the restoration of this unauthorised quarry. The need for the storage is reiterated.

A copy of a letter from Galway County Council's Enforcement Officer, Planning Enforcement to the first party is attached to the response. It states 'having reviewed all relevant documents the PA have decided that there is no justification to proceed further with enforcement procedures based on complaints as received, following discussion meeting (including documents received on the 10/01/2018) and following the combined site inspection with you on the 10/01/2018. Planning Enforcement have decided not to continue with enforcement proceedings and Planning Authority will not be taking any further action in this matter.'

7.3. Planning Authority Response

7.3.1. The Planning Authority have not responded to the grounds of appeal.

8.0 Assessment

8.1.1. The issues which arise in relation to this appeal are: appropriate assessment and use of the shed, and the following assessment is dealt with under those headings.

8.2. Appropriate Assessment

8.2.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect, individually or in combination with other plans or projects, on a European site.

8.3. Use of the Shed

8.3.1. The intended purpose of the shed is to store aggregate which is currently stockpiled and exposed to the elements. The aggregate is dried prior to mixing with bitumen. The proposed structure will reduce the energy required to dry the material and will reduce the air pollution associated with dust.

8.3.2. It is stated that permission was previously granted for two sheds and this application is intended to amend the location and design of the shed proposed as part of planning application p13/575.

8.3.3. The grounds of appeal contends that the use of the shed is associated with unauthorised quarry extraction. It is argued that there is no permission for quarrying at this location.

8.3.4. This is contested by the first party who states that the extraction has permission under register reference 24002 and that the area to which the permission applies and the area to in respect of which substitute consent was required, were reviewed by the Board in response to a request for clarification, prior to submitting the substitute consent application. The area where rock is currently being extracted was not part of the substitute consent application site, but was part of site 24002.

8.3.5. In my opinion the proposed shed, which is not located within site 24002, is nevertheless to be used for aggregate extracted from site 24002 and on that basis is acceptable. For clarity, a condition should be attached to any grant of permission tying the use of the shed to authorised quarrying at this location.

9.0 Recommendation

- 9.1.1. In the light of the above assessment I recommend that planning permission be granted for the following reasons and considerations and in accordance with the following conditions.

10.0 Reasons and Considerations

- 10.1. The proposed shed is intended for use as part of quarrying and ancillary operations at a site where the quarrying currently being carried out is within a site where quarrying is permitted under planning permission reg. ref. 24002 and it is considered that subject to the following conditions, the proposed development would accord with the County Development Plan, would not unduly impact on the amenities of the area, and would accordingly be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following condition. 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. The shed hereby permitted shall be used for the storage of existing material stockpiled on site or material extracted from an extraction area, adjacent to the subject site, which has the benefit of planning permission, and shall not be used for any other purpose.
Reason: In the interest of clarity.
3. When quarrying on this land has ceased the building shall be removed

within a reasonable time, as part of the reinstatement of the lands.

Reason: In the interest of amenity.

4. The colour of the cladding shall be subject to the written agreement of the planning authority prior to the commencement of development.

Reason: In the interest of amenity.

5. The developer shall pay to the planning authority a financial contribution of €12,400 (twelve thousand four 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.

Planning Inspector

19th July 2018

1 Photographs

2 Extracts from the Galway County Development Plan 2015-2021