



An  
Bord  
Pleanála

## Inspector's Report 302050-18

### Development

Permission for retention of the use of imported aggregates for the manufacture of ready-mix concrete, the construction of a truck wash-out facility associated landscaping & site works.

### Location

Ballingurteen & Gortnadihy, Clonakilty, Co. Cork

### Planning Authority

Cork County Council

### Planning Authority Reg. Ref.

17/00627

### Applicant(s)

Keohane Ready-mix Ltd.

### Type of Application

Planning permission

### Planning Authority Decision

Grant permission

### Type of Appeal

Third Party

### Appellant(s)

Tim O'Sullivan

Derry O'Sullivan

### Observer(s)

None

### Date of Site Inspection

3<sup>rd</sup> October 2018

## **1.0 Site Location and Description**

- 1.1.** The site is located approx. 12km to the northwest of Clonakilty Town. It is accessed by means of the R599 (Clonakilty – Dunmanway) and a local road which branches off the regional road in a northerly direction. The appeal site comprises an existing quarry and concrete manufacturing plant in the ownership of Keohane Readymix Ltd.
- 1.2.** The site is accessed from the local road L4635 at a point which is approx. 500m to the north of the Y-junction with the Regional Road. Apart from the access point, the site does not have any frontage to the local road. There is a private lane which bounds the southern boundary of the site, and this leads to a farmhouse of a third party not connected with the application or appeal. The property of one of the appellants, Derry O’Sullivan, is directly adjacent to the north/northwest of the site and that of the other appellant is located further to the north, on the opposite side of the local road.
- 1.3.** The site area is given as 4.437ha. It is an operating concrete manufacturing plant within a partially worked out gravel quarry with silos, stockpiles, open storage areas, settlement lagoons, wheel wash areas and a site office. The submissions indicate that the site has been in operation as a gravel pit since the early 1990s, with associated washing, grading and storage of concrete products. There is an area to the north east which has been fully worked out and has been restored to agricultural use. A local stream (Bunanumera) runs along the western boundary of the site. There is a fuel banded storage area and a wheelwash area to the south of the concrete recycling area, and the offices/canteen is located close to the southern boundary. Wastewater from the site discharges from the site to a septic tank and percolation area to the south.

## **2.0 Proposed Development**

- 2.1.** It is proposed to continue the importation of aggregates for the manufacture of ready mix concrete and concrete products, to continue the processing of imported aggregates, to retain certain elements of the current operation and recent restoration

works, to complete and undertake further restoration works and to upgrade some of the existing infrastructure on the site. It is stated that the site has been used as a gravel pit since 1991 and that the plant has been used to process imported materials since 2002.

**2.2.** The elements that are proposed to be retained may be summarised as follows:

- Import and process aggregates for the manufacture of concrete and concrete products. This includes a proposal to install facilities for the crushing and recycling of concrete to produce aggregates.
- Construction of a truck wash out facility. This includes reinforced concrete holding and water recycling tanks.
- Retention of some areas of restoration and carrying out of further restoration in two phases including landscaping and site works.

The development had initially included a proposal to import waste concrete for recycling. However, it was clarified during the course of the application that this element of the proposal was no longer included in the proposed development.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to grant permission subject to 9 no. conditions. These were generally of a standard type and included the following conditions of note:-

- Condition 2 prohibited the importation of waste concrete for recycling and re-use on the site.
- Condition 3 required the landscape restoration plans to be implemented in accordance with the FI submitted and to be overseen by the Project Ecologist.
- Condition 4 required the implementation of the wheel wash facilities at the site and also at the Kilonane site, which is one of the main suppliers to the appeal site. It required that all trucks leaving the Kilonane site must pass through the wheel wash.

- Condition 9 prohibited the accumulation of end-of-life metal equipment and waste materials on site and that materials exported from the site for recovery/recycling/disposal shall be managed at an approved facility.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The Area Planner's report (17/11/17) noted that the site is located in a Transitional Rural Area. It was also noted that submissions had been received from four third parties in which various issues were raised. These related to claims regarding unauthorised uses such as making of concrete blocks, importation of gravel, reopening of closed quarry, as well as issues such as noise, heavy traffic, flooding, drainage, hours of operation, right of way and site notices.

The Area Planner referred to the reports of the Area Engineer, the Heritage Officer and the Environment Officer, each of which had recommended deferral on the basis of the need for further information on various matters. The Area Planner was in general agreement with these recommendations. It was, however, considered that the production of concrete products was acceptable in principle, but that the submitted drawings were confusing and lacked sufficient information to make a decision.

Deferral was recommended pending receipt of further information. A request for FI was issued on 17/11/17 in respect of the following matters:-

1. Ecology of Bunanumera Stream, including existing baseline data and how the stream is currently/would be affected by the proposed development.
2. Details of the surface water collection system, including whether discharges will be to existing sump system or proposed lagoons.
3. Confirmation that the wastewater treatment system is adequate and that it does not cause/contribute to negative impacts on the adjoining stream.
4. Clarification of the landscaping which has already been undertaken together with further details on the areas to be subject to restoration.
5. Reinstatement works carried out recently to be clearly shown on drawings. Clarification is also sought regarding the various phases, such as Phase 1

“Green Area” which is located on the Truck Wash Out Area and details of the existing wheel washing facilities should be provided.

6. Truck washing area – further details required with regard to overflow pipe and point of discharge for same.
7. Concrete crushing/recycling facility – if importing concrete from outside the site for crushing/recycling, this would constitute a waste recycling facility under the Waste Management Act 1996, which would require a waste facility permit. Further details were requested regarding the source of the material as well as details of the crushing activity such as equipment, volumes of concrete, storage facilities, measures to prevent contamination of surface water or dust/noise emissions. Further information was also required in respect of noise generation and noise sensitive locations, as well as proposed mitigation measures.
8. Noise and nuisance from increased traffic – further details required, particularly with reference to any other similar operations by the applicant elsewhere. Justification for the location of a crushing facility at this location.

### **3.2.2. Other Technical Reports**

Area Engineer’s Report – (13/11/17) – Deferral was recommended on the basis of the issues outlined in FI request above. In addition, it was stated that the Engineer had visited one of the other sites owned by the applicant and that there were concerns regarding the lack of an operational wheel wash and the impact on the local road network.

Environment Unit (9/11/17) – FI required regarding the nature and source of the “waste” to be recycled, details of the crushing activity, details of noise levels and potential impacts on noise sensitive locations, together with proposals for mitigation, and details of surface water collection/discharge.

Ecologist (10/11/17) – it was noted that at present, surface water is collected from the batching plant in a series of sumps and discharges to a tank, which overflows to the stream. The proposed system proposes that it be diverted to two new settlement lagoons, from which it will flow by gravity to a settlement tank and will then be discharged to the stream. Concern was expressed regarding the potential impact on water quality in the stream and further information in respect of the physio-chemical

nature of the waste water and baseline was sought. FI was also sought in respect of the wastewater treatment system and the restoration plans.

Archaeologist (28/10/17) – Holy well CO121-042 located close to boundary. Any ground works need to be kept well away from this archaeological site.

### **3.3. Prescribed Bodies**

IFI (25/10/17) – inadequate information regarding discharge to local stream or of any potential abstraction from the watercourse. If permission is granted, a condition would be sought prohibiting any interference with, bridging, draining or culverting the stream without IFI permission.

### **3.4. Third party observations**

Four submissions received including one from each of the two appellants. The issues raised are summarised in pages 1-2 of the Area Planner's initial report (17/11/17). Much of the content of the submissions relate to the unauthorised nature of the works, given the general understanding that the quarry has been terminated and the failure of the applicant to abide by the terms of previous permissions. Specific issues also relate to drainage and flooding, unacceptable noise levels and the likely increase in noise levels associated with the proposed crusher and increased traffic (HGVs), the unauthorised use of the neighbour's drain, and encroachment/use of a right of way without consent.

### **3.5. Response to Further Information Request received on 21<sup>st</sup> May and 14<sup>th</sup> June 2018**

1. Ecology of Bunanumera Stream – Detailed physio-chemical assessment carried out by Dixon Brosnan submitted as unsolicited FI on 14/06/18. This concluded that the quarry is not having any significant impact on water quality in the stream. Report from Heritage indicated no further issues.
2. Surface water collection system – revised plans indicate that all surface water is now to be discharged to the drainage system on site. Water will be

discharged to the settlement tanks and waste water will be recycled as much as possible. Unsolicited FI submitted on 14/06/18. Report from Heritage indicated no further concerns.

3. Water treatment system – Revised proposal is that it is no longer proposed to discharge waste water to the stream. No further issues raised in Environment Report.
4. Landscaping for which retention is sought and proposed restoration for areas where quarrying is still ongoing – the landscaping/restoration plan was considered to be acceptable. This included a “Landscaping Plan” together with an aerial photograph, but with correct labelling, (plans submitted with original application were incorrectly labelled). Heritage officer requires condition stating that landscaping plan to be implemented within 6 months of any permission under the supervision of the project ecologist.
5. Clarification of reinstatement works carried out – a layout plan has been submitted as unsolicited FI “Restoration Plan” which adequately shows the existing restoration areas and future gravel resources along with existing/future tree planting. Area Engineer has no further issues.
6. Truck washing facility – Area Engineer has no further issues subject to conditions.
7. Concrete crushing facilities – Applicant no longer proposes to undertake this activity as part of this application. The noise related issues are therefore no longer of relevance. It was clarified that unused wet concrete is the source of the recycling which is to be used in the manufacture of large concrete products. It was considered that as this is not classified as waste concrete, but as unused concrete product, the process is not waste concrete recycling. The details were considered to be acceptable. A noise survey carried out by Dixon Brosnan was also submitted.
8. Noise from increased traffic – no adverse impacts identified as a result of the noise survey carried out by Dixon Brosnan (14/06/18).

It was further noted that the applicant had submitted a revised Appropriate Assessment Screening Report carried out by Dixon Brosnan. This indicated that as the applicant has proposed a new surface water discharge system which will prevent discharge to the adjoining stream, there is no risk of a direct adverse effect on either habitats or species for which the Natura sites' qualifying interests were selected. The FI was deemed to be acceptable. The Heritage Officer was satisfied with these conclusions.

#### **4.0 Planning History**

**91/323** – Planning permission granted for extraction of gravel, garage offices, weigh bridge, septic tank, concrete products manufacture, storage of concrete products and landscaping. It also included permission for construction of gravel sorting, crushing, washing plant and settlement ponds, for retention of the entrance, construction of signage, landscaping and associated site works. This permission was granted subject to 32 conditions, the most relevant of which are

Cond.11 - All plant and equipment to be removed from the site within three months of the cessation of gravel extraction. Reason – in the interest of visual amenity.

Cond. 12 – The ready-mix plants shall be used for processing material extracted within the site boundaries. Reason – To safeguard the amenities of the area

Cond. 19 – The site shall be reinstated and landscaped to the Council's satisfaction and in accordance with a comprehensive scheme which shall be submitted to and agreed with the P.A. and shall provide for

- (a) The replacement of waste material and top soil to make land suitable for agriculture or recreational or other purposes and consistent with the surrounding area.
- (b) Agreements for the regrading of all vertical faces, the moulding of surface levels, the renewal of natural surface and subsoil drainage if necessary and the seeding and planting of the site.

Reason – in the interest of visual amenity and of the proper development of the site.



**00/4732** – permission granted subject to conditions for construction of two-storey offices and ancillary facilities. The Area Planner/Senior Planner had, however, recommended refusal on the basis that it would involve intensification of a commercial use in an unserviced rural area.

**01/5878** – permission granted for construction of garage, repair workshop, company offices and retention of entrance and associated site works. Condition 2 required that the development comply with the terms and conditions of 91/323 which governs the overall development of the lands of which the site forms part. This proposal was intended to supersede that granted under 00/4732. It should be noted that the Area Planner/Senior Planner had recommended refusal on the basis that it would involve an intensification of a commercial use in an unserviced rural area.

**Enforcement** – Enforcement files were opened and closed a number of times during the period 2010 to 2017. Following a Warning Notice, the documentation on file indicates that the developer had responded to the P.A. in 2013 confirming that sand and gravel deposits were exhausted in 2002. An Enforcement Notice was issued on 19/08/14 which required immediate cessation of the importation of gravel and manufacture of concrete. It also required the removal of all plant, equipment, imported gravel and concrete products from the site within 3 months and the removal of all waste materials, scrapped vehicles/plant, concrete ponds and concrete by-products within 3 months. The Notice also required reinstatement of the site for use as agricultural purposes within 6 months. (Note these requirements essentially relate to compliance with conditions 11, 12 and 19 of 91/323).

**Ombudsman** – Letters from the Ombudsman to the appellants are included with one of the grounds of appeal (Appendix 4 Derry O’Sullivan). Reference is made in these letters to a report by the P.A. to the Ombudsman following a complaint from the appellants regarding lack of progress on the enforcement case. This had indicated that the P.A. was statute-barred (in 2013) from taking enforcement action against allegations of non-compliance with the terms of 91/323, but would rely on Condition 2 of 01/5878 as the statute of limitations did not expire until 22/08/14. It had further been stated that the P.A. intended to focus on non-compliance with Conditions 11, 12 and 19 of 91/323, as this was extended by Cond. 2 of 01/5878. However, it was concluded by the Ombudsman (August 2015) that the P.A. has discretion as to

whether to take Enforcement Action, that in this case the actions of the Council were reasonable and that there was no maladministration.

## **5.0 Policy Context**

### **5.1. Quarries and Ancillary Activities Guidelines for P.A. s 2004**

- 5.1.1. These Guidelines provide guidance on planning for the quarrying industry and ancillary activities. They include advice relating to best practice/mitigation in respect of issues such as noise, vibration, dust/air quality, ground water and surface water, ecology, landscape, traffic management, cultural heritage and waste management.

### **5.2. Cork County Development Plan 2014**

The site is located in a **Transitional Rural Area, Chap 4, Rural Coastal & Islands**. This type of area is described (4.3.9) as being more distant from the major urban areas and the associated pressure from urban generated housing. Although population concentrations are lower, the population base is more stable with less evidence of decline. These areas also exhibit characteristics of a weaker economic structure and higher levels of environmental sensitivity.

**Chap. 6 Economy & Employment** states (6.3.2) that a key element of the employment strategy is to concentrate new economic and employment development primarily in the main towns, including Clonakilty and Dunmanway. Section 6.7 states that Agriculture, fishing and forestry are the core activities of the economy of the County's rural areas. Business Development in rural areas is encouraged under certain circumstances (6.9)

Relevant policies include:

**RCI 7-3 Small scale rural business/tourism initiatives** – encourage small scale rural business/tourism initiatives such as renovation of barns, outhouses or other existing structures for owner run agri-tourism/rural business etc. subject to normal planning considerations

**EE 9-1 Business Development in Rural Areas** – the scale and nature of the development must be appropriate to the rural area, in an area of low environmental

sensitivity, would enhance the strength and diversity of the local rural economy, would not adversely affect the character of the rural landscape, and the local road network should have capacity to accommodate additional demand together with safe access to the public road network.

**EE 12-1 Safeguarding Mineral Resources** – protect County’s natural mineral resources.

**EE 12-3 Impacts of Mineral Extraction** – minimise environmental and other impacts of mineral extraction. Regard should be had to visual impacts, methods of extraction, noise levels, dust prevention, protection of rivers, lakes, European sites etc, impacts on residential and other amenities, impacts on road networks, road safety, phasing, re-instatement and landscaping of worked sites.

**GI 6-1 Landscape** – preserve and enhance visual and scenic amenities including discouraging developments which would require the removal of extensive amounts of trees.

**HE 2-3** – Protect Biodiversity outside Protected Areas.

**HE 3-1 Protection of Archaeological Sites** – Safeguard sites and settings of archaeological interest and secure the preservation of all archaeological monuments.

**ZU 2-5 – Non-conforming Uses** – generally permit reasonable intensification of extensions to and improvements of premises accommodating non-conforming uses within the existing curtilage of the development subject to normal planning considerations.

### **5.3. West Cork Municipal District Area Local Area Plan 2017**

- 5.3.1.** Clonakilty is the main town in the Municipal District LAP area and is the main centre of population and a significant employment centre. Dunmanway is also a designated town and is located 20km to the north of Clonakilty. It is a market centre and the Plan seeks to strengthen its role as an important centre of population, employment, recreation, amenity and services.
- 5.3.2.** Both Ballingurteen and Rossmore are designated as ‘Villages’ in the LAP. The vision for each of these Villages is to encourage development within the village, to promote sympathetic development in tandem with the provision of services and the

preservation of the unique character of the settlement. Business development can be accommodated within the settlement boundary on suitable sites subject to normal proper planning and sustainable development criteria.

#### **5.4. Natural Heritage Designations**

Bandon River SAC (002171) approx. 10km to northwest.

Clonakilty Bay SAC (000091) approx. 12km to southeast.

Clonakilty Bay SPA (004081) approx. 12 km to southeast.

Kilkeran Lake and Castlefreke Dunes SAC (001061) approx. 12km to south.

Galley Head to Duneen Point SPA (004190) approx. 15km to southeast.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

Two third-party appeals have been submitted. The first appeal is from Tim O'Sullivan and the second is from Derry O'Sullivan. The main points raised may be summarised as follows:

- **Intensification of unauthorised development** – it is alleged that the original permission in 1991 was temporary and developer was restricted to using material extracted from within the site in the manufacture of ready-mix. All equipment was to be removed within 3 months of cessation of gravel extraction, which it is claimed had ceased in 2002. An Enforcement Notice was issued on 19/08/14 but it was never pursued by the P.A. This was against non-compliance with Condition 2 of W/01/5878 and Conditions 11, 12 and 19 of W/323/91) and required, inter alia, immediate cessation of the importation of gravel and the manufacture of concrete/concrete products, and the removal within 3 months of all plant, equipment, imported gravel and concrete products from the site. The failure of the Council to take enforcement action was the subject of a complaint by one appellant to the Ombudsman, (details enclosed). The current application will make this a permanent operational plant, which

would intensify the unauthorised nature of the use and would be contrary to good planning.

- **Control of Noise and Dust** – there are currently no sound barriers or dust control measures in place. The noise levels for the survey are disputed as they do not represent times when the plant is in full operation with lorries arriving and filling the silos, hazard horns on etc. Noise barriers should have been constructed to the west and south. Development at the top of the hill will give rise to additional noise and dust from trucks travelling up and down the hill. No details of increased noise levels or dust emissions provided. No control measures or hours of operation proposed.
- **Traffic volumes will increase** – the extra volume of traffic will have a knock-on effect with increased noise pollution and increased traffic hazard.
- **Reinstatement not as stated** – part of the site has been reinstated since the Enforcement Notice was issued. However, the developer has also constructed wash-out facilities, several aggregate yards, and areas for the storing and making of concrete products without permission.
- **Deciduous trees** – These trees were planted on the boundaries and have resulted in a dull and negative environment.
- **Encroachment issues** – it is submitted that the developer is using one of the appellant's drains, which is frequently blocked due to activities on the site, and is also using lands in his ownership to access the site, without consent.
- **Operations at top of hill** – it is stated that the use was extended to the top of the hill, including the truck wash, which has caused overlooking and noise issues, resulting in loss of amenity.
- **Flooding** – the fields and roads adjoining the watercourse have been flooded due to blocking of the stream by the quarrying activities, by reason of silt, cement and dust. It is now proposed to keep discharge surface water within the site boundaries but there is no plan for heavy rainfall.

## **6.2. Planning Authority Response**

The P.A. responded to the grounds of appeal on 7<sup>th</sup> August 2018, stating that it had no further comments to make.

## **6.3. Response from First Party to grounds of appeal**

A response was submitted by the applicant on 14<sup>th</sup> August 2018. This was mainly in the form of a rebuttal of the grounds of appeal.

## **6.4. Response from Third parties to grounds of appeal**

Each of the third-party appellants responded on 15<sup>th</sup> August 2018. The responses mainly reiterated the grounds of appeal.

## **7.0 Assessment**

**7.1.** It is considered that the main issues arising from the appeal are as follows:-

- Extent of unauthorised development
- Intensification of use – nature of permitted use/proposed use for retention, traffic volumes,
- Residential amenity
- Surface water drainage
- Restoration and landscaping proposals
- Environmental Impact Assessment
- Appropriate Assessment

## **7.2. Extent of unauthorised development**

**7.2.1.** The authorised use of the site has been established by the planning authority as gravel extraction, the manufacture and storage of concrete products and landscaping and also included associated gravel sorting, crushing and washing plant with settlement ponds as well as company offices. There are a number of ancillary

facilities within the permitted development such as a weigh bridge, canteen, septic tank, fuel bund. The use/development is mainly restricted by the 32 no. conditions attached to 91/323, as amended by 01/5878. In essence, the original permission was granted for the duration of the period required for the extraction of the sand/gravel on the site and the manufacture/storage of concrete products was restricted to the processing of the resource emanating from the site. Thus, the intention was that upon cessation of the extraction on site, the use/development was to cease and the site was to be restored to agricultural or similar use.

**7.2.2.** The documentation and correspondence submitted with the grounds of appeal indicate that enforcement investigations were initiated in c. 2010, following complaints regarding the importation of aggregate and non-compliance with the conditions of the original permission, amongst other matters, and were closed in 2012 as the Council considered that it was statute-barred in respect of compliance with 91/323. However, it was confirmed that the Developer was in compliance with Conditions 3 and 4 (noise and dust) and that the alleged 'block yard' was implicit in the 91/323 permission. Subsequently, the P.A. decided to issue an Enforcement Notice (2014) on the basis of non-compliance with Condition 2 of 01/5878 (which required compliance with the governing permission). This decision appears to have been taken following firstly, a statement from Keohane's (2013) that sand and gravel deposits were exhausted in 2002, and secondly, a site inspection by the P.A. which had established that the equipment had not been removed, the manufacture of concrete products was ongoing, that raw materials were being imported onto the site and that the site had not been reinstated.

**7.2.3.** The correspondence on file indicates further that following the issue of the Enforcement Notice in August 2014, discussions ensued between the developer and the P.A. but no enforcement action was taken. However, the Ombudsman has found (August 2015) that the actions of the Council, including the decision not to pursue enforcement action, were reasonable, having regard to all of the circumstances of the case. It was concluded that no maladministration had occurred. I note from correspondence between the appellant and the P.A., that a further enforcement file was opened in 2017, which is likely to have resulted in the current application/appeal. This related to alleged unauthorised construction of a concrete walled structure and concrete tank-like structure and earthen berms.

**7.2.4.** Having regard to the foregoing summary of events, it is considered that the elements of the existing use which are unauthorised are the importation of aggregate/gravel for the manufacture of concrete products on the site; the construction of a truck wash-out facility complete with holding tanks of reinforced concrete; and the restoration of parts of the site which differ from the original restoration proposals/phasing plan. These elements are the subject of the retention permission application that is currently before the Board. The application had initially included a further proposal to import waste concrete and to provide a crushing facility to turn this into aggregate for use in the concrete manufacturing process. However, this was subsequently omitted as part of the FI submitted in May/June 2018. In this letter, it was clarified that the intention had been to bring in a mobile crusher to process the unused/waste concrete arising from the production process already on the site, which had been stockpiled there. However, this 'waste' concrete will now be transferred to a licensed waste facility instead.

**7.2.5.** The appellants have raised a further issue in relation to the authorised/unauthorised use of the site, which relates to the cessation of gravel extraction. They believe that the deposits have been exhausted and that upon cessation of extraction, the plant/equipment is required to be removed and the site restored to agricultural use. Although the Ombudsman refers to a letter from the developer to the P.A. dated 6<sup>th</sup> November 2013, which it is stated had confirmed that the deposits had been exhausted in 2002, the letter itself is not included in the documentation. Notwithstanding this, the evidence currently before the Board indicates that the deposits have not been exhausted. The drawings and aerial photographs submitted with the FI on 21<sup>st</sup> May 2018 clearly show that there is a strip of gravel resource in the central part of the site, which remains to be extracted. This is reinforced in the letter of the 21/5/18, which refers to a 'thin layer of gravel over the 'green area' and the 'purple area'. As this matter is the 'trigger' for removal of equipment and plant and restoration of the site to agricultural use, this is significant in terms of what constitutes the unauthorised nature of use on the site.

**7.2.6.** It is further noted from the letter received on 21/05/18 that all concrete production on the site is currently based on imported aggregates. The following paragraph from page 10 clarifies the matter:



“Aggregates imported to the site are the only materials used to produce concrete on the site. Concrete is manufactured in the batching plant and residual concrete product that is not used up at the end of the day is poured into moulds to create one tonne concrete blocks. These are then sold as concrete product....”

Thus, regardless of whether there is a continued presence of gravel for extraction on the site, which is a matter disputed by the third parties, the importation of aggregates for concrete production is a clear breach of Condition 12 of 91/323.

### **7.3. Intensification of use**

- 7.3.1.** The proposal to import raw material for manufacture of concrete products would effectively extend the life of the development on the site and is likely to intensify the use of the site. In the short term, while existing resources remain to be extracted, the importation of additional raw material has the potential to increase the level of intensity of activity on the site. In both the short and longer term, the importation of material would result in increased traffic movements to/from the site. It is acknowledged that this activity is ongoing, and the proposal is for its retention, but as stated above, it is currently unauthorised.
- 7.3.2.** The FI response (21/05/18) stated (page 8) that the production of 1,200m<sup>3</sup> of concrete generates c.492 truck movements per week, but acknowledged that production can increase to twice this rate, which would double the number of truck movements. The material would be imported from Shannonvale (75%) and Kilronan (25%), where the applicant has established quarry sites. The truck movements would also include the delivery of cement in articulated trucks (for use in concrete production) and the distribution of the product. It was further stated that there are 12 employees at the plant. The haul routes were provided in figures 6 and 7, from Kilronan, (c.8km to the northwest primarily along the R599) and from Shannonvale, (c.10km to the east primarily along the R599). Based on this information alone, it is considered that the use that is proposed to be retained would have a significant traffic impact on the local road network, which would also have impacts on the residential amenities of the area in terms of noise, dust and traffic.
- 7.3.3.** Condition 12 of the parent permission restricted the production of concrete to the material extracted from within the site boundaries. This condition, together with the

condition (11) requiring removal of the plant and equipment on cessation of gravel extraction, had the effect of restricting the life of the quarry/production use, restricting the scale of the production process and limiting its impacts on the surrounding area. The reason for condition 12 was to safeguard the amenities of the area. Whilst the evidence indicates that gravel extraction, and hence concrete production/storage, can continue on site under the previous permissions until such time as the resource is exhausted, the current proposal to allow the importation of raw material to 'feed' the production process, and essentially make it a permanent feature of the operation, would clearly be in breach of condition 12. It is difficult to see what justification there is for a grant of permission which would materially contravene this condition.

- 7.3.4.** Furthermore, the environmental impacts of the importation of such a large volume of material have not been fully assessed and no conditions were attached to the P.A. decision to restrict the volume of material to be imported or the nature/intensity/duration of the production process. Although little information is available on the file regarding the intensity of the original production process, which was based on the gravel extracted on site, the likelihood is that the current proposal would result in a significant intensification of the permitted use, with significant likely effects on the environment. It is considered that there is insufficient information upon which to base such an assessment.
- 7.3.5.** The truck wash-out area is a large structure comprised of reinforced concrete with underground holding tanks. It has been constructed at the interface between the area which has been restored to agricultural fields and the remaining gravel resource. The ground level at this part of the site is stated to be 81m OD, which compares with 70m OD at the entrance and batching area and 73m OD at the concrete recycling area. Effectively, it has extended the hard surface area within the site to an elevated part of the site, that would have otherwise formed part of the restoration area, with which it is contiguous. It is not clear why this location was chosen as there seems to be ample room elsewhere within the site to locate such a facility, such as within the concrete recycling area.
- 7.3.6.** The nature and extent of this facility, which comprises a large concrete apron with underground holding tanks, all made from reinforced concrete, would make it very difficult to reverse this development and incorporate this area into the restoration to agricultural use, as set out in the plans. It is acknowledged that the wash-out facility

(with holding tanks and drainage system), would result in environmental improvements in terms of site drainage, in that it would facilitate the recycling of used water and the direction of waste water to a disposal system that would eliminate the need for discharge to the nearby watercourse. However, the siting of the facility on an elevated part of the site, far removed from the batching plant and concrete recycling areas, and on a part of the site which has either been restored or will be restored, is inappropriate. It is considered that this feature could militate against the future restoration plans for the site once the gravel resource is exhausted. This factor together with the proposed importation of aggregate, could undermine the future removal of plant and equipment and the proper restoration of the site as originally envisaged under the parent permission.

**7.3.7.** The area adjacent to the truck wash out area is labelled 'Operational Storage' and is currently used for the open storage of scrap vehicles and miscellaneous items. The P.A. had raised concerns about this element of the overall use and had attached a condition (9) to its decision (17/627) prohibiting the accumulation of end-of-life equipment. However, the location of this open storage area adjoining the truck wash out area is likely to further militate against the restoration of this part of the site.

**7.3.8.** In conclusion, it is considered that the proposal to retain the importation of aggregates, together with the retention of the layout which includes the truck wash area and open storage area, both of which are sited within Phase 1 of the permitted restoration area, on an elevated part of the site adjoining the recently restored areas, would be likely to result in a significant intensification of the use. It would also prolong the life of the use of the site and undermine the future restoration proposals for the site. It is considered that the proposed development would materially contravene Condition 12 of 91/323.

#### **7.4. Residential amenity**

**7.4.1.** The site is located in a rural area where agriculture is the predominant activity and where there are a number of residential properties in close proximity to the site. The original permission was granted subject to conditions, a number of which controlled the environmental impacts of the development. For Example, Condition 3 required all operations on-site to be carried out in such a manner as to ensure that no odour or dust nuisance occurs beyond the site boundary. Condition 4 restricted noise levels at

the site boundaries to 50dBA between 0800 and 2000 hours and 40dBA at any other time.

- 7.4.2.** The developer submitted a Noise Survey (Dixon Brosnan) with the current application, (date stamped by P.A. on 22/05/17, 5/9/17 and 25/9/17). It is stated that the survey was undertaken on 17<sup>th</sup> October 2014, that daytime and night time levels were recorded at three monitoring locations (no plan of locations), and that there were no exceedances of a Daytime limit of LAeq 55dBA daytime and LAeq 45dB night time at these locations, which were close to noise sensitive receptors. A further Noise Survey (Dixon Brosnan) was submitted with the FI on 21/5/18. This stated that a survey was undertaken on 11<sup>th</sup> April 2018 and similar results were obtained. A plan of the monitoring locations indicates that N1 is to the south of one of the appellant's properties (on L4635 opposite site to west) and that N2 is located near a house to the southwest on the R599. The criteria used again related to those contained in the Quarry Guidelines, (albeit at 30 minute rather than 60 minute levels), rather than the criteria set out in Cond. 4 of the governing permission, which relate to the boundaries of the site.
- 7.4.3.** The Noise surveys and interpretation of results provide partial information on the impact of the proposed development on the surrounding area in terms of noise. There is no justification for the choice of monitoring locations, or for exclusion of properties which are closer or noise levels at the site boundaries. Although it is stated that the survey was undertaken at a time when the site was busy and fully operational, it is difficult to assess whether this means that all aspects of the proposed use were operational, or to enable a comparison of noise levels between the permitted use and that currently proposed to be retained. It is not clear whether the activities recorded on the day/time of the survey were truly representative of either a typical day or a worst-case scenario at the site. The noise levels recorded were 51dB at N1 and 50dB at N2. This would indicate probable non-compliance with the noise level restrictions in Condition 4 of 91/323.
- 7.4.4.** The appellants have disputed the results of the noise surveys and consider that the surveys were carried out at a time when no activity was occurring at the quarry site. The appellants have also claimed that the applicant has been blasting rock on the site. However, there is no evidence to corroborate these claims and neither the P.A. nor the first party has commented on them.

- 7.4.5.** Although the Noise Surveys give an insight into the noise generation on site at a point in time, and what the noise levels were at two NSLs, it is not a comprehensive assessment of the impact of the proposed development on the noise sensitive receptors in the vicinity of the site. The noise levels associated with the transport of material to the site and the additional product to be transported off site, and the impact of this in terms of noise and dust levels along the haul routes does not appear to have been assessed. The noise and dust impacts of placing the truck wash out facility on the top of the hill within the site have not been adequately assessed.
- 7.4.6.** It is considered that in the absence of either adequate evidence that the proposed development to be retained is in compliance with the conditions of the previous governing permission, or a Noise Impact Assessment which is based on appropriate monitoring of all sensitive receptors, includes all potential noise sources and identifies the likely impacts on these receptors, it is not possible to be satisfied that the proposed development would not give rise to an increase in noise levels emanating from the site which would seriously injure the residential amenities of properties in the area.

## **7.5. Surface water and waste water management**

- 7.5.1.** The P.A. sought further information regarding surface water collection and disposal. The information provided in the letter of the 21/5/18, together with the revised/additional drawings, indicates that the surface water drainage system on the site is to be enhanced and that it is no longer proposed to discharge treated water or concrete wash out water to the Bunanumera Stream. All water from the plant area will be discharged to the on-site surface water drainage system which includes existing and new settlement tanks, a buffer tank and two percolation areas. Water from the buffer tank will be discharged to the batching plant to be recycled and reused and the remainder will be pumped to a percolation area in the north of the site. Similarly, the new truck wash-out area is concrete paved and falls to a central sump. Trucks are washed out here with the concrete wash water draining through a series of settlement tanks which allows the solids to settle. There is an overflow pipe which discharges wastewater to a percolation area to the north of the concrete wash out area. Much of the wash-out water is recycled and the settlement tanks will be monitored and maintained with the removal of any sediment build-up.

**7.5.2.** It is considered that the proposed development would result in improvements in terms of the treatment and disposal of surface water and waste water. Firstly, the volume of water being discharged to the percolation areas would be significantly reduced due to the increased recycling of used water. Secondly, the provision of new settlement tanks adjacent to the western boundary will cease discharges to the adjoining stream. These measures will be beneficial to the environment, will avoid any significant effects on the water quality of the adjoining stream and will reduce the likelihood of flooding from the site.

## **7.6. Restoration plans and landscaping proposals**

**7.6.1.** The appellant has submitted revised proposals for the restoration and landscaping of the site. Figure 4 and Aerial Photo No. 1 (FI 21/5/18) show the areas that have been restored to date, which are to the north of the site. The area to the north-east is described as an area where gravels have yet to be extracted, and is currently in use for the storage of scrap metal, soil and stone unsuitable for quarry use and for concrete rubble. It is stated that the concrete rubble has been stockpiled over 20 years and will be transported off-site to a waste recovery facility. It is further stated that once the gravels have been removed from this area, the remaining soil and stones will be used to reinstate the ground and the area will be graded, top soiled and grass seeded for agricultural use. Landscaping proposals are shown on Figures 5A and 5B and more details of the proposed screening planting, hedgerow planting and woodland planting are given in Tables 1, 2 and 3, respectively.

**7.6.2.** The previous phasing plan seems to have been superseded by the current proposals and there is no timescale provided for either the completion of gravel extraction or for the restoration/landscaping of this area. As stated in section 7.3 above, the presence of the truck wash-out facility and storage yard, combined with the proposal to import gravel for concrete manufacture/storage on site, casts doubt on whether this area will ever be restored. The revised restoration plans do not include the batching plant and concrete recycling area.

**7.6.3.** It is considered that the revised restoration plans would facilitate the long-term use of the site for concrete manufacture and storage and as there are no firm plans for the cessation of gravel extraction, it is likely that little progress would be made in terms of restoration of the site in these circumstances. A grant of permission for the

proposed development is therefore likely to result in the postponement of any restoration plans for some time. If the Board was minded to grant permission, it could impose time frame restrictions. However, as the governing permission has already granted permission for the extraction of gravel and associated concrete manufacture until such time as the gravel is exhausted, it may not be possible to put a time limit on gravel extraction.

## **7.7. Environmental Impact Assessment**

- 7.7.1.** The existing, permitted development relates to the extraction of gravel and the manufacture of concrete and concrete products on a site with a stated area of 4.437ha, and the proposed development involves the importation of aggregate for the continuation of concrete manufacture on the site. Gravel extraction would also continue at the site. Thus, the nature of the use falls within Class 2(b) of Part 2 of Schedule 5, 'Extraction of stone, gravel, sand or clay where the area of extraction would be greater than 5ha'. However, as the site is under 5ha in area, it is sub-threshold and has not been subject to EIA to date. The proposed development, however, introduces the importation of raw materials which is likely to result in intensification of the development already granted. Class 13 of the same Schedule requires an EIA in respect of any change/extension of a development already authorised which would result in an increase in size greater than 25% or an amount equal to 50% of the appropriate threshold. It is not clear from the information submitted with the application and appeal whether this would be the case. It is considered, therefore, that a Preliminary Examination is required.
- 7.7.2.** Having regard to the nature and extent of the activities permitted on the site, many of which generate emissions such as noise, dust, wastewater, visual and traffic impacts etc., it is considered that the introduction of additional activities which would be likely to generate further emissions, a significant amount of additional traffic (mostly HGV) and prolong the life of development on the site, could give rise to significant environmental effects. Insufficient information has been provided to assess the likely effects of these matters on the environment and to establish the scale of the change from the permitted development. There is significant and realistic doubt, therefore, about the likelihood of significant effects on the environment.

**7.7.3.** Having regard to the nature, size and location of the proposed development, together with the existing development on the site, it is considered that the likelihood of significant effects on the environment arising from the proposed development is uncertain. The need for environmental impact assessment cannot, therefore, be excluded at Preliminary Examination and a Screening Determination is required. As such, should the Board be minded to grant permission, Schedule 7A information should be submitted in order to assess whether the proposed development would have significant effects on the environment.

**7.7.4.** The Board should note, however, that as the site includes several elements that are currently unauthorised, for which retention is being sought, and that a Screening Determination is required, planning permission cannot be granted.

## **7.8. Appropriate Assessment**

- Bandon River SAC (002171) approx. 6km to northwest.
- Clonakilty Bay SAC (000091) approx. 10km to southeast.
- Clonakilty Bay SPA (004081) approx. 10km to southeast.
- Kilkeran Lake and Castlefreke Dunes SAC (001061) approx. 11km to south.
- Galley Head to Duneen Point SPA (004190) approx. 12km to southeast.

**7.8.1.** The closest European site is Bandon River SAC (002171), which lies approx. 6km to the northwest and is hydrologically linked to the site via the Bunanumera Stream. Given the distances involved to the remainder of the sites, and the lack of any known hydrological connections to the designated sites, it is considered that no appropriate assessment issues are likely to arise in respect of these sites. An Appropriate Assessment Screening Report was, however, submitted by the developer on 14<sup>th</sup> June 2018. This was requested by the P.A., which had noted that there is a potential hydrological link between the site and the Bandon River SAC.

**7.8.2.** The AA Screening Report identified that the Bunanumera Stream, which adjoins the western boundary of the quarry site, joins the Bandon River at Manch Bridge (c. 5.5km to the north), and the SAC is located 3.6km upstream of Manch Bridge. The quarry site is located upstream of the confluence of the stream with the Bandon river, but it discharges downstream of the SAC. Thus, it was established that there were



no potential direct impacts on the SAC as a result of activities at the quarry. However, there is a potential indirect impact on migrating species and Annex 2 species.

**7.8.3.** It is an objective to maintain or restore the favourable conservation condition of the annex I habitats and the Annex II species for which the site has been selected. The Qualifying Interests of the SAC are

- Watercourses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation.
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Annex I habitat).
- Freshwater pearl mussel (*Margaritifera margaritifera*)
- Brook Lamprey (*Lampetra planeri*).

**7.8.4.** The AA Screening Report states that Freshwater pearl mussel population in the Bandon River is uncertain, but is likely to be at unfavourable conservation status and is likely to decline as time proceeds. Atlantic salmon regularly occurs within the Bandon River and it is noted that it is intrinsically linked with the complex life cycle of the Freshwater pearl mussel. Thus, this species could potentially be affected as they migrate through the catchment. Brook Lamprey, which is a freshwater species, is abundant in the Bandon catchment, and is expected to be present both upstream and downstream of the site and within the Bunanumera stream. However, as the SAC is upstream of the facility and Brook Lamprey is not anadromous, no impact is likely to occur on this species.

**7.8.5.** Watercourses of plain to montane levels (with the Ranunculion fluitantis and Callitriche-Batrachion vegetation) habitat is commonly distributed in the Bandon River catchment and is present in the Bunanumera Stream. However, the AA Screening Report states that the habitats present in the stream are relatively species poor and are not considered to be high value examples of this Annex I habitat. The Alluvial Forests habitat is a terrestrial one and will not be affected by the proposed development.

**7.8.6.** The EPA Biological monitoring results for the Bandon River (upstream and downstream of the confluence) recorded a Q value of 4 in 2015 (Good status). The applicant's agent (Dixon Brosnan) carried out a detailed ecological and physio-

chemical survey of the Bunanumera Stream in Feb. 2018, including chemical analysis and biological analysis at two sampling sites. A similar survey/analysis had been carried out previously in 2015 by the same company. In both 2015 and 2018, a Q value of 4 was assigned to both sites. The assessment concluded that there are no indications that the quarry facility is having a significant impact on water quality in the stream or that it is impacting on the aquatic ecology of the stream.

**7.8.7.** Potential impacts from the proposed development would include increased silt levels in surface water run-off and accidental spillage of hydrocarbons from fuels stored at the site, which could affect freshwater pearl, lamprey and salmon spawning habitats. The Bandon River SAC, however, is not located downstream of the SAC, and the confluence of the Bunanumera Stream and the River is also downstream of the SAC. Thus, there is no direct hydrological pathway between the site and the SAC, which could impact on water quality. It is further noted that chemicals are stored in bunded areas, wastewater is treated by an existing septic tank and surface water will be discharged to percolation areas (and eventually to the stream via groundwater, where the recharge rate is high). Any impact on water quality of the Bunanumera Stream and the Bandon river downstream of the facility is likely to be negligible. Therefore, any impacts on salmonids or on qualifying interests, where they occur outside the SAC boundary, is likely to be negligible.

**7.8.8.** Having regard to the nature of the proposed development, the lack of direct discharges to surface waters, the distance from the Bandon River SAC and the lack of a direct hydrological connection between the stream and the SAC, it is reasonable to conclude that on the basis of the information on the file, which I consider to be adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans of projects, would not be likely to have a significant effect on European Site No. 002171, or any European site, in view of the site's Conservation Objectives. A Stage 2 Appropriate Assessment is not, therefore, required.

## **7.9. Other matters**

### **7.9.1. Encroachment onto neighbouring lands**

The appellants have raised concerns regarding encroachment of the development in terms of use of one of the neighbour's drains, which is frequently blocked due to activities on the site, and use of lands in the neighbour's ownership to access the site. The use of the site, (including access from the L4635), has been established for almost 30 years. If there are any outstanding legal issues regarding a lack of ownership or right of way to access the site, it is considered that this is a civil matter to be resolved between the parties. Similarly, any unauthorised use of a neighbouring drain is a legal matter to be resolved between the developer and the appellant(s). It is further noted, that the revised proposals submitted with the FI in May 2018, proposes to suspend direct discharges into the adjoining stream and to deal with all surface water discharges within the new drainage system on the site.

### **7.9.2. Flooding during heavy rainfall**

The appellant has raised concerns regarding the blocking of the stream by quarrying activities in the past, and whilst acknowledging the proposal to keep discharge waters within the confines of the site, the lack of any plans for heavy rainfall remain of concern. It is noted that the site is not identified as being at risk of flooding. It is further noted from the submission by Dixon Brosnan (AA Screening Report 14/06/18) that the groundwater recharge in the area is quite high (according to the Geological survey of Ireland), at 85% of effective rainfall, with the remainder running off to surface water. Thus, there would be a high level of attenuation. Although this issue has not been directly addressed by either the P.A. or the appellant, it is considered on the basis of the information on the file that the proposed development is unlikely to contribute to flooding beyond the site.

## 8.0 Recommendation

- 8.1. I recommend that planning permission should be refused for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

1. Having regard to the location of the site in a rural area, in close proximity to residential properties, and to the terms of the governing permission granted under W/323/91, which restricted the manufacture of concrete products to the gravel resource emanating from the site and required the restoration of the site upon cessation of gravel extraction, it is considered that the proposed retention of the importation of raw material from outside the site, together with the truck wash-out area on an elevated part of the site adjoining the reinstated lands, would result in a significant intensification of the use and in increased traffic generation associated with the use, including a high proportion of HGVs, and an undue extension of the life of the development on the site, which would seriously injure the residential amenities of the area by reason of increased noise, dust and traffic volumes. The proposed development, would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development would contravene materially a condition attached to an existing planning permission for development, namely, Condition no. 12 attached to planning permission granted by Cork County Council in 1991 under planning register reference W/323/91.

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Mary Kennelly  
Planning Inspector

8<sup>th</sup> March 2019

