



An
Bord
Pleanála

Inspector's Report ABP-302526-18

Development	Continued use on lands c. 29.7 hectares of the existing permitted development Planning Reg. Ref. 06/651 consisting of: Extraction of sand and gravel with processing
Location	Ballysaxhills, Kilcullen, Co. Kildare.,
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	171344
Applicant(s)	Kilsaran Concrete
Type of Application	Permission
Planning Authority Decision	Split decision
Type of Appeal	First Party
Appellant(s)	Kilsaran Concrete
Observer(s)	No observers
Date of Site Inspection	11 th December 2018
Inspector	Colin McBride

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 35.8 hectares, is located approximately 2.5km south west of Kilcullen in close proximity to the Curragh (located to north and north west of the site. The site is accessed off the L6080 (south of the public road) via a private road way. There is an existing sand and gravel quarry on site. The extraction area is located to the south of the site with a settlement lagoon located at the north western corner, a concrete batching plant is located at the north eastern corner and a processing plant located between the extraction area and the settlement lagoon. There are screening berms located along part of the northern boundary and along the eastern and western boundaries. Adjoining lands are agricultural in nature with the nearest dwellings located adjacent the north western and north eastern corner of the site along the public road (L6080/L6075).

2.0 Proposed Development

2.1. Permission is sought for continued use on lands measuring c.29.7 hectares of the existing permitted development under ref no. 06/651 consisting of:

(a) Extraction of sand and gravel with processing that includes crushing, washing (with associated silt disposal lagoons) and screening and all ancillary site works and structures, and to include a proposed new holding pond.

(b) Continued use of the existing readymix concrete batching plant granted under ref no. 94/1109 and 89/150.

(c) Site facilities consisting of prefabricated offices, WC and wastewater treatment and percolation area, canteen and cloakroom, ESB substation and switch house, concrete laboratory, bunded fuel tanks and water recycling bays, weighbridge and wheelwash granted under ref no. 06/651.

The proposed development will consist of an extension (c.6.1 hectares) to the existing permitted sand and gravel pit for extraction over and area of c4.3 hectares and processing taking place at the existing plant within the existing permitted development area of ref no. 06/651. The remaining c.1.8 hectares will consist of an

overburden storage area, screening berms and buffer zones to archaeological features to be preserved.

Restoration of the entire site (ref no. 94/1109, 89/150 and 06/651) to a combination of agricultural and nature conservation areas.

The proposed operational period is for 10 years plus 2 years to complete restoration (total duration sought 12 years).

In response to further information the proposal was revised with the area for continued extraction reduced in size and the proposed extended area reduced in size as follows...

Continued use on lands of existing permitted development under ref no. 06/651 measuring c.23.9 hectares. Restoration of the entire site (ref no. 89/150, 94/1109 and 06/651) to a combination of agricultural and nature conservation areas. This is to include areas of the existing pit now outside the planning application areas with provision for these restoration works to be carried out under Section 34(4)(A) of the Planning and Development Act 2000 (as amended). The proposed operational period is 4 years plus 2 year to complete restoration. Revised by significant further information consisting of; submission of NIS; revision of the overall planning application area, reducing from c.35.8 hectares to c.27 hectares; continued use on lands of the existing permitted development under ref no. 06/651 measuring c.23.9 hectares, reduced from c.29.7 hectares; revision of the proposed extension area, reducing from c.6.1 hectares to c.3.1 hectares, and subsequent reduction of the proposed sand and gravel extraction areas from c.4.3 hectares to c.1.9 hectares. The remaining c.1.2 hectares will consist of an overburden storage area, screening berms and buffer zones to existing archaeological features to be preserved in-situ; restoration of the entire site (ref no. 94/1109, 89/150 and 06/651) to a combination of agricultural and nature consecration areas. This will include areas of the existing pit now outside the planning application area of 27 hectares with provision for these restoration works to be carried out under Section 34(4)(A) of the Planning and Development Act 2000 as amended; revision of the proposed operational is reduced from 10 years plus 2 years to complete restoration (total duration sought 12 years) to 4 years plus 2 years to complete restoration (total duration sought 6 years).

3.0 Planning Authority Decision

3.1. Decision

Split decision

Permission granted for continued use on lands of existing permitted development under ref no. 06/651 measuring c.23.9 hectares. Restoration of the entire site (ref no. 89/150, 94/1109 and 06/651) to a combination of agricultural and nature conservation areas. This is to include areas of the existing pit now outside the planning application areas with provision for these restoration works to be carried out under Section 34(4)(A) of the Planning and Development Act 2000 (as amended). The proposed operational period is 4 years plus 2 year to complete restoration. Revised by significant further information consisting of; submission of NIS; revision of the overall planning application area, reducing from c.35.8 hectares to c.27 hectares; continued use on lands of the existing permitted development under ref no. 06/651 measuring c.23.9 hectares, reduced from c.29.7 hectares.

Permission was refused for the extended extraction area reduced from c.6.1 hectares to c.3.1 hectares, and subsequent reduction of the proposed sand and gravel extraction areas from c.4.3 hectares to c.1.9 hectares.

Conditions of note...

Condition no. 4:

The extraction on site shall not exceed 450,000 tonne per annum.

Reason: To limit the impact of the development on the residential and rural amenities of this area and in the interest of the proper planning and sustainable development of this area.

Condition no. 45:

Prior to the commencement of development the Developer shall pay Kildare County Council a financial contribution of €488,680 as a Special Contribution under section 48(2)(c) of the Planning and Development Act 2000 as amended in respect of the reconstruction costs of a 2km section of the L6075 to the west of the site to accommodate the increased volume of Heavy Goods Vehicles (HGV) as a result of this development.

Reason: The additional HGV traffic is causing significant damage to the L6075 to the west of the subject site. There are some serious concerns that the continuation of the HGV movements associated with this development will accelerate the deterioration of this section of road in the short term. Accordingly, it is considered reasonable that the developer play a contribution towards the improvement of this infrastructure which will benefit the proposed development in the interests of traffic safety and the proper planning and sustainable development of the area.

Refusal for proposed extension area of c.3.1 hectares to the southeast of the existing quarry.

Refused based on six reason, which are as follows...

1. The proposed extension to the existing quarry by reason of its scale, nature and proximity to Dun Ailinne which is included on the Tentative List which was approved by the Minister of Arts, Heritage and the Gaeltacht and submitted to UNESCO to consider Dun Ailinne for nomination to the World Heritage List, would seriously injure the visual amenity of the area and would be contrary to the provision of AH12 of the Kildare County Development Plan 2017-2023 where it is the policy of the Council to contribute towards the protection of any site designated as World Heritage Site in Kildare. The proposed quarry extension would also be contrary to the provisions of AO5 of the Plan where it is an objective of the Council to recognise the potential World Heritage Site in Kildare on UNESCO Tentative List – Ireland-2010 and support the nomination of Dun Ailinne to World Heritage Status. The proposed extension would accordingly be contrary to the provisions of AH12 and AO5 of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.

2. The proposed extension to the existing quarry by reason of its scale, nature and proximity to Dun Ailinne, which is an Archaeological Complex and its proximity to the Curragh Archaeological Complex would have a serious negative impact on the importance and setting of both these Archaeological Complexes and would accordingly be contrary to the provisions of AH1, AH2, AH3 and AH4 of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.

3. The proposed extension to the existing quarry is approximately 403m northwest of the site of Dun Ailinne, which is designated as being a major ridgeline under the Kildare County Development Plan 2017-2023. Section 14.6.2 of the Plan states that “Ridgelines are conspicuous features of the natural landscape as they perform an important role as dominant landscape focal points. It is important that development does not interrupt the integrity of ridgelines. Development on steeply sloping land can be views over greater distances”. The proposed extension to the existing quarry would interrupt the integrity of this ridgeline and would therefore be contrary to the provisions of the Kildare County Development Plan 2017-2023 and accordingly would be contrary to the proper planning and sustainable development of the area.

4. The proposed extension to the existing quarry is located adjacent to the southern boundary of the Curragh Sub-ordinate Landscape Area, which under the provision of table 14.2 of the Kildare County Development Plan 2017-2023 is characterised as a Class 5 ‘Unique Sensitivity’ landscape “with little or no capacity to accommodate uses without significant effects on the appearance or character of the landscape having regard to unique and special sensitivity factors”. The extraction of Sand and Gravel is categorised as low compatibility within this Landscape Character Area, as set out in table 14.3 of the Plan. The proposed development would therefore be contrary to the provisions of the Kildare County Development Plan 2017-2023 and accordingly would be contrary to the proper planning and sustainable development of the area.

5. The proposed extension to the existing quarry is located on the edge of the Curragh which is an area of High Amenity as identified in the Kildare County Development Plan 2017-2023. The provision of the Plan under CU1 is to restrict development, particularly on the Curragh Plains and to avoid the over development of the edge of the Curragh. The provisions of the Plan under CU2 is to ensure that fencing, earth works or planting do not conflict with the intrinsic quality of the landscape. The proposed quarry extension would be contrary to these stated provisions of the Kildare County Development Plan 2017-2023 and would be therefore contrary to the proper planning and sustainable development of the area.

6. The proposed extension to the existing quarry is located on the edge of The Curragh which is a Natural Heritage Area, the provisions of the Kildare County Development Plan 2017-2023 under NH7, NH8, NH9 and NH10 is to afford protection to Natural Heritage Areas. The proposed quarry extension would be contrary these stated provisions of the Kildare County Development Plan 2017-2023 and would be therefore contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (01/02/18): Further information required including additional detail in relation to Appropriate Assessment screening, clarification of extraction since the grant of permission ref no. 17/188, additional photomontages, additional information regarding impact on setting of Dun Ailnne, an updated hydro geological assessment, details of materials to be used for restoration, a traffic survey of traffic generated by existing quarrying operations, a road carriage width survey of the L6075 and a road safety audit.

Planning report (03/08/18): the proposed development was considered acceptable in the context of environmental impact, adjoining amenities, visual amenities of the area and traffic impact. Permission was granted subject to the conditions outlined above.

3.2.2. Other Technical Reports

Water Services (13/12/17): Condition in relation to surface water.

Irish Water (18/12/17): No objection.

Heritage Officer (22/06/18): Conditions in the event of a grant of permission.

Environment Section (20/06/18): No objection subject to conditions.

Roads and Transportation (23/07/18): Evidence that HGV traffic is causing damage to the L6075 to the west of the site. Works required to make good a 2km section of this road. Costs of these works are €488,680.No objection subject to conditions.

Area Engineer (17/07/18): It is noted that the traffic generated by the existing permitted quarry is significantly more than forecasted at the time permission was granted (06/651) and that the remediation works are required to a 2km section of the L6075/L6085). A contribution of €488,680 is required).

3.3. Prescribed Bodies

Inland Fisheries Ireland (06/07/18): Conditions in the event of a grant of permission.

GSI (03/01/18): No further observations to make.

HSE (12/02/18): Further information required regarding, drinking water supply, potential impact on groundwater, staff rest facilities, noise and dust impact.

HSE (18/07/18): Similar issues raised as above.

3.4. Third Party Observations

7 submissions were received. Issues raised include...

- Traffic safety, non-compliance with conditions/unauthorised development, inadequate EIA and Appropriate Assessment, impact on groundwater, impact of dust, noise, vibration, visual impact, impact on flora and fauna.

4.0 Planning History

17/188: Application for extension of duration of ref no. 06/651 granted on the 31st May 2017 (currently subject to judicial review).

QRA-28-07: Direction to apply for substitute consent in accordance with Section 177E

QR02: Quarry registered under Section 261.

06/651: Permission granted for the extraction of sand and gravel with processing that includes screening and all ancillary works and structures on a total site area measuring 37 hectares.

04/1109: (Appeal) Permission granted for readymix plant at existing operation and for 32 hectares extension to existing sand and gravel operation.

PL09.094857: Permission granted for concrete plant and extension of quarry on a further 32 hectares of land.

90/632: Permission granted for ESB substation within the existing gravel pit.

90/52: (Appeal) Permission granted for concrete plant.

89/150: Permission granted for extraction and processing of sand and gravel on lands at Ballysaxhills.

PL9/5/43939: Permission granted for re-opening of a sand and gravel pit on a site of 22 acres.

5.0 Policy Context

5.1. Development Plan

The relevant Development Plan is the Kildare County Development Plan 2017-2023. Section 10.7 relates to Sand and Gravel Extraction

There are a number of policy objectives in relation to such including...

El 2: Recognise the role and facilitate the exploitation of County Kildare's natural aggregate resources in a manner which does not unduly impinge on the environmental quality and the visual and residential amenities of an area, while continuing to regulate the extraction of aggregates and to seek the delivery of environmental benefits in the form of sustainable habitat creation in conjunction with the restoration phases of development.

El 3: Facilitate the sourcing of aggregates for and the operation of the extractive industry in suitable locations, subject to the protection of landscape, environment, road network, heritage, visual quality and amenity of the area.

El 4: Ensure that extraction activities address key environmental, amenity, traffic and social impacts and details of rehabilitation. In the assessment of planning applications for new development, intensification of use or diversification of activity, the Council will have regard to the nature of the proposal, the scale of activity proposed, the impact on the adjoining road network, the effect on the environment including important groundwater and aquifer sources, natural drainage patterns and surface water systems and the likely effects that any proposed extractive industry

may have on the existing landscape and amenities of the county, including public rights of way and walking routes.

EI 5: Ensure that development for aggregate extraction, processing and associated concrete production does not significantly impact the following:

- Special Areas of Conservation (SACs).
- Special Protection Areas (SPAs).
- Natural Heritage Areas (NHAs).
- Other areas of importance for the conservation of flora and fauna.
- Zones of Archaeological Potential.
- The vicinity of a recorded monument.
- Sensitive landscape areas as identified at Chapter 14 of this Plan.
- Scenic views and prospects.
- Protected Structures.
- Established rights of way and walking routes.

EI 6: Consult with the Geological Survey of Ireland (GSI), with regard to any developments likely to have an impact on Sites of Geological Importance listed in the County Development Plan (Chapter 12).

EI 7: Require submission of an Appropriate Assessment under Article 6 of the Habitats Directive where any quarry / sand and gravel extraction is likely to have an impact on a Natura 2000 site (see Chapter 13).

EI 8: Require relevant planning applications to be accompanied by an Environmental Impact Statement. An Ecological Impact Assessment (EclA) may also be required for sub-threshold development to evaluate the existence of any protected species/habitats on site.

EI 9: Require a detailed landscaping plan to be submitted with all planning applications indicating proposed screening for the operational life of the site. The

predominant use of native plant species in the proposed landscaping plan is encouraged.

EI 10: Require detailed landscaping and quarry restoration plans to be submitted with each application. Habitats and species surveying shall be carried out and shall influence the restoration plan for the site.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal has been lodged by SLR Consulting Ireland.

- The appeal is in relation to application of condition no. 2, which is a special contribution of €488,680 as a Special Contribution under section 48(2)(c) relating to the cost of remediation works over a 2km section of the L6075 to the west of the site.
- It is noted that the works to the L6075 are described as remediation works to make good on damage to the stretch of road in question. It is noted that the full cost of the works has been unjustifiably attributed exclusively to traffic generated from the existing permitted development. It is noted that any contribution should be based on the application under consideration, which is has not been the case. It is noted that damage may have been caused by unlawful and unauthorised activities at a neighbouring site.
- It is noted that any contribution should be a reasonable estimate of the works required to facilitate development and a proportionate contribution would reasonably fall within the range of €4,886 and €48,868. The appellant does note that the principle underlying the application of the contribution is not justifiable. Were the Board to consider such a contribution necessary then it should be between the ranges indicated above,
- The appeal submission include a traffic report in relation to the contribution under condition no. 45. It is noted that the traffic flows which are used to

justify the contribution do not accurately reflect the current traffic flow scenarios upon which the Planning Authority relies.

- It is noted that the Planning Authority's assessment is based on Table 14-2 of the EIAR regarding existing traffic generation and based on the development permitted under ref no. 06/651 (average daily generation of 86 HGV movements based on 450,000 tonnes per annum).
- The appellant notes that the traffic report submitted as part of the further information has two tables that outline potential traffic generation based on 450000 tonnes per annum with 127 HGV movements and 250000 tonnes per annum with 102 HGV movements. It is noted that tables in the FI submission are incorrect in how they were calculated and the one based 450000 tonne per annum should be 86 HGV movements while the reduced extraction level of 250000 tonnes per annum should be 61 HGV movements. It is noted that reduced extraction level is the development under consideration (revised in response to further information).
- It is noted that the proposed development (revised proposal approved) provides for less traffic than that permitted under ref no. 06/651 (29% reduction in HGV's). It is noted that extraction at 450000 tonne per annum would give rise to no increase in traffic above that permitted under ref no. 06/651.
- The applicant notes that there is traffic data for the surrounding road network with it a condition of ref no. 06/651 to record traffic movements. It is noted that the Planning Authority assessment is not based on such data but on a short term traffic count in the EIAR.
- It is noted that there is no evidence to justify attributing degradation of the road solely to HGV traffic arising from the existing development with it noted that the L6075 is a public road. It is noted that traffic survey data show other vehicles including HGV's not associated with the existing development on site using the L6075. The traffic data indicates that the existing development generate a daily flow of 3 HGV trips (in either direction) on the L6075. Based on the traffic survey information the existing development on site equates to

11% of the total HGV traffic flow along the L6075 and 1% of the total traffic flow along the L6075.

- It is noted that 100% of the remediation costs have been attributed to the proposed development, which is unfair as the existing operation does not account for that proportion of traffic using the L6075. It is noted that between 1% and 11% of the remediation costs should be apportioned to the development if such is considered necessary.
- It is also noted that the level of HGV traffic on the road network in the recent times may have been inflated by the construction of a new stand at the Curragh Race course as well as noting as some of the HGV traffic on the L6075 can be attributed to an unauthorised operation in the area.
- The appellants note that condition no. 45 is inequitable and the applicant should not be burdened with the full cost of the remediation works.

6.2. Planning Authority Response

Response by Kildare County Council

- The Council refer back to the Roads reports and note that such includes a comprehensive breakdown of the estimated road improvement costs on the L6075. It is noted that the analysis was carried out by competent persons with relevant expertise in terms of road maintenance and road upgrading works.
- The Council confirm they have no further comment to make in regards to the decision to refuse for extension.

6.3. Further Responses

Response by the applicants Kilsaran Concrete.

- The applicants note they are withdrawing the appeal against the refusal for extension of extraction area and the appeal is solely focused on the application of condition no. 45.

7.0 Assessment

- 7.1. This is an appeal in relation to the application of a development contribution only. The Board will not determine the application as if it was made to it in the first instance and will only determine the matters under appeal.
- 7.2. The appeal concerns the application of a special contribution under section 48(2)(c) of the Planning and Development Act 2000 as amended of €488,680 in respect of the reconstruction costs of a 2km section of the L6075 to the west of the site to accommodate the increased volume of Heavy Goods Vehicles (HGV) as a result of this development.
- 7.3. Under Section 48(2)(c) of the Planning and Development Act 2000 as amended it is noted that “a planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of particular development where specific exceptional cost not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development”.
- 7.4. The contribution is in respect of remediation works to repair a 2km stretch of road along the L6075 to the west of the site. Kildare County Council had asked the applicant in further information to conduct a traffic survey over a five week period as well as details the level of extraction (tonnage) over the five week period. And use the information to forecast the traffic levels of the proposed development. Kildare County Council used this information to compare proposed traffic generation to that of the permitted development under ref no. 06/651 and noted that there would have been a significant increase in traffic generation (30% increase of HGV traffic). The Council noted that the stretch of road in question has deteriorated and remediation works are required.
- 7.5. The first party appellant notes that the figures in the table submitted showing proposed levels of traffic is incorrect due to a miscalculation and that the proposed development entails a lower level of traffic than that permitted under 06/651 (29% decrease in HGV traffic). Notwithstanding such the appellants note that the apportioning of the entire cost of remediation works to the proposed development is unfair as it is public road and the existing and proposed development are not only traffic generated on the route.

7.6. The works in question are repair and remediation works to a 2km stretch of public road located to the west of the existing quarry. Section 48(2)(c) relates to the payment of a special contribution in respect of particular development where specific exceptional cost not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development. The proposal was not subject to a general Development Contribution under the adopted contribution scheme (was subject to a section 48 contribution of €1,850,000 under ref no. 06/651, condition no. 54).

7.7 The nature of the traffic associated with the existing quarry and the proposed continuance of use does exert an impact on the road condition and I accept that the stretch of road in question is in need of remedial works (municipal engineers report and accompanying photographs) and that the HGV traffic has contributed towards such deterioration. It is notable that in calculating the levy it was considered that the proposed development would lead to an increase level of traffic over that of the permitted and existing operation (granted under ref no. 06/651) and such was determined on the basis of the traffic report submitted in response to further information. It is notable that existing and permitted quarry had an extraction level of 450000 tonnes per annum and that the permitted/proposed development in this case is estimated as to extract 250,000 tonnes per annum (due to revisions in response to further information). In granting permission condition no. 4 confines extraction levels to the figure of 450,000. Having examined the information on file and the traffic report submitted in response to further information, I would note that there is a mistake in the calculations and that the traffic levels identified are over inflated and that the traffic levels based on extraction of 250,000 tonnes per annum would be less than that the existing operation permitted under ref no. 06/651. Even at extraction levels of 450,000 annum the proposal would not generate traffic above and beyond that of the existing operation permitted under re no. 06/651.

7.8 Notwithstanding the above assessment of traffic, the attribution of the full costs of the repair/remediation of the 2km stretch of road should not be solely attributed to the proposed development as it is a public road and the existing operation and proposed

continued extraction is the not only traffic generated and using the road in question. I would consider that some portion of the costs should be attributed to the proposed development. The first party appellant has noted in their submission that the HGV traffic associated with the proposed development will account for 11% of the HGV traffic using the route based on annual average daily traffic flows and that if a contribution is applied it should be between 1 and 11% of the costs of the works (€4,886 and €48,868). I would note that the Local Authority's response does not seek to clarify the percentage of the cost that should be attributable to the works in question and their position appears to be that 100% of the cost should be borne by the applicants. As noted above as the applicants are not the sole users of traffic generator on the route this should not be the case. The applicants have attempted to quantify the level of traffic generated by the proposed development and the level of cost that should be attributable by them and such is based on the traffic survey data.

7.9 I would consider based on the information on file and the details in regards to traffic levels associated with the proposed development that condition no. 45 should be amended to provide for a special development contribution under section 48(2)(c) of €48,868 based on the fact that the proposed development would contribute 11% of the HGV traffic using the L6075.

8.0 Recommendation

8.1. I recommend that Kildare County Council be directed to amend Condition no. 45 as follows...

1. The developer shall pay the sum of € 48,868 (fourty eight thousand, eight hundred and sixty eight euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000 in respect of remediation work on a 2km stretch of the L6075 located to the west of the site. This

contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate. The application of 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 the Board to determine.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

9.0 Reasons and Considerations

Having regard to the nature and scale of the development, the traffic likely to be generated by such and the fact that the works relate to a stretch of public road that is used by traffic generated by other land uses as well as the existing quarry subject to the proposal for continued extraction, the attribution of the sole costs for the remediation works to the development proposed would be disproportionate and unreasonable.

Colin McBride
Planning Inspector

21st December 2018