



An
Bord
Pleanála

inspector's Report ABP-303334-19

Development	Retain quarry and ancillary concrete products manufacturing area.
Location	Trammon, Rathmolyon, Co. Meath
Applicant(s)	Keegan Quarries.
Type of Application	Leave to appeal for substitute consent under section 177C(2)(b) of the Planning and Development Act 2000 (as amended).
Type of Appeal	First Party Direct Application
Date of Site Inspection	12 th March 2019.
Inspector	Karen Kenny

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DECISION QUASHED

1.0 Introduction

- 1.1. This is an application for leave to apply for Substitute Consent for a quarry and ancillary manufacturing uses under section 177C(2)(C) of the Act.

2.0 Site Location and Description

- 2.1. The existing quarry is located approximately 2 kilometres to the north-west of the village of Rathmoylan and approximately 7 kilometres to the south of Trim in County Meath. The R156 road (which extends west from Dunboyne to meet the N4 National Primary Road close to Mullingar) runs along the southern boundary of the site.
- 2.2. The quarry site is long and narrow. It extends by almost a kilometre north from the R156 and at its widest is approximately 300 metres in width. The site is accessed from the R156 and there is a site office and car park adjacent to the entrance. The main quarry void is in the southern part of the site. To the north, there is an open yard, two large manufacturing buildings and other associated structures. Concrete products are manufactured and stored in this section of the site. An internal access road runs through the site from the R156 northward along the western perimeter of the site.
- 2.3. There is an adjoining quarry to the immediate west of the site that is in separate ownership (Kilsaran). There is scattered residential development along the local road network and Kill National School lies c.900 metres to the south east of the site entrance.

3.0 Planning History

- 3.1.1. Planning applications relating to the overall landholding:

PA Ref. 97/1868: Permission granted for quarrying of limestone on a site of 8.5 hectares to the north of the R156 in 1998. Condition no. 2 of this permission limited the operation of the quarry to a period of 15 years. Permission was subsequently granted in 2013, under PA. Ref. TA/130399, to extend the duration of this permission to 5th August 2018.

PA Ref. TA/2075: Permission granted in 2001 for a mobile block making plant, concrete yard and water settlement tank, temporary office and storage shed and an access road from the existing quarry.

PA Ref. TA/20408: Permission granted in 2003 for the erection of a building to manufacture concrete floors, pipes, blocks/bricks and associated products adjacent to the existing block yard permitted under PA Ref. 00/2075.

ABP Ref. PL17.206702 and PA Ref. TA/30334: Permission granted by the Board in 2004 (upholding the decision of the planning authority) for the continuance and extension of the quarrying of limestone over an area of 9.06 ha including the quarrying of 3 no. lower benches and progressive restoration, replacement settlement lagoons, pump house, relocated percolation area and ancillary works. Permission was also granted for the retention of an extension of quarrying over an area of 4.88 ha to the north, south and east of the area permitted under PA Ref. 97/1868, for an overburden storage area, settlement lagoon and stilling pond, offices / workshop, septic tank and percolation area and modifications to the layout permitted under PA Ref. 97/1868 over 10.53 ha on an overall site of 15.88 hectares. The existing quarry floor level was stated as 65.51m AOD and the proposed quarry finished quarry floor area was 71m AOD. Condition no. 8 of the permission limited the operation of the quarry to a period of 9 years and condition no. 2 stated that there shall be no excavation below a level of 7 metres OD. The application was accompanied by an Environmental Impact Statement. The duration of the permissions was extended in 2013 under PA Ref. TA/130400 to 5th August 2018.

ABP Ref. PL17.226884 and PA Ref. TA/60629: Permission refused by the Board in 2009 (overturning the decision of the planning authority) for an extension to the existing quarry and to establish a pre-cast concrete plant and concrete block plant on lands to the south of the R156, on grounds of visual impact, impact on amenities, disorderly development and potential impacts on groundwater and surface waters including an unacceptable risk of environmental pollution. An EIS accompanied this application.

ABP Ref. PL17.235960 and PA Ref. TA/900976: Permission granted by the Board in 2010 (upholding the decision of the planning authority) for a c.2.85ha extension to existing permitted extraction area (estimated extraction of c.1.33m tonnes over a period of up to 10 years at a maximum rate of 250,000 tonnes per annum), plus

ancillary development. Condition no.2 of the permission requires a 60m setback from roadside boundary and condition no.3 prohibits extraction below 50m OD. An EIS accompanied the application. The duration of this permission was extended under PA Ref. TA/130581 to 5th August 2018.

ABP Ref. QV0217: The Board under Section 261 of the Planning and Development Act 2000, as amended, determined having regard to the planning history of the site (inc. permissions granted under PL17.235960 (2010), PL17.206702 (2004) and 97/1868 (1998)), that permission was granted in respect of the quarry on the subject site and that the requirements in relation to registration of quarries under Section 261, as amended, were not applicable.

ABP Ref. PL17.248115 and PA Ref. TA/161419: The Board granted temporary permission in 2017 for three-years for the retention of a concrete silo structure. The submitted documents state that the structure is associated with and ancillary to the precast concrete facility permitted under PA Ref. TA/20408.

3.1.2. Referrals under Section 5 of the Planning and Development Act:

PA Ref. TA/S5/1655: Meath County Council determined in 2017 that a lime drying and batching plant incorporating storage bays and a storage hopper and an enclosure over the plant for the purposes of dust control constituted development which was not exempted development.

PA Ref. TA/S5/1656: Meath County Council determined in 2017 that an ESB substation installed for the purposes of supplying power to the precast concrete facility constituted development which was not exempted development.

PA Ref. TA/S5/1623: Meath County Council determined in 2017 that works including an ESB substation and lime drying and batching facility and an enclosure over the plant for the purposes of dust control constituted development which was not exempted development.

3.1.3. License to Discharge Trade Effluent to Waters

PA Ref. 04/2: Discharge licence for the discharge of treated effluent from quarry dewatering operations. The license specified the effluent treatment to be as follows - to be directed through settlement lagoons of min. 3600m³ capacity and then through Klargest Interceptor type NS 15 Class 1 full retention which accepts a normal flow of 14l/s unless otherwise agreed with the licensing authority; to pass through 30m

section of 10-15mm crushed rock berms and discharge through a v-notch weir to the receiving waters. Sets qualitative and quantitative standards for effluent characteristics, limiting total volume to 58m³ per hour or 1400m³ in any one day and setting maximum limit values. Set monitoring regime requirements and recording / log requirements.

3.1.4. Enforcement History:

Under PA. Ref. UD/15/284: An enforcement notice was served on the applicant in relation to 'unauthorised newly constructed block work electrical sub-station, construction of pre-cast concrete units i.e. silos/storage bays, 2 no. concrete batching plants and associated plant and a large industrial building'. There is no indication of any court proceedings or conviction in respect of the enforcement notice. The details submitted by the PA refer to other enforcement files that would appear to have been opened in response to third party complaints (PA Ref. UD/11/098, PA Ref. UD/10/388, PA Ref. UD/09/068, PA. Ref. UD/07/162, PA. Ref. UD/07/123, PA. Ref. UD/07/040, PA. Ref. UD/07/010, PA. Ref. UD/03/192). It appears that no warning letters or enforcement notices were served in these cases.

4.0 Natural Heritage Designations

- 4.1.1. The designated area of the River Boyne and River Blackwater SAC (site code 002299), is approximately 900 metres to the west of the appeal site at the closest point.
- 4.1.2. The designated area of the River Boyne and River Blackwater SPA (site code 004232) is approximately 2.6 kilometres to the north west of the appeal site at the closest point.

5.0 Legislative Context

- 5.1. Section 177C of the planning act states *inter alia*

(1) A person who has carried out a development referred to in subsection (2) may apply to the Board for leave to apply for substitute consent in respect of the development.

(2) A development in relation to which an applicant may make an application referred to in subsection (1) is a development which has been carried out where an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required, and in respect of which—

(b) the applicant is of the opinion that exceptional circumstances exist such that it may be appropriate to permit the regularisation of the development by permitting an application for substitute consent.

Section 177D states –

(1) Subject to section 261A(21), the Board shall only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required in respect of the development concerned and where it is further satisfied—

(b) that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

(2) In considering whether exceptional circumstances exist the Board shall have regard to the following matters:

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;

(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;

(c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;

- (d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;
- (e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;
- (f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;
- (g) such other matters as the Board considers relevant.

6.0 The Application

6.1 Applicant's Submission

6.1.1. The applicant requests that the board grant leave to apply for substitute consent in respect of the works already carried out on the site. The case put forward by the applicant can be summarised as follows:

- The site has an extensive and progressive planning history and applications have been accompanied by Environmental Impact Statements, providing analysis in line with the EIA Directive and the Habitats Directive.
- The site has operated under applications previously considered by the Board (PL17.206702 and PL17.235960). The subject application is triggered by ancillary development in 2015 within the concrete manufacturing lands. These structures would have required a determination as to whether an EIA is required. The submission sets out the following reasons in respect of the applicants belief that development was not unauthorised:
 - The quarry site has been operating under multiple planning consents up to 5th August 2018 that cover the totality of the extraction area.
 - The applicant held the view that developments carried out from 2013 were exempted development on the basis that they constituted extensions, replacements, additions and that the use of the land did not change.

- The PA determined under S.261A(2)(a) that a Remedial NIS and Substitute Consent was required. On review the Board set aside the PA's determination (ABP Ref. QV0217).
- The applicant sought Section 5 declarations in relation to development and was advised that the developments were not exempted. Permission was sought to retain a silo and to relocate the concrete block yard and develop an ancillary mixing / batching plant on lands to the south of the R156. On appeal the Board granted permission for the silo (ABP Ref. PL17.248115) but refused permission for the relocation of the yard and development of a mixing / batching plant (ABP Ref. PL17.249285). On foot of concerns raised in relation to a piecemeal and disorderly approach at the site it was considered that uncertainty remained with respect to the sites planning status.
- EIA has been undertaken on site up to August 2018 (including monitoring regimes).
- Following legal opinion, work has commenced on preparing a remedial Environmental Impact Assessment Report (EIAR) for the overall site. The remedial EIAR baseline coincides with the 2015 date of structures that have triggered the requirement for substitute consent.
- Timeline limitations imposed under previous applications were derived from the volume of material and the extraction rate. Extraction volumes fell for an extended period due to economic factors, leaving unworked resources in situ.
- The application sets out details of the history of the applicants overall quarrying and value-added businesses, the quality of the limestone deposits being extracted, the value of recent investments, the contribution of the business to the local economy and the value of products in providing off site solutions for development nationally and internationally.

6.2. Planning Authority Submission

- 6.2.1. The submission of the Planning Authority welcomes the application and indicates support for the continued planned development of the site. The submission states

that subject to relevant assessments the proposals are generally supported by Section 12.0 and Policies RD POL 21 to RD POL 27 of the Meath County Development Plan 2013-2019.

6.3. Applicants Further Submissions

- 6.3.1. The applicant made a further submission following circulation of the submission of the Planning Authority. No new issues were raised.

7.0 Assessment

- 7.1.1. This is an application for leave to apply for Substitute Consent for a quarry and ancillary manufacturing use under section 177C(2)(C) of the Act. Section 177D(1) of the Act specifies that the Board can only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment was or is required in respect of the development concerned and where it is further satisfied that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.
- 7.1.2. The proceedings that have led to the making of this application are summarised as follows:
- Planning permission was originally granted for a limestone quarry on 8.5 hectares of land to the north of the R156 in 1998, under PA Ref. 97/1868. The area and depth of extraction approved under this permission would appear to be completed.
 - The extent of the quarry (area and depth) was increased in 2004 under ABP Ref. PL17.206702 (PA Ref. TA/30334). This application was accompanied by an Environmental Impact Statement.
 - The duration of the 1998 and 2004 permissions were extended in 2013 under PA Ref. TA/130399 and PA Ref. TA/130400 to 5th August 2018.

- In 2010, the extraction area of the quarry was further extended by c.2.85ha on land to the east of the original quarry under ABP Ref. PL17.235960 and PA Ref. TA/900976. This application was accompanied by an Environmental Impact Statement. The duration of this permission was extended in 2013 under PA Ref. TA/130581, again to 5th August 2018.
- Permission was granted on lands to the north of the extraction zone for a block making and pre-cast concrete manufacturing facility in 2001 and 2003 respectively, under PA Ref. 00/2075 and PA Ref. TA/20408. Conditions of these permissions required these developments to cease when the quarry development ceases.
- The planning authority, under Section 261 of the Act, directed the owner / operator of the quarry to apply for Substitute Consent in respect of quarrying activities on the site and advised that the application should be accompanied by a remedial EIS or a remedial NIS, or both. The Board determined in 2013, having regard to the planning history of the site that the requirements in relation to registration of quarries under Section 261 of the Act were not applicable (ABP Ref. QV0217).
- The submitted details state that the substitute consent application would incorporate the totality of the operational area at the quarry to include both the quarry and the ancillary concrete products manufacturing area, including the continued development of the quarry to previously permitted depths.

7.2. Requirement for Environmental Impact Assessment (EIA)

7.2.1. It is clear on the basis of the planning history detailed in Section 3.0 above that the planning consents pertaining to the subject site have expired and that permission would be required to retain the continuance of both the extraction and manufacturing activities, all of which were ongoing at time of site inspection.

7.2.2. The thresholds concerning EIA are set out in the *Planning and Development Regulations 2001* (as amended). With respect to the extraction activities, Schedule 5, Part 2, Class 2 (b) sets out the following applicable threshold: "Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares".

- 7.2.3. The existing quarry exceeds the 5-hectare threshold. The quarrying activities permitted in 1998, 2004 and 2010 were all subject to EIA and no significant environmental impacts were identified as part of these assessments. A refusal of permission for an expansion of the quarry and the establishment of a new pre-cast concrete plant and concrete block plant on lands to the south referred to potential visual impacts, impact on amenities and potential impacts on groundwater and surface water (ABP Ref. PL17.226884).
- 7.2.4. While the approved quarrying activities on the site have been subject to EIA, the overall "project" to include the ancillary manufacturing activities has not been the subject of EIA. In addition, given the passage of time coupled with the expiration of consents, in addition to the fact that the overall "project" has not had the benefit of EIA I am of the view that the broad scope and purpose of the EIA Directive has not been met and that any application to regularise activities on the site would have a requirement for EIA. In coming to this conclusion, I have had regard to the fact that manufacturing uses on the site use aggregates from the existing quarry and that the manufacturing facility is therefore ancillary to and reliant on the continued operation of the quarry, thus forming one project for the purposes of EIA.
- 7.2.5. In conclusion, having regard to the scale and nature of the development that has taken place, and for which regularisation would be sought, I am of the view that a requirement for EIA with respect to Article 109(2), Planning and Development Regulations 2001, as amended, arises and that the likelihood of significant effects on the environment cannot be excluded for the purposes of EIA. The development, therefore, does qualify for consideration for leave to apply for substitute consent being a development in respect of which EIA is required.

7.3. Requirement for Appropriate Assessment (AA)

- 7.3.1. The second issue is whether the quarry development and manufacturing development that would be retained, would have required or requires Appropriate Assessment. Based on the source-pathway-receptor model, I consider the River Boyne and River Blackwater SAC and the River Boyne and River Blackwater SPA to be the relevant European Sites. The qualifying interests and conservation interests of these sites is summarised below.

River Boyne and River Blackwater SAC (Site Code: 002299)

Objective: To maintain or restore the favorable conservation condition of the Annex 1 habitat(s) and/or the Annex II species for which the SAC has been selected, namely:

- Alkaline fens.
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, Alnion incanae, Salicion albae).
- River Lamprey (*Lampetra fluviatilis*).
- Salmon (*Salmo salar*).
- Otter (*Lutra lutra*).

The designated area of this site is located 900 metres to the west of the quarry site at the closest point.

River Boyne and River Blackwater SPA (Site Code: 004232)

Objective: To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA, namely:

- Kingfisher (*Alcedo atthis*).

The designated area of this site is located 2.6 km to the north west of the quarry site at the closest point.

- 7.3.2. The main potential for impact would appear to relate to changes in water quality in the SAC and SPA as a result of the development that would impact on the qualifying interests of the SAC and SPA. There is a hydrological connection between the site and the River Boyne and River Blackwater SAC and the River Boyne and River Blackwater SPA. The unnamed stream that runs along the northern site boundary discharges into the Trammon Stream which forms part of the designated area of the River Boyne and River Blackwater SAC from a location that is c. 900 metres downstream of the site. De-watered groundwater discharges from the subject site (under license) to this unnamed stream showing a clear pathway for pollutants. The potential for interaction between ground water and surface waters would also need to be considered, particularly as the existing quarry operates below the level of the water table. No habitats of conservation significance were noted within the site during site inspection. The potential for in combination impacts arising from other

plans and projects, including other quarries in the area, would also need to be considered.

AA is required in my opinion, as it cannot be excluded, on the basis of objective information, that the development either alone or in combination with other plans or projects, would not have had a likely significant effect on the River Boyne and River Blackwater SAC (Site Code: 002299) and the River Boyne and River Blackwater SPA (Site code: 004232) having regard to the qualifying interests and conservation objectives for these sites. The development, therefore, does qualify for consideration for leave to apply for substitute consent being a development in respect of which AA is required.

7.4. Exceptional Circumstances

- 7.4.1. With regard to exceptional circumstances, I propose to assess the subject application by reference to the matters to which the Board is required to have regard under S.177 D (2).

Would regularisation of the development concerned circumvent the purposes and objectives of the EIA Directive or the Habitats Directive?

- 7.4.2. I am satisfied on the basis of the site history and the level of environmental assessment that has been undertaken in respect of previous planning applications, that the regularisation of the subject development would not circumvent the purpose and objectives of the EIA Directive or the Habitats Directive.

Whether the applicant has or could reasonably have had a belief that the development was not unauthorised.

- 7.4.3. A robust argument has been submitted in respect of the above. The submission states that the owner / operator of the site did not have a belief that the development was unauthorised. It is clear that the site had the benefit of planning consent for a significant proportion of the quarrying and ancillary manufacturing activities to August 2018. I refer the Board to the summarised planning history in Section 3.0 above. It is not unreasonable in this context to accept that the applicant had a belief that the development in its entirety was not unauthorised. I am therefore, satisfied that the applicant could reasonably have had the belief that development within the site was not unauthorised.

7.4.4. Whether the ability to carry out EIA or AA and to provide for public participation in such an assessment has been substantially impaired.

I do not consider that there is any impairment to carrying out EIA and AA, including providing for public participation. In this regard, I would note the availability of baseline environmental data from EIS documents prepared in respect of previous planning applications on the site.

7.4.5. The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development.

I would note that previous EIA in respect of approved developments within the site did not identify any significant environmental impacts.

7.4.6. The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated.

In relation to EIA and AA, I am of the view that there is scope to address any potential impacts (e.g. on water quality) through avoidance or remediation and good management practices.

7.4.7. Whether the applicant has complied with previous permissions granted or has previously carried out unauthorised development.

There is no evidence to suggest that the applicant has any difficulties in relation to these matters.

Such other matters as the Board considers relevant.

The submission refers to the quality of the limestone deposits at this location and their role in producing concrete products for the national and international building markets and the economic value of activities that are being undertaken within the site.

7.5. Conclusion

- 7.5.1. It is my conclusion that exceptional circumstances do exist in this case as the regularisation of the development would not circumvent the purposes or objectives of the EIA Directive and the Habitats Directive; the applicant could reasonably have

had a belief that the development was not unauthorised; the ability to carry out EIA and AA and provide of public participation has not been substantially impaired; and the limited nature of any actual or likely effects on a European site resulting from the development and its continued use.

8.0 Recommendation

- 8.1. I recommend that the board grant leave to apply for substitute consent and direct that the application be accompanied by a remedial Environmental Impact Assessment Report and a remedial Natura Impact Statement.

9.0 Reasons and Considerations

Having regard to Section 177D of the Planning and Development Acts, 2000-2016 the Board is satisfied that:

- a) the development is one where an EIA or a determination as to whether EIA is required, and
- b) that exceptional circumstances exist by reference, in particular, to the following:
 - the fact that the regularisation of the development would not circumvent the purpose or objectives of the Environmental Impact Assessment Directive or Habitats Directive;
 - that the ability to carry out EIA and AA and provide for public participation has not been substantially impaired;
 - the reasonableness of the grounds for believing that the development was not unauthorised arising from the level of permitted development on the site; and
 - the nature and extent of the actual or likely significant effects on the environment resulting from the development.

The Notice to the applicants advising of the decision should also direct that:

- a) the application be made within 12 weeks of the giving of the notice or such longer period as the Board may, on request, consider appropriate, and

- b) The application includes a remedial Environmental Impact Assessment Report and a remedial Natura Impact Assessment.

Karen Kenny

Senior Planning Inspector

14th March 2019

DECISION QUASHED

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