



An
Bord
Pleanála

Inspector's Report ABP-304436-19

Development

Restoration of a quarry void with soil and stone waste.

Location

Bay Lane Quarry, St. Margaret's, Co. Dublin

Planning Authority

Fingal County Council

Prospective Applicant

GLV Bay Lane Ltd.

Inspector

Karla Mc Bride

Date of site inspection:

20th July 2019

1.0 Introduction

- 1.1. GLV Limited requested Pre-Application Consultations under Section 37B of the Planning and Development Act, 2000, as amended, for the proposed infill of a quarry void with soil and stone waste at Bay lane Quarry, St. Margaret's in N County Dublin. Pre-Application Consultations took place between An Bord Pleanála (the Board) and the prospective applicant on 1st October 2019 (see appended signed Record).
- 1.2. The primary purpose of this meeting was to address the issue of whether or not the proposed development constitutes strategic infrastructure for the purposes of the 2000 Act, as amended by the Planning and Development (Strategic Infrastructure) Act, 2006, and to consider matters relating to the proper planning and sustainable development of the area or the environment which may have a bearing on the Board's decision, and procedures involved in making the application.
- 1.3. This Report provides an overview of the proposed project, a summary of the meeting and the advice provided by the Board and the legislative provisions.

2.0 Site Location

- 2.1. The site of the proposed development is located in N County Dublin, to the N of the M50 and E of the M2 and Dublin airport. There are several business parks in the vicinity, Tyrellstown is located further to the W and the immediately surrounding lands are currently in agricultural use. The c.13.5ha site contains a partially excavated c. 8.6ha quarry that was permitted by the Board under PL06F.125541 in 2002. Excavation works ceased in 2009 when pyrite was discovered, and the restoration works required under Condition no. 7 were not implemented. The site boundaries are defined by trees and hedgerows with Bay Lane to the SW and there is one dwelling house located adjacent to the SE corner of the site. There are no sensitive built or natural heritage features in the immediate vicinity.

3.0 Proposed development

- 3.1. The proposed development would comprise:
 1. A soil and stone recovery facility which would allow for the full restoration of the site.

2. Infilling the quarry void with c.1.4 million tonnes of soil and stone over 2.5 to 5 years (c.560,000 tonnes per annum).
3. Site works include an ancillary internal access road, temporary infrastructure, relocation of an existing weight bridge and landscaping.

3.2. The prospective applicant, who is a national house builder with residential development sites in the surrounding area (Glenveagh), stated that soil and stone waste would mainly originate from these sites, no construction or demolition waste would be accepted and that there would be no on-site processing.

4.0 **Prospective applicants' case**

4.1. GLV Bay Lane Ltd. is proposing to infill an existing quarry void at the lands described in section 2.0 above which would comprise the works described in section 3.0 above.

4.2. The key elements of the Applicant's submission in support of the case not being designated as strategic infrastructure are summarised as follows:

- It exceeds the statutory thresholds as specified in the Seventh Schedule of the 2006 Planning and Development Act as amended by S.78 of the 2010 Act, as it would comprise:
 - An installation for the disposal, treatment or recovery of waste with a capacity for an annual intake greater than 100,000 tonnes.
- It would not satisfy criteria (a), (b) or (c) of S.37A (2) of the 2006 Act.
 - (a) It would not be of strategic economic or social importance to the State and the Leinster region as it will primarily serve local Glenveagh requirements, there are 3 million tonnes of soil and stone capacity in the Dublin region per annum, the site was previously conditioned to be backfilled and restored under PL06F.125541, and it would serve nearby housing development and construction sites.
 - (b) It would not contribute substantially to the fulfilment of any national, strategic or regional planning objectives due to the small intake and short duration (560,000 tonnes X 2.5 - 5 years), limited and local intake sources, and limited intake type (clean soil and stone only).

(c) It would not have a significant effect on the area of more than one planning authority as it will not serve the wider construction sector.

4.3. Proposal is of a class of development falling within the Seventh Schedule but does not comply with the 3 criteria set out in section 37(A)(2) of the Act, and the proposed development should not be deemed a SID.

5.0 Pre-Application Consultations

5.1. One Consultation meeting was held in the Board offices.

5.2. This meeting was held on 1st October 2019. The prospective applicant described the site and surroundings, outlined the main elements of the proposed development and provided an update on the status of the project. The policy context for the project was explained (including European, national regional and local policy), the site constraints were identified, and the consultations undertaken to date were outlined.

5.3. The Board representatives queried the reason why the soil and stone material was not considered to be a by-product as provided for under Article 27 of the EU (Waste Directive) Regulations 2011. The prospective applicant stated that an application for an EPA waste licence would bring a greater degree of certainty to the process. The Board's representatives stated that it must be considered if the proposed development falls within a class of development set out in Schedule 7 (i.e. a waste installation) and if so, it must be considered in relation to the criteria set out under section 37A(2) of the Act

5.4. It was confirmed that initial discussions had taken place with Fingal County Council, local residents had been consulted and that consultations with a number of agencies including several prescribed bodies had been undertaken.

6.0 Legislative provisions

6.1. The Board is asked to decide if the proposal is or is not Strategic Infrastructure Development as defined by Section 37A of the Planning and Development Planning Act 2000 as amended by Section 5 of the Planning and Development (Strategic Infrastructure) Act 2006 and by Section 78 of the Planning and Development (Amendment) Act 2010.

6.2. Strategic Infrastructure is defined in the Seventh Schedule of the 2006 Act as amended by S.78 of the 2010 Act and under Class 3 as:

An installation for the disposal, treatment or recovery of waste with a capacity for an annual intake greater than 100,000 tonnes.

6.3. Section 37A of the Planning and Development Act, 2000, as amended by the Planning and Development (Strategic Infrastructure) Act, 2006 and the Local Government Reform Act 2014, requires that any development specified in the Seventh Schedule should be made to the Board if the proposed development falls within one or more of the following:

(a) the development would be of strategic economic or social importance to the State or the region in which it would be situate;

(b) the development would contribute substantially to the fulfilment of any of the objectives in the National Spatial Strategy or in any regional spatial and economic strategy in force in respect of the area or areas in which it would be situate;

(c) the development would have significant effect on the area of more than one planning authority.

6.4. Article 5 of the Waste Framework Directive, 2008 as transposed by Article 27 of the European Union (Waste Directive) Regulations, 2011 provides for uncontaminated excavated soil and other naturally occurring materials (used on sites other than the one from which they were excavated) to be considered in accordance with the definition of waste and the provisions for by-products and on end-of-waste status under the Waste Framework Directive, 2008.

6.5. EPA Guidance on Soil and Stone By-products (in the context of Article 27 of the EU (Waste Directive) Regulations 2011) Version 3, June 2019, seeks to encourage the prevention of waste including the lawful and beneficial use of excess uncontaminated soil and stone. This Guidance states that excess uncontaminated soil and stone resulting from excavation works (the primary aim of which is not the production of soil and stone) is a production residue and is regarded as a by-product only if all four by-product conditions are met (as set out in Article 5 of the EU Waste Framework Directive and Article 27 of the Waste Directive Regulations, 2011):

- (a) further use of the soil and stone is certain;
- (b) the soil and stone can be used without any further processing other than normal industrial practice;
- (c) the soil and stone is produced as an integral part of a production process; an
- (d) further use is lawful in that the soil and stone fulfil all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.

7.0 Assessment

- 7.1. In my opinion the proposed development would comprise a Seventh Schedule development as it would relate to an installation for the disposal, treatment or recovery of waste with a capacity for an annual intake greater than 100,000 tonnes.
- 7.2. I consider that the proposed development does not meet the requirements of condition (a) of Section 37(A) (2) of the Planning and Development (Strategic Infrastructure) Act 2006 as it would not be of strategic economic importance to the state and region due to its scale, limited duration and location proximate to the intake source.
- 7.3. Section 37(A) (2) (b) of the above Act requires the development to contribute substantially to the fulfilment of any of the objectives in the National Spatial Strategy (Project Ireland 2040-National Planning Framework, February 2018) or in any regional spatial and economic strategy in force in respect of the area or areas in which it would be situate. In my view the proposed development is not of a scale that would substantially contribute to the spatial, economic or waste management objectives for the region as set out in Section 37(A)(2)(b).
- 7.4. The proposed development, having regard to its scale and location proximate to the intake source, would not have a significant effect on more than one planning authority, having regard to Section 37(A) (2) (c) of the above Act.
- 7.5. It is noted that the proposed development could fall within the remit of Article 5 of the EU Waste Framework Directive, 2008 and Article 27 of the EU (Waste Directive) Regulations 2011, as set out in section 6.2 above and the associated EPA Guidance on Soil and Stone By-products, 2019.

7.6. The proposed development, which would provide for the restoration of a quarry void with uncontaminated soil and stone sourced from nearby development sites, could be regarded as a production residue and therefore a by-product subject to compliance with the 4 tests summarised in section 6.7 above. However, it is noted that Condition 7 of the planning permission granted under PL 06F125541 for the development of the quarry required the restoration of the site, and that Condition no. 3 required that only dry inert fill from local sources should be used as backfill subject to EPA licencing requirements. However, this permission has expired, and the works would not currently comply with the fourth test (d) with regard to further lawful uses.

8.0 Recommendation

I recommend that the Board serve a notice on the prospective applicant, pursuant to Section 37(B)(4) Planning and Development Act 2000, as amended, stating that it is of the opinion that the proposed development does not constitute a strategic infrastructure development for the following reasons and considerations:

Reasons and considerations

Having regard to the size, scale, location and limited duration of the proposed development, and the proximity of source material, it is considered that the proposed development comprising the backfilling of a quarry void, associated infrastructure and site works at Bay Lane Quarry, St Margaret's, County Dublin constitutes development that falls within the definition of infrastructure in the Seventh Schedule but is considered not to be of strategic importance by reference to the requirements of Section 37A (2) (a), (b) & (c) of the Act. An application for permission for the proposed development directly to An Bord Pleanála under S.37E of the Act is therefore not required.

Karla Mc Bride

Senior Planning Inspector

31st October 2019