



An
Bord
Pleanála

Inspector's Report

ABP-304769-19

Development	Retention of development consisting of a concrete batching plant, which is an extension to an existing concrete bathing plant permitted under Pl.Ref, No: 09/230, and includes for associated structures and hardstanding areas.
Location	Barrettspark, Athenry, Co. Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	19517
Applicant(s)	Coshla Quarries Limited
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Brendan Dowling
Date of Site Inspection	20 th September 2019

Inspector

Colin McBride

1.0 Site Location and Description

- 1.1 The appeal site, which has a stated area of 0.79 hectares is located in the townland of Barrettspark in east Co. Galway. The site is situated approximately 9 km to the west of the town of Athenry, 6 km to the northeast of Oranmore, and around 8km east of the outskirts of Galway City. The site is located south of the R339 (Galway – Monivea) Road. The site is part of an existing quarry with access to the gained from a local 3rd class road, the L7109, commonly referred to as the ‘Coshla Road’, which meets the R339 at a T-junction. This local road also serves an ESB substation, C & F Tooling (factory – see Section 6.2 below) and a number of rural houses and farm buildings. At both sides of the R339 junction, on the south side of the road there are detached bungalow dwellings, whilst there is no development on its northern side. There are no paths, cycle lanes or pedestrian refuges on this regional route or on the Coshla Road itself. Access off the Coshla Road is in turn gained via an access road serving the quarry alone, which is approximately 1 km in length.
- 1.2 The surrounding area is predominantly rural with a relatively dense pattern of one-off houses, characteristic of the eastern approaches to Galway City. There are approximately 4 houses within 500m of the quarry and a substantial number of other dwelling houses along the 1.5km access road from the R339. There is a dwelling located immediately to the south, but this has previously been indicated as being unoccupied and in the ownership of Coshla Quarries Ltd. The quarry is located approximately 170 metres to the north of the M6 motorway.
- 1.3 The existing quarry, which has a total area of 27.5 ha. and an extraction area of 4.8ha. was established to service the construction of the M6 Ballinasloe-Galway section of the motorway, the line of which is situated approximately 170 metres to the south of the quarry. In the past, a temporary access haul road had been constructed linking the southwestern corner of the quarry with the N6 construction site. However, this haul road is no longer in existence.
- 1.4 The stated area of the application site (for the concrete batching plant) is 0.79ha. It is occupied by an existing concrete batching plant and a hardstanding area.

2.0 Proposed Development

- 2.1. Permission is sought for retention of a concrete batching plant, which is an extension to an existing concrete batching plant permitted under PI.Ref No: 09/230 and includes for associated structures and hardstanding areas.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 5 conditions. Of note is the following condition...

Condition no. 5: the extension to the existing batching plant shall expire on the same day as 09/1958.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (29/05/19): The existing concrete batching plant was permitted under ref no. 09/230 and the proposal is an extension which will not increase output. A grant of permission was recommended subject to the conditions outlined above.

3.3. Third Party Observations

Two submissions were received...

Brendan Dowling, Cashla, Atheny, Co. Galway.

Joanne Dowling, Cashla, Atheny, Co. Galway.

The issues raised in the submissions can be summarised as follows...

- The issues raised include need for EIA, unauthorised development that should be refused due to the provision of Section 23 of the Planning and Development (Amendment) Act, 2010, existing unauthorised development, lack of information forthcoming under the AIE regulations.

4.0 Planning History

PL07.241241: Permission refused for temporary asphalt batching plant and ancillary activities. Permission refused based on two reasons...

1. Having regard to the planning history of the site, to the pattern of development in the vicinity, to the nature and scale of the proposed development, to the layout and restricted nature of the junction of the R339 and L7109, and to the existing volume of HGV traffic including permitted HGV levels associated with the existing quarry and concrete batching plant, it is considered that the additional traffic movements generated by the proposed development especially at the said junction with the R339 could not be safely accommodated. The proposed development would, therefore, endanger public safety by reason of traffic hazard.

2. The site is located over a regionally important and vulnerable aquifer and karstified bedrock which is highly vulnerable to pollution and can provide rapid conduits to sensitive receptors. In addition, the quarry site has been subject to a flooding event in the recent past and is therefore prone to flooding. Having regard to requirement of the proposed bitumen plant for storage of large quantities of hydrocarbons, notwithstanding the proposed relocation of the bitumen plant to higher ground and the mitigation measures proposed, the Board is not satisfied that the proposed development can be accommodated without unacceptable risk of environmental pollution. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

PL07.235821 (09/1958): Permission for continuation of quarrying and operation of concrete batching and Bitumen Plant.

09/230: Permission granted for retention of a concrete batching plant and temporary access haul road.

06/4125: Permission granted for the development of a 13 hectare quarry.

06/893: Permission granted for a 13 hectares quarry.

5.0 Policy Context

5.1. Development Plan

5.1.1 The relevant Development Plan is the Galway County Development Plan 2015-2021.

5.2. Natural Heritage Designations

Lough Corrib SAC (000297) 4km from the site.

Galway Bay Complex SAC (000268) 4.2km from the site.

Rahasane Turlough SAC (000322) 9.7km from the site.

Lough Fingall Complex (000606) 12.1km from the site.

Castletaylor Complex SAC (000242) 12.4km from the site.

Monivea Bog SAC (002352) 12.8km from the site.

Kiltiernan Turlough SAC (001285) 13.7km from the site.

Ardrahan Grassland SAC (002244) 14.4km from the site.

Inner Galway Bay SPA (004031) 6km from the site.

Creganna Marsh SPA (004142) 6.4km from the site.

Rahasane Turlough SPA (004089) 9.7km from the site.

Lough Corrib SPA (004042) 11.3km from the site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A third party appeal has been lodged by Brendan Dowling, Cashla, Athenry, Co. Galway. The grounds of appeal are as follows...

- Breach of constitutional rights due to the withholding of environmental information by the Local Authority regarding the existing operation of the quarry on site under the European Communities (Access to the Environment) Regulations 2007-2018.
- The concrete plant in place was subject to an application accompanied by an EIS. The existing concrete plant in place is not the one permitted and has a capacity twice that permitted and assessed in the EIS. The appellant raises concerns about project splitting and the modification or extension to the overall quarry development and requires a new EIA to be submitted.
- The application form indicates that the site has not been subject to flooding. The site was flooded in 2009 and the development refused under PL07.235821 was refused in part due to established flood risk. The assessment of the proposal is inadequate in terms of flood risk.
- The proposal relates to unauthorised development it is noted that the provision of Section 23 of the Planning and Development Act 2010 regarding refusal of unauthorised development where before it was commenced an environmental impact assessment or a determination of an environmental impact assessment is required.
- It is noted that required safety works under permission ref no. PL07.235821 have not been carried out and the works carried out have impacted adversely on sightlines. It is noted that the Council have accepted that the applicant has complied with conditions attached to the permission and demonstrated a favourable bias to the applicant in dealing with past applications and the current application.

6.2. Applicant Response

6.2.1 Response by MKO Planning and Environmental Consultants on behalf of the applicant, Coshla Quarry Limited.

- It is noted the proposal is the provision of an alternative batching plant for use during any breakdown of the permitted plant.

- It is noted that the proposed development does not result in any additional extraction of aggregates regardless of extended capacity. It is noted the ref no. PL07.235821 was accompanied by an EIS however such was not required for the development as it did not fall with any class requiring EIA.
- It is noted the proposal does not fall within any class listed in Part 1 and Part 2 of Schedule 5 of the Planning and Development regulations.
- An EIA screening was carried out and it was concluded that there will no significant direct or indirect on the receiving environment.
- The proposal does not constitute project splitting in the context of EIA as it does not fall within any class listed in Part 1 and Part 2 of Schedule 5 of the Planning and Development regulations.
- A review of the most up to date OPW mapping indicates that the application site is not prone to fluvial or pluvial flooding. The applicants note the report on flooding referred to be the appellant and that flood waters did not encroach onto the application site during the flood event in 2009.

6.3. **Planning Authority Response**

6.3.1 No response.

7.0 **Assessment**

7.1. Having inspected the site and examined the associated documents, the following are the relevant issue in this appeal.

Principle of the proposed development

Visual/adjoining amenity

Environmental Impact Assessment

Appropriate Assessment

7.2. Principle of the proposed development:

7.2.1 The proposal is for retention of a concrete batching plant. The proposal entails a number of elements including...

2 no. bulk cement silos, 4 no. admixture tanks, a quality control container, a dry aggregate batching plant, a dry aggregate hopper and conveyor feed system including plant containment area, aggregate hopper access ramp, office and canteen, walkway from control room, office, canteen and a tool room. The various elements are located adjacent or within the confines of the permitted concrete batching plant. The applicant notes that the purpose of the extension for retention is the provision of an alternative batching plant for use during any breakdown of the permitted plant.

7.2.2 The planning history of the site is the provision of a quarry and a concrete batching plant with such outlined above. The information on file indicates that the proposal is an alternative batching plant, which is a back-up to the permitted batching plant and that the proposal does not impact upon the output of the operation on site and no additional extraction of aggregates is to be carried out beyond that permitted on site. Based on the information on file the proposal is for retention of ancillary structures to support the established and permitted quarrying operation on site. Having regard to the fact that the proposal relates to additional ancillary structures within an established and permitted operation, the principle of the proposed development is acceptable subject to an acceptable visual impact and impact on adjoining properties.

7.3 Visual/adjoining amenity:

7.3.1 As noted above the proposal is for retention of a concrete batching plant. The information on file indicates that the proposal is an alternative batching plant, which is a back-up to the permitted batching plant and that the proposal does not impact upon the output of operation on site and no additional extraction of aggregates is to be carried out beyond that permitted on site. The proposal is for retention of structures within an existing quarrying operation. The structures themselves would not be out of scale or character with existing permitted structures on site and are located within the confines and vicinity of the permitted concrete batching plant. The nature, scale and design of such have no significant visual impact over and above that of the

existing permitted structures and would be satisfactory in regards to the visual amenities of the area.

7.3.2 Given the ancillary nature of the proposed development to the existing permitted use and the fact that such does not alter the intensity or capacity of the existing quarrying operations, which are subject to conditions imposed under the previous permission granted on site concerning environmental management, emission limit values and restrictions on operating hours, I would consider that the proposal would have a negligible impact in regards to the amenities of adjoining properties. It is notable that in granting permission the proposal has been tied to the previous permission on site under ref no. PL07.235821 (09/1958) for continuation of the quarrying and concrete batching plant under condition no. 5 (expiry of permission). I would consider that in the event of grant of permission a similar condition is appropriate including compliance with the conditions attached to ref no. PL07.235821.

7.4 Environment Impact Assessment:

7.4.1 One of the main aspects of the appeal concerns Environmental Impact Assessment. The appellant notes that the concrete plant in place was subject to an application accompanied by an EIS. It was also noted that the existing concrete plant in place is not the one permitted and has a capacity twice that permitted and assessed in the EIS. The appellant raises concerns about project splitting and that there is a modification or extension to the overall quarry development which requires a new EIAR to be submitted. The appellant notes that the proposal relates to unauthorised development it is noted that the provision of Section 23 of the Planning and Development Act 2010 regarding refusal of unauthorised development where before it was commenced an environmental impact assessment or a determination of an environmental impact assessment is required.

7.4.2 Projects that are likely to have significant effects on the environment are identified in Annex I (mandatory EIA) and Annex II (possible EIA) of the EIA Directive. These Annex have been transposed into Irish legislation by Part I and Part II, Schedule 5 of

the Planning and Development, 2001 (as amended). The provision of a concrete batching plant is not a category of development under Part I and Part II, Schedule 5 of the Planning and Development Regulations, 2001 and there is no mandatory requirement for Environmental Impact Assessment. The appellant has noted that previous applications on the site have been accompanied by an EIAR and that the proposal is akin to project splitting and there is a requirement for an EIAR.

7.4.3 As noted in the previous section of this report the information submitted on file and the description of the development subject to retention is for a concrete batching plant that is a back up to the existing permitted plant and for use in the event of breakdown of the permitted plant. The proposal development is an ancillary development to the permitted development on site and does not alter the intensity of the activity on site or the capacity or output of the existing operation. The previous permission on site under PL07.235821 was accompanied by an EIAR and development was granted. The current proposal does not alter the terms or nature of the permission granted under PL07.235821 and is an ancillary development. What is proposed cannot be considered to be project splitting and as noted earlier is not a category of development under Part I and Part II, Schedule 5 of the Planning and Development Regulations, 2001 and there is no mandatory requirement for Environmental Impact Assessment. I would also be a view that a determination of whether the proposal requires an EIAR is not necessary in this case. I would note that having regard to such that Section 23 of the Planning and Development Act 2010 regarding refusal of unauthorised development where before it was commenced an environmental impact assessment or a determination of an environmental impact assessment is required does not apply.

7.5 Flooding:

7.5.1 The appellant raises concerns regarding historic flooding at this location and on the appeal site, in particular a flood incident in 2009. The appellant has submitted a report outlining the impact of flooding in 2009. The applicant in response has noted that based on the information contained within the report in question it is noted that the appeal site itself (part of overall quarry) was not inundated by water during the 2009 flood event as well as noting that up to date OPW mapping indicates that the

application site is not prone to fluvial or pluvial flooding. The most recent planning history of the site include a grant of permission for retention of a concrete batching plant under ref no. 09/230, a grant of permission for continuation of quarrying and operation of concrete batching and Bitumen Plant under ref no. PL07.235821 (09/1958). Permission was refused under ref no. PL07.241241 for a temporary asphalt batching plant and ancillary activities. One of the reason related to flooding and is outlined above.

7.5.2 The proposal seeks retention of a concrete batching plant. It is noted that the proposal is a back up to the existing and permitted plant and does not alter the intensity or capacity of the existing permitted quarrying operation and concrete plant. The proposed development is located in the same location as the permitted plant. Having regard to the fact the proposal is an ancillary element to an existing, established and permitted activity, I would be off the view that the issue of flooding is not a significant concern. There is evidence to indicate that the location of the proposed development has not been impacted by flooding and the proposed development does not alter the wider quarrying activity permitted on site. In this case a flood risk assessment would not be required.

7.6 Appropriate Assessment:

7.6.1 An AA Screening Report identifies the Natura 2000 sites within 15km of the site. These are as follows...

Lough Corrib SAC (000297) 4km from the site.

Galway Bay Complex SAC (000268) 4.2km from the site.

Rahasane Turlough SAC (000322) 9.7km from the site.

Lough Fingall Complex (000606) 12.1km from the site.

Castletaylor Complex SAC (000242) 12.4km from the site.

Monivea Bog SAC (002352) 12.8km from the site.

Kiltiernan Turlough SAC (001285) 13.7km from the site.

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Inner Galway Bay SPA (004031) 6km from the site.

Creganna Marsh SPA (004142) 6.4km from the site.

Rahasane Turlough SPA (004089) 9.7km from the site.

Lough Corrib SPA (004042) 11.3km from the site.

It is concluded based on distance and lack of source pathway links between the proposed development and the designated sites that the proposed development, individually or in combination with other plans or projects is not likely to have significant effects on any European sites in view of the site's conservation objectives and a Stage 2 Appropriate Assessment and submission of an NIS is not therefore required. I would consider that sufficient information is provided to conclude that this is the case and that having regard to the nature and scale of the proposed development and its proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.7 Other issues:

7.7.1 One of the issues raised relates to the breach of the appellant's constitutional rights due to the withholding of environmental information by the Local Authority regarding the existing operation of the quarry on site under the European Communities (Access to the Environment) Regulations 2007-2018. This is not a planning matter or an issue that falls under the remit of the Board.

7.7.2 The appellant raises issues concerning lack of compliance with previous permissions and conditions on site and the fact that unauthorised development has been carried out. The proposal entails retention of a development on site and ability to seek retention permission for development is provided for under the Planning and Development Act, 2000 (as amended) and such should be assessed on its merits and is dealt with in the previous section of this report.

7.7.3 In relation to the issue of non-compliance with existing permission and conditions I would note that such are not planning considerations in assessing the proposed development and are not a function of the Board to enforce.

8.0 Recommendation

8.1. I recommend a grant of permission based on the following reasons.

9.0 Reasons and Considerations

Having regard to the nature and scale of the development subject to retention and the fact that is ancillary to an established permitted use and does not alter the intensity or capacity of the permitted use, the proposed development would be acceptable in the context of the visual amenities of the area, the amenities of adjoining properties and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development for retention shall in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Permission for the development subject to retention shall expire on the same date as the 10 year permission granted under permission ref no. PL07.235821.

Reason: In the interests of orderly development.

3. The proposed development shall be operated in compliance with all conditions set down under permission ref no. PL07.235821.

Reason: In the interests of orderly development.

4. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Colin McBride
Planning Inspector

01st October 2019