



An
Bord
Pleanála

Inspector's Report

ABP-308265-20

Development	Permission for retention, storage facility for demolition of waste, for purpose of reuse.
Location	Clashaniska Upper, Clonmel, Co. Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	20128
Applicant(s)	Caherlough Tarmacadam Ltd
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Caherlough Tarmacadam Ltd
Observer(s)	Jason Moran and Claire Fahey
Date of Site Inspection	4 th of March 2021.
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. Clashaniska Upper is located in a rural area 5km north of Clonmel Road beyond the urban fringe. The area hosts a concentration of one-off dwellings.
- 1.2. The subject site, is 1.2ha, level and rectangular in configuration. There is a spayed entrance off the local road into the site. The site includes a number of aggregate/soil mounds, and shed (114sq.m) and vehicles (cars and a loader).
- 1.3. There are two bungalows to the immediate south and these can be seen from the subject site. There is a dwelling on the opposite side of the road, with dwellings located 150metres north of the site.
- 1.4. Inside of the entrance there are stockpiles of different materials. The shed is located along the southern site boundary alongside an adjoining dwelling.
- 1.5. The site boundaries are a mature hedgerow and trees to the east, a hedgerow to the north, the roadside boundary to the west, and houses to the south.

2.0 Development

- 2.1. Permission for retention of change of use. The site operates as a facility for the storage of aggregates and the acceptance of construction and demolition waste for the purpose of recovery and reuse by crushing on site, and ancillary equipment. Previous use was a ready mix concrete facility.
- 2.2. It is stated a maximum of 10,000 tonnes of waste can be brought to the site per annum. Only waste materials are crushed on site.

3.0 Planning Authority Decision

3.1. Decision

Tipperary Co. Co. Refused the proposed change of use for one reason:

The planning authority is not satisfied having regard to:

- *The nature and extent of the proposed development;*

- *The proximity to adjoining residential property and significant potential for noise nuisance and impacts on amenity enjoyed by this property arising from site operations;*
 - *The limited measures to mitigate these impacts and*
 - *Limitations with the supporting information provided with the application*
- That the proposed development by reason of noise, dust, vibration and general disturbance would not be detrimental to the protection of the residential amenity enjoyed by this area.*

The proposed development would seriously injure the amenities of property in the vicinity and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning authority originally requested further information:-

- Demonstrate compliance with planning reference 14/600315
- Another noise survey away from the rookery along the southern site boundary
- Dust monitoring during the summer
- Drawings to not correspond to stockpiling on site
- Full details of exclusion zone
- Mitigation measures

Further information was received on 30th of July 2020.

- The applicant is awaiting grant of permission for the entire development prior to carrying out cosmetic works granted under reference 14/600315, therefore the applicant decided not to complete the works.
- The Environmental Noise Monitoring report was assessed, and it was considered the report did not demonstrate that the facility was in full use when the monitoring was carried out. Noise calibration dates differ in the report.

The report does not define the frequency of the crushing facility the basis for the mitigation measure of the 3metres boundary wall is unclear.

- The dust monitoring was not carried out during the dates specified by the planning authority, however it is noted the results are within the required thresholds. The type of weather during the assessment is not specified.
- There will be aggregate stored beside the adjoining residential property, although a 3metre wall is proposed, their private area would still be visible from a machine.
- There are mainly road plainings brought to the site, and it would appear the tarmacadam material brought onto the site is been used in roadways.

3.2.2. **Other Technical Reports**

No relevant reports on file however the 2nd Planning Reports refers to an internal report form the Environment Section.

District Engineer had no objection.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

There were a number of third party objections to the proposed development on the following grounds:

- Noise
- The site was idle
- Planning breaches
- Safety concerns
- Vibrations
- Inaccuracies
- Change of use

4.0 Planning History

4.1 P3.4521

Planning permission granted on the site in 1977 for the erection of a concrete missing plant, silo, offices and garage.

4.2 14600315

Permission granted for the removal of existing front boundary to road 38metres long consisting of trees ditch and hedge to the left hand side and replace with a 38m block wall 0.9m in height, with railing on top 2m high.

4.3 TUD-19-151

Enforcement Notice issued on 19th of June 2020

5.0 Policy Context

5.1. Development Plan

South Tipperary County Development Plan 2009 (as Varied)

Policy ED9: Enterprise in the Open Countryside

It is the policy of the Council to support and facilitate the provision and/or expansion of appropriate small scale rural enterprise in the open countryside within residential sites and in vacant or derelict buildings. Development proposals will be required to meet the following

criteria:

- a) The development shall not have an adverse impact on the residential, environmental and rural amenity of the area;
- b) Any new structure shall be of a scale appropriate to the size of the site, and be sited and designed to ensure it does not detract from the rural setting and landscape character of the area.
- c) The development shall comply with the development management standards set out in Chapter 10.

Where the enterprise or activity develops to a scale that is inappropriate by virtue of activity

or size in its rural context, the Council will seek to encourage its re-location to a more suitable location on zoned land within towns and villages.

5.2. **Natural Heritage Designations**

Within 15kms of the subject site:

Lower River Suir SAC

Neir Valley Woodlands SAC

Commeragh Mountains SAC

5.3. **EIA Screening**

Schedule 5 of the Planning and Development Regulations 2001 s amended sets out the thresholds for projects which require an EIS, specifically Part 2, Subsection 11(b) provides that an EIS is required for installations of the disposal of waste with an annual intake greater than 25000 tonnes. However the waste material will be recycled for reuse and it is under 10,000tonnes per annum been brought to the site.

Having regard to the nature and scale of the proposed development and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage, and a screening determination is not required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The following is a summary of the grounds of the appeal: _

6.1.1 ***Established, Permitted Use***

In 1977, the site got planning permission for a concrete mixing plant, silo, offices and garage. The two houses to the south of the site were granted planning permission in 1983, and the dwelling opposite was granted permission in 1995. In 2013 when the applicant purchased the site the concrete mixing plant was removed

but the site was been used for stone processing. There were signifigant stockpiles on the site.

In 2014, the applicant applied for planning permission to change the boundary treatments, and the planning report dated 3/11/14 stated, stockpiles were evident on the site. The site has been continuously operated as a stone processing facility. An aerial photo form 2014 is included to support the continuous use.

Planning history provided , Reference, P3.4521 and 16600315 (See Planning History section of this report).

6.1.2 *Processing of inert 'waste' is not different to existing activities*

Planning permission for change of use was applied for in 2018/2020 was processing 'waste' stone, concrete for recycling. The processing of waste requires specific planning permission and a waste facility permit.

In terms of potential nuisance to neighbours, the processing of waste stone or concrete is exactly as the processing of the same materials from virgin sources.

There is essentially no signifigant change in the activities at the site, it still processes stone.

6.1.3 *Nature and Extent of Development*

The nature and extent of the development is unchanged since 1977, therefore the planning authority was wrong to refuse on this basis. The site at one stage was a concrete mixing plant.

6.1.4 *Proximity to neighbours/ impact*

The only reason a planning application was made was because the applicant needs it for a Waste Certificate, to allow the processing of 'inert' waste materials. If permission was granted any actual or environmental impacts could have been regulated under the terms of the CoR issued by the Environment Section.

There were a number of monitoring carried out on the site for Noise, Vibration and Dust during 2019 and 2020 results tabulated in the submission. Two rounds of noise and dust monitoring were carried out because the planning authority was not satisfied with the first round of monitoring. The dust monitoring was carried out in March/ April 2020 and May/ June 2020 and the highest result was 294mg/m.sq./day

next to the rock crushing area, and all other results at the site boundary locations were less than 98mg/sq.m.day.

In terms of the noise monitoring one point showed noise levels greater than 55dB close to the rookery, and the noise experts attributed that to crows in the rookery. An additional test was carried out at the rookery when there were no crows present and this had a result of less than 55dB.

There were different monitoring companies used on the testing at the site, and all monitoring indicated that noise, dust and vibration were within regulatory limits. The monitoring results clearly indicate the current mitigation measure in place (crushing of rock within a designated area, within limited times) will have no significant impact. The planning authority disregarded the monitoring evidence when making its decision. The reason for refusal refers to impact and nuisance, yet the monitoring indicates that noise, dust and vibration are within regulatory and best practice limits.

6.1.5 ***Mitigation of Impacts***

Nuisance levels are difficult to assess because each individual has a different tolerance to nuisances, which can be based on past experiences or people's sensitivities.

It is unfortunate that when the contiguous neighbours bought their house, they were not aware of the use of the application site. However, the applicant would like to have a good relationship with the neighbours, and is keen to ensure the operations on site are not a nuisance.

It is incorrect of the planning authority to refuse permission on the grounds of 'limited measures to mitigate these impacts'. The applicant has already implemented the following measures:

- Stone crushing is only carried out at the back of the site, furthest from neighbours
- Stone crushing is limited to one or two days per month.

The applicant has agreed to erect a boundary wall between the application site and the nearest neighbour to provide privacy for both parties. The wall would be 3metres in height, and would assist in reducing noise impacts also.

6.1.6 **Privacy**

In 2019 evergreen trees along the boundary were felled due to safety concerns. Presently there is no visual boundary between the site and the neighbouring property which is unsatisfactory for both parties.

6.1.7 **Limited Scale**

Caharclough's operation is very small. It is estimated 100 tonnes of inert material would be processed per annum. This requires a Certificate of Registration.. This is the lowest level of authorisation within the waste regulatory system. An intake of over 50,000 tonnes requires an EPA licence.

6.1.8 **Employment Loss**

Caharclough Tarmacadam is Clonmel based, family owned business employing 20No. people, and people will be made redundant if the business is closed.

6.1.9 **Recycling Rates**

The site produces recycled aggregates for use in roadworks. The closure of the site will have a devastating impact on construction and demolition recycling rates because there are so few of these services available.

6.2. **Planning Authority Response**

The planning authority considers the subject use is materially different to the permitted. The planning authority is concerned about the potential environmental impact to adjoining residential properties. The monitoring results were assessed by the planning authority and the limitations were noted. The planning authority consider the reason for refusal is reasonable and should be upheld by the Board.

6.3. **Observations**

There were two observations received on appeal submitted by neighbouring **Jason Moran**, and **Claire Fahey**. The issues raised in both submissions are broadly similar, and I will summarise them collectively to avoid undue repetition: :

- There is no permission for the stone processing on site and it is not associated with a concrete missing plant. There is no permission for the

storage of aggregates, or the acceptance of construction waste. The neighbouring house was purchased when the concrete mixing on the site had ceased, and the site was a green field. Many of the houses were granted permission when operations at the site had ceased, and the planning authority would not grant permission for homes beside a concrete mixing plant. It had ceased operations in 1980.

- The current unauthorised activity started in 2014 when he bought the site
- The applicant did not comply with the conditions attached to reference 14/600315, which is a cause for concern. The current unauthorised activity on the site is the subject of an enforcement order and yet it continues to operate illegally.
- The noise monitoring was not carried out when the rock breaker was in operation. There was no heavy machinery or dumping of waste during the monitoring. It is reasonable to suggest that multiple noise monitoring recording peaks at 72dB, 86db, 88 db and 93db frequently, represents a nuisance. There is also heavy machinery loading in front of this home.
- There is no regard to the residential privacy, to the front machinery is used to load and dump material. People on the site operating machinery have clear views into their garden, their privacy is non-existent. A 3metre wall will not ensure their privacy.
- A party structure was removed without consultation or notification, it was stated it was for safety concerns but no evidence was provided. The tree removal stopped at his garden and yet no trees were moved in the area where the crushing takes place.
- The volume of work machinery and vehicles adjacent to his garden has increased. There is no mitigation measures to reduce the noise close to his home.
- The site had planning permission for a cement missing facility granted planning permission 43 years ago, and ceased activity on the site 40 years ago. There is no permission or licence for the acceptance of waste.

- There is no evidence that the workforce has doubled since the acquisition of the site.
- Clonmel is well served by facilities that accept this type of waste.

7.0 Assessment

7.1. The appeal will be assessed under the following headings:-

- The proposed change of use
- Impacts on Residential Amenity
- Appropriate Assessment

7.2 The permitted use on the subject site was for a concrete mixing plant that was granted planning permission back in 1977 under planning reference P3.4521. according to the appeal file the use ceased in 1980, however the applicants state on file that when he purchased the site in 2013 the site was been used for stone processing. Unfortunately, no evidence has been submitted by either party to determine when the ongoing use, if any, was established on the site from 1980 to its purchase in 2013. The Board cannot make any assumptions on when the current use or the alleged stone processing use was established on site without documentary evidence. The appellant is incorrect in stating on appeal the use on the site has essentially unchanged since 1977. Otherwise why was there an Enforcement Notice issued from the planning authority in 2019 and a current planning application for the change of use on the site. According to the appellant the site has always processed stone, yet the third party observers state the site was a greenfield because otherwise planning permission would not have been granted for dwellings alongside the site, and one appellant would not have purchased his dwelling contiguous to a stone processing site.

The appellant further states the only reason planning permission for the change of use was applied for was to obtain a Waste Certificate of Registration to allow for the processing of 'inert' waste materials on site.

The processing of insert waste on the site is, in my opinion, a material change of use on the site. Inert waste is brought to the site, crushed and stockpiled to be recycled elsewhere off site. These activities are materially different to the permitted use on

the site as a concrete batching plant. There is no crushing of materials on site within a concrete batching plant, and the machinery involved includes dust and noise screening measures, whereas, the current operations on site are fully exposed. Furthermore, it has not been established from the file if the permitted use was abandoned on the site as alleged by the third parties immediately adjacent to the site.

The negative impacts to the adjoining residences is evident, as discussed in the next section, with the removal of the common boundary, the exposure of activities on site, and the stockpiling of stone alongside a dwelling to the south. The site is confined in size and width, and it is not possible to relocate a lot of the processes and activities away from the dwellings houses. According to **Policy ED9: Enterprise in the Open Countryside** of the Tipperary County Development Plan 2009 (as amended)

'It is the policy of the Council to support and facilitate the provision and/or expansion of appropriate small scale rural enterprise in the open countryside within residential sites and in vacant or derelict buildings. Development proposals will be required to meet the following criteria:

a) The development shall not have an adverse impact on the residential, environmental and rural amenity of the area;'

This issue is explored in greater depth in the next section.

7.3 Impacts On Residential Amenity

There are a number of one-off houses in the general vicinity of the subject site, to the north, south and west. The dwellings that will be impacted the most are adjoining the site along its southern site boundary. There is a bungalow immediately contiguous to the site which is exposed to the majority of the activities on the site.

Crushing : It is stated the maximum amount of materials requiring crushing is anticipated to be 25% of waste material brought to the site (2500tonnes). The crushing normally takes place one day per month for 2-3hours. The crushing area is down the back of the site along the eastern site boundary. There will be a processing and storage exclusion zone from the southern site boundary beside dwellings, and the crushing area is furthest from dwellings. The crushing area is less

than 100metres from the rear of the dwelling and only 65metres form the rear garden area. In my opinion, it is an unacceptable distance between an industrial process which is noisy and a dust generator. The Board has to examine this change of use de novo, and the previous permitted use on the site is not relevant in this instance. According to the appeal file the inert material brought to the site consists of 'waste' stone, and concrete. The mobile stone crusher is filled and the crushed stone is stored in mounds. The appeal states the processing of waste stone or concrete is the same as processing of the same material from virgin sources. I disagree with the applicant's argument. In my opinion, a concrete batching plant is not the same a stone processing and crushing process. In addition, most concrete batching plants or stone crushing activities are located within existing quarries or on appropriately zoned lands, not adjacent to residential developments in the open countryside.

Noise: A noise survey was carried out on site in March 2019 and the noise levels were below 55db(a) at the monitoring location along the southern site boundary. The noise levels were above 55db(A) along the southern site boundary, however a contributing factor was birds in the trees overhead. Noise levels monitored at non-sensitive locations vary with proximity to the site been a factor. No tonal or impulsive noise was recorded. Since the monitoring a number of trees were removed from the site for safety concerns.

I note the Noise Monitoring Report submitted by way of further information on 30th of July 2020. There were 4No. monitoring points and according to the report crushing and loading was occurring on site during the test. However, it is not clear from the report, if the site was in full use during the time of the tests. It is noted that one point had a result significantly higher than 55 dB but due to attenuation of noise in free field conditions the using of inverse square law, the noise levels can be estimated below 55 dB. However, the inverse square model only applies to free field conditions where there are no reflective surfaces or barriers between the source and the receptor, yet there are matures trees and a hedgerow on three sides of the crushing area location. There is no clear information on the frequency of the crushing or the days/ times which would lead to sensitivity issues for the adjoining residents.

A new 3metres boundary wall is proposed along the southern site boundary to screen the proposed development and mitigate potential noise pollution, according to

the report the wall will provide noise attenuation to 25dB, yet there is no clear basis for this calculation in the Noise Report.

Dust: Dust monitoring carried out in March 2019 on site and the monitoring was carried out over a four-week period indicating that dust levels were within recommended levels. The highest dust level recorded was 225mg/ sq.m./ day. The EPA and local authorities set a maximum allowable limit. Unfortunately, the results do not give clear indicators to the weather conditions at the time of the monitoring, and dry conditions would present a worst case scenario.

The appeal claims the planning authority disregarded the monitoring evidence submitted, however, based on the amount and nature of the information in the reports submitted by way of further information, I consider the planning authority assessed the information and stated the limitations to the findings, which were not addressed in the appeal, and I would concur with the authority's assessment.

I note the proposed exclusion zones along the southern site boundary. The exclusion zone is the same depth as the existing galvanised shed on site (>10metres). In my opinion, this is an insufficient mitigation measure, and in similar instances there would be earthen berms between the processing and the residential dwellings, and all activities would be located away from the dwellings. Unfortunately the site is too restricted in size and width to enable sufficient buffer areas and adequate mitigation measures to be implemented. On balance I consider the site to be inappropriate to accommodate the proposed change of use, and the landuse should be encouraged to re-locate to a more suitable location on suitably zoned land or within an existing quarry.

7.4 **Appropriate Assessment**

The subject site and proposed development are not directly or indirectly hydrologically connected to any Natura 2000 site. Having regard to the limited nature and scale of the development, 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 the conservation objectives of any European site.

8.0 Recommendation

8.1. I recommend the planning authority's decision to refuse the development be held for the following reason.

9.0 Reasons and Considerations

It is the policy of the planning authority, as set out in the current Tipperary Development Plan for the area, to facilitate small scale rural enterprise in the open countryside where the development will not have an adverse impact on the residential and rural amenity of the area. This policy is considered to be reasonable. It is considered that the proposed development of storage and processing of demolition and construction waste has no specific locational requirements which necessitate its location at this rural location adjoining residential developments and would, result in serious injury to the existing residential amenities in terms of noise and nuisance. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Caryn Coogan
Planning Inspector

23rd of April 2021