



An
Bord
Pleanála

Inspector's Report

ABP-309308-21

Development

20 year permission for a 13.5 hectare extension to existing Overburden Management Facility (OBMF). The application includes an Environmental Impact Assessment Report (EIAR) and requires an Industrial Emissions Directive (IED) Licence. The current facility operates under an IED Licence (EPA Ref No. P0030-05).

Location

Platin and Cruicerath, Drogheda , Co. Meath

Planning Authority

Meath County Council

Planning Authority Reg. Ref.

LB201629

Applicant(s)

Irish Cement Limited.

Type of Application

Permission.

Planning Authority Decision

To grant.

Type of Appeal

First Party

Appellant(s)

Irish Cement Limited.

Observer(s)

EPA.

Date of Site Inspection

25th May 2021.

Inspector

Deirdre MacGabhann

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1.0 Site Location and Description

- 1.1. The 43.5ha appeal site is situated c.3km to the south west of Drogheda and c.3km north east of Duleek at Platin and Cruicerath, County Meath. The site lies to the north of a county road (L-5612) and comprises Irish Cement's existing Overburden Management Facility (OBMF) at Platin, for the associated limestone quarry and cement manufacturing plant, and adjoining agricultural land. Access to the existing OBMF is by way of at grade crossing of the L5612. South of the appeal site and L5612 is Irish Cement's quarry and cement works.
- 1.2. The extension area to the OBMF comprises agricultural fields to the west of the existing site. These are bounded, and separated from each other, by mature hedgerows with accompanying ditches. Fields are a mix of arable and rough grazing. A water courses (with an associated hedgerow/tree line) flows through the site in an south easterly direction, separating the existing OBMF from the proposed extension area. Substantial roadside vegetation screens views of the extension area (and existing OBMF) from the L5612.

2.0 Proposed Development

- 2.1. The proposed development comprises a 20 year permission for a 13.5ha extension to the existing OBMF, on an overall site of 43.5ha. The height of the extension area will be 86m above OD and will be consistent with the height of the existing facility. Overburden arising from the quarry is used for the construction of landscaping around the perimeter of the quarry and in the manufacture of cement, replacing a portion of shale that is imported to the cement plant. Only that which is not needed for these purposes is placed in the OBMF. The site will have a capacity for storage of c.3.85 million tonnes (c.2.15m³) and is estimated to provide for a lifespan of between 12 and 20 years. The facility will provide long term storage for overburden with potential future use in the later restoration of the quarry following closure and/or for the restoration of the decommissioned areas within the Cement Works.
- 2.2. The application includes:
 - Closure of the existing at grade crossing,

- Provision of a new at grade crossing c.640m to the west of the existing crossing point, with ramped access from the existing quarry haul road, access gates on each side of the crossing and a wheel wash on the northern side of the road,
- Provision of a culvert in place of the existing drainage channel which runs across the site, to drain to existing ponds,
- Provision of open vegetated perimeter channel around the toe of the extension area, in advance of soil stripping, to drain to a proposed settlement/attenuation pond prior to discharge into the quarry's existing drainage system, and
- Fencing, perimeter landscaping (northern and western boundaries) and other ancillary work.

2.3. The application for the development includes:

- EIAR and Non-Technical Summary (EIA Portal ID 2020185).
- Construction Environmental Management Plan.
- Information for Screening for Appropriate Assessment.
- Road Safety Audit.

2.4. The application relates to a development which requires an Industrial Emissions Licence, EPA ref. no. P0030-05.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 22nd of December 2020, the planning authority decided to grant permission for the development subject to 16 conditions, including:

- C2 – Development to comply with the condition set out under PA refs. 94/925 and SA/130769 and ABP ref. PL17.243795, unless authorised by the permission, and for a period of 20 years.
- C10 – This condition deals with the management of surface water and includes that the applicant submit details of surface water design calculations for the proposed settlement lagoon and existing attenuation area detailing

their capacity to cater for surface water runoff, works to comply with Greater Dublin Strategic Drainage Study (GDSDS) and for surface water discharges to comply with section 4 of the Local Government Water Pollution Acts 1977 (as amended).

- C13 – Requires the development to be operated and managed in accordance with an Environmental Management System to be submitted and agreed with the planning authority prior to commencement. Specifies emissions limits for dust and noise, requires specific arrangements for refuelling and the management of hydrocarbons and provision of a complaints register.
- C14 – Requires the monitoring of groundwater, surface water flow, noise and dust deposition levels, submission of monitoring reports, annual audit and measures to bring the development into compliance with conditions, if required.
- C16 – Requires the payment of a cash deposit or bond to secure the satisfactory phased restoration of the site.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 9th January 2021 – Refers to the planning history of the site, quarry and adjoining cement works, the planning policy context for the development and submissions made. It considers the merits of the development under a number of headings including principle, siting, layout and design, access traffic and parking, environmental and heritage matters, water supply, waste management, environment and public health. It also carries out a Stage 1 appropriate assessment (AA) and environmental impact assessment (EIA). The report considers that having regard to the nature and scale of the development, the suitability of the site, pattern of development in the area, national, regional and local policy in relation to quarrying, and subject to compliance with the conditions, the development would not seriously injure the visual amenities of the area or residential amenity of property in the vicinity and would not be likely to have significant effects on the environment

or ecology of the area. It recommends granting permission for the development subject to conditions.

3.2.2. Other Technical Reports

- Transportation (4th December 2020) – No objections subject to conditions, including closure of existing crossing point, provision of sightlines, implementation of recommendations of Road Safety Audit, submission of Construction and Operational Stage Traffic Management Plan and implementation of mitigation measures set out in EIAR.
- Water Services (9th December 2020) – No objections subject to conditions, including calculations to demonstrate capacity of the proposed settlement lagoon and existing attenuation area vis-à-vis demand.
- Environment (17th December 2020) – No objections subject to implementation of mitigation measures, discharge of surface water to local watercourses in accordance with appropriate authorisation under Local Government Water Pollution Acts 1977 as amended and no removal of top soil or overburden from the site.
- Heritage (17th December 2020) – No objections subject to conditions including implementation of mitigation measures, hedges and trees not to be removed during nesting season and appointment of Ecological Clerk of Works during construction. Considers that no AA issues arise.
- Flooding (18th December 2020) – No objections subject to conditions in respect of proposed culvert on the existing watercourse to be subject to Section 50 consent from OPW and no development within 10m of drainage channels and watercourses on the site.
- Chief Executive (18th December 2020) – Considers that the environmental impact assessment carried out by the Planning Officer contains a fair and reasonable assessment of likely significant effects of the development on the environment.

3.2.3. A report by the Conservation Officer is referenced in the Planning Report (not on file). It raises concerns regarding the level of dust arising from the facility on the local environment (individuals and built heritage) and the potential for archaeology within the site. It recommends archaeological pre-development testing and

monitoring of works. I note that a condition to this effect has been included in the planning authority's grant of permission.

3.3. Prescribed Bodies

- EPA (10th December 2020) – Applicant was issued an Integrated Pollution Control Licence on 20th January 1996 (Register No. 30). The Industrial Emissions Licence (Register No. P0030-05) granted on the 29th of January 2018 is currently under review (Register No. P0030-06). The proposed development was not referred to in the application and the Licence may need to be reviewed to accommodate the proposed changes. A different EIAR was submitted to the EPA in respect of P0030-06 to the one submitted in respect of the proposed development.
- HSE (5th December 2020) – Recommends meaningful public consultation with concerns addressed as part of EIA process, sustainable travel/transport plans and restoration (with provision of woodland, hedgerows, grass meadow and possible recreational and physical activities that could be carried out on the site).

3.4. Third Party Observations

- Development will result in an increase lorries and heavy industrial machinery causing increase in traffic on the public road, pollution, dust, dirt on the public road and loud noise in proximity to dwellings. Impact on safety of the public road. Impact on wildlife.
- Development forms part of wider quarrying development and should not be assessed separately. Significant effects of the development on the landscape since 2015.
- Need for off-site disposal of overburden (from adjoining quarry) was not identified in earlier planning applications (PA ref. SA130769).
- Visual impact of substantial berms on adjoining property. Impact on landscape, habitat, drainage.

- Appropriate assessment required of proposed development with ongoing disposal to tributary of River Nanny.
- Overdevelopment of lands of the overall site, with impacts on landscape, agricultural nature of the surrounding townland and depreciation in value of properties. Development would set an undesirable precedent for future development of the quarry. and on-going nuisance.

4.0 Planning History

- PA ref. 94925 – Permission granted for retention (5ha) and extension (9ha) of the existing overburden disposal mound and the extension (5ha) on the existing quarry for the continued extraction of limestone at Cruicerath, Carranstown, Platin, Co. Meath.
- PA ref. 130769 and PL17.243795 – Permission granted for extension of quarry by 40.5ha to a depth of 20m below OD (IPPC Licence Register Ref. No. P0030-04).
- PA ref. LB201199 (incomplete) – Application for a 20 year permission for development of 13.5ha extension to existing OBMF.
- PA ref. LB201254 (withdrawn) - Application for a 20 year permission for development of 13.5ha extension to existing OBMF.

5.0 Policy Context

National

- 5.1.1. The National Planning Framework 2018 seeks to guide development in the country to 2040. Strategic objectives include supporting the sustainable growth of Dublin and its metropolitan area and building stronger regions over the Plan period. The Plan recognises that extractive industries are important for the supply of aggregate and construction materials and minerals to a variety of sectors. National Policy Objective 23 seeks to facilitate the development of the rural economy through supporting sustainable and economically efficient development of rural industries, including the

extractive industries, while maintaining and protecting the natural environment built heritage.

- 5.1.2. In section 7.8.4, the government's Development Management Guidelines for Planning Authorities 2007 refer to section 99F of the Environmental Protection Act 1992 (as amended) and states that these preclude the planning authority and the Board, in granting permission for an activity licensable by the Environmental Protection Agency, from imposing conditions relating to the control of emissions from the activity. The guidelines also state that construction aspects of the development can be regulated.

Development Plan

- 5.1.3. Strategic goals of the Meath County Development Plan 2013 to 2019 seek to facilitate supplies of aggregates in the County to meet future growth needs, in the County and in the wider area, whilst addressing key environmental traffic and social impacts and rehabilitation.

Natural Heritage Designations

- 5.1.4. The subject site lies c.2.6km to the south of the River Boyne and River Blackwater SAC and SPA (site codes 002299 and 004232 respectively) and c. 5km to the north west of the River Nanny and Shore SPA (site code 004158) in Laytown

5.2. EIA Screening

- 5.2.1. The existing OBMF at Platin receives in excess of 25,000 tonnes of overburden from the permitted quarry to the south of the appeal site per annum. The proposed development comprises an extension to this facility i.e. it will provide for the continued disposal of >25,000 tonnes per annum of overburden from the permitted quarry, with no import of other material to the site. It is stated by the applicant that the material comprises inert soils and gravels from the quarry to allow access to the rock below. Whilst the soils are inert, the IE licence for the cement plant and quarry (No. P0030-05) classifies the material as 'waste'. Consequently, the applicant asserts that the development requires environmental impact assessment by virtue of Section 11(b) of Part 2 of Schedule 5 of the Planning and Development Act, 2000 (as amended) under 'Other Projects', *'Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of the Schedule'*.

5.2.2. Part 1 of Schedule 5 includes the category '*Quarries and open-cast mining where the surface of the site exceeds 25 hectares*'. As stated, the overburden facility is in place to serve the adjoining quarry and in effect forms part of this development. In the absence of an adequate storage facility for soils, underlying rock reserves could not be accessed. I would also argue therefore, that the proposed development warrants EIA under Part 1 of Schedule 5 also.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. First party grounds of appeal are:

- The existing OBMF and proposed extension are located within the boundary of the existing IE licences area for the overall ICL works at Platin (cement works, quarry and OBMF). Therefore the conditions and monitoring in relation to the control of emissions to the environment are correctly applied and monitored under IE licence, current licence No. P0030-05. In particular:
 - The OBMF is referenced in the introduction to the licence and in sections 2.3, 8.21 and Schedule A.
 - Control and monitoring of emissions to the environment are addressed in Sections 5 and 6.
 - Closure, restoration and aftercare management are addressed in section 10.

As such, the application of conditions in the permission for the control of environmental emissions is contrary to the provisions of section 99F of the EPA Act 1992, as amended (as referenced in section 34 of Planning and Development Act, 2000 as amended).

- Condition nos. 10(a), (b) and (f), 13(a), (b), (c), (d), (e), (g) and (i), 14 (a), (b), (c) and (d) and 16 are either in full or most part relate to aspects that are already condition and monitored under the IE by the EPA and should be removed.
- As set out in the application documentation, no refuelling will be carried out on site.

- As the appeal relates only to conditions, request the Board to determine it under section 139 of the Planning and Development Act, 2000 (as amended).

6.2. Planning Authority Response

6.2.1. The planning authority make the following comments in their response to the appeal (1st March 2021):

- The Planning Authority acknowledge the *de novo* scope of the appeal by virtue of section 37(1)(b) of the Act.
- The PA does not dispute the applicant's contentions, but draw the Board's attention to section 7.8.4 of the Development Management Guidelines which enable planning authorities to control the construction aspects of development which is licensable by the EPA.
- The EPA has acknowledged that the current licence is under review and has stated that the EIAR submitted with the planning application differs from that submitted with the licence review application (ref. P0030-06).
- Having regard to the EPA comments and as condition nos. 10, 13, 14 and 16 relate to 'construction aspects' of the development it remains the position that the permission ought to be granted subject to the 16 no. conditions set out in the Schedule to the Chief Executive's Order.
- The conditions comply with section 34(4) of the Planning and Development Act, 2000 and the tests set out in section 7.3 of the Development Management Guidelines.

6.3. Observations

6.3.1. In their observations to the Board (21st April 2021) the EPA repeat their comments made to the planning authority in December 2020 (summarised above).

6.4. Further Responses

- None.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, inspected the site and having regard to relevant national and local planning policies, I consider that the appeal can be dealt with under section 139 of the Planning and Development Act 2000 (as amended). In coming to this view, I have had regard to the operation of the existing OBMF, the detailed design of the proposed development, the established context for it, the absence of significant views of the proposed development, the arrangements for further landscaping, distance of sensitive receptors from the site and proposed mitigation measures. I also note that the volume of material to be placed in the OBMF is largely consistent with the volume referred to under PL17.243795 to be removed from the quarry site for external storage.

Condition no. 10

- 7.2. The applicant appeals sub-sections (a), (b) and (f) of condition no. 10. Sub-sections (b) and (f) require, respectively, the submission of design calculations in respect of the proposed settlement lagoon and existing attenuation area and that discharge of surface water to local watercourses be in accordance with section 4 of the Local Government Water Pollution Act 1977 (as amended). Sub-section (b) requires that all works comply with the Greater Dublin Strategic Drainage Study (GDSDS).
- 7.3. The current IE license for the Irish Cement Facility, EPA ref. P0030-05, governs the cement works, quarry and OBMF, with specific reference to the OBMF in the licence in the Introduction and sections 2.3, 8.21 and Schedule A. The proposed extension of the OBMF will also be governed by the licence, which will be reviewed as a consequence of the development. The licence review is likely to follow the format of the existing licence, as the activities proposed reflect those at the current OBMF.
- 7.4. With regard to discharges to surface water, the licence sets out limits for emissions for discharges to the River Nanny, with parameters for volume and biochemical emissions. It also requires monitoring and reporting on compliance with the expressed emission limit values. I would accept therefore that condition no. 10 (f) of the permission is superfluous.

- 7.5. With regard to design and construction of settlement lagoons, this is not expressly addressed in the EPA licence. Whilst compliance with emission limits may well determine lagoon design, I do not consider that it is unreasonable that the planning authority request these construction details, demonstrating capacity and physical requirement for the lagoon system.
- 7.6. With regard to the GDSDS, the applicant argues that this is not applicable as all proposed drainage is to and via existing ICL drainage networks, licenced and monitored by the EPA under the terms of the IE Licence, with no discharge to a public sewer or to a local authority or Irish Water network.
- 7.7. The GDSDS focuses on the foul and surface water systems in the Dublin local authority areas. Volume 2 focuses on technical guidelines and best practice for works associated with new development and sets out requirements by local authorities for drainage works. For the proposed development, all drainage from the site is directed to the existing ICL drainage networks with licenced discharge to surface water from these. Therefore, I would accept that in the context of the proposed arrangements for the management and discharge of surface water and the existing licensing regime, reference to the GDSDS document is not necessary.

Condition no. 13

- 7.8. The applicant appeal sections (a) to (e), (g) and (i) of the condition. Section (a) requires the development to be operated in accordance with an Environmental Management System to be submitted to the planning authority, with the EMS to set out controls for dust, noise, waste management, protection of groundwater, emergency response planning, site environmental policy, environmental regulatory requirements and project roles and responsibilities. Section (b) and (c) set out dust and noise emission limits respectively and requirements for monitoring. Section (d) deals with refuelling, (e) the storage of potential pollutants and (g) the location of bunded storage areas away from watercourses. Section (i) requires maintenance of a complaints register.
- 7.9. As stated previously the existing Industrial Emissions licence for the Platin facility will be reviewed by the EPA in respect of the proposed development. It is likely to follow the format of the existing licence, given the nature of the development which is an extension of existing activities. With this in mind:

- The existing licence requires maintenance and implementation of an environmental management system (EMS) for the operation of the facility (section 2.2). The EMS is required to include details on the management of the plant, out of hours contact, outreach work with the community and schedule of environmental objectives and targets, a programme for meeting these and reporting on agreed targets in an annual environmental review (AER).
- Condition no. 3 (Infrastructure and Operation) sets out requirements for the storage of potential pollutants. However, as stated the applicant has indicated in the application documentation that no refuelling will take place on site.
- Condition no. 5 (Emissions) requires adherence to emission limits set out in Schedule C. These include standard emission limits for dust and noise at the boundary of the site (sections C.4 and C.5 respectively) and for discharges to water (C.2).
- Condition no. 6 (Control and Monitoring) requires monitoring to demonstrate compliance with emission limit values specified in Schedule C.
- Condition no. 11 (Notification, Records and Reports) requires recording of all complaints of an environmental nature and the response made to the complaint.

7.10. Having regard to the foregoing, I consider that sub-sections (a) to (e), (g) and (i) of the condition no. 13 will be addressed in the Industrial Emissions licence and, in accordance with Section 99F of the Environmental Protection Agency Act 1992 (as amended) and Section 34(2) of the Planning and Development Act, 2000 (as amended) should not be addressed through the planning system. However, as in the previous decisions of the board in respect of the operation of the quarry at the site (under PL17.243795), I would recommend that a copy of the EMS and Annual Environmental Reports, required under the licence, are submitted to the planning authority to ensure that the planning authority is informed of the environmental conditions at the site.

Condition no. 14

7.11. The applicant appeals sub-sections (a), (b), (c) and (d) of condition no. 14. Sub-section (a) requires monitoring of groundwater, surface water flow, noise, dust at

existing monitoring and recording stations and submission of results to the planning authority. Sub-section (b) requires an annual environmental audit to be submitted, with an annual topographical survey, record of groundwater levels and complaints. Sub-section (c) requires quarterly reports of dust, noise, surface water quality and groundwater monitoring and notification of breaches in emission levels. Sub-section (d) requires compliance with any requirements for the planning authority to address exceedances/breaches.

7.12. As stated monitoring of compliance with emission limits is required by condition no. 6 of the IE licence and reporting on compliance is required by way of AER. Emission limits for groundwater parameters and surface water flow are set out in Schedule C of the licence (C.5.2 and C.2.3 respectively). I would consider, therefore that condition no. 14 of the planning authority's grant of permission is largely unwarranted. However, sub-section (b) (i) and (ii) which require an annual topographical survey and recording of groundwater levels at monthly intervals, are construction aspects of the development and would facilitate the planning authority in monitoring compliance with construction parameters (i.e. with the phased working of the quarry in terms of area and depth). I consider, therefore, that it is appropriate that these elements are included in the grant of permission.

Condition no. 16

7.13. Condition no. 16 requires the payment of a bond to secure the satisfactory restoration of the site. Condition no. 12 of the IE licence requires the applicant to provide an annual statement of the financial provisions in place in relation to the underwriting costs for remedial actions following unanticipated events, including closure, as may be associated with the activity. Financial provisions are required to relate to a Environmental Liabilities Risk Assessment.

7.14. Having regard to the foregoing, I do not consider that it is necessary to add an additional financial measure to ensure the satisfactory restoration of the site.

8.0 Recommendation

8.1. I recommend that planning authority be directed, in accordance with Section 139, Subsection (1) of the Planning & Development Act, 2000 (as amended), to:

- i. AMEND condition no. 10 of the permission by REMOVING sub-sections (b) and (f) and ATTACHING sub-section (a).
- ii. AMEND condition no. 13 of the permission by REMOVING sub-sections (a), (b), (c), (d), (e), (g) and (i) and ATTACHING the following:

The developer shall make a copy of the annual environmental report prepared for the Platin facility as part of the licence reporting procedure to the EPA available to the local authority. This report shall be submitted to the local authority at the same time as the submission is made to the EPA.

Reason: To ensure that the local authority is informed of environmental conditions at the site.

- iii. AMEND condition no. 14 of the permission by REMOVING sub-sections (a), (b) (iii), (c) and (d) and ATTACHING sub-section (b) (i) and (ii).
- iv. REMOVE condition no. 16 of the permission.

For the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the nature, scale and form of the proposed development and its operation as part of the Irish Cement Limited Platin facility, which is subject to an Industrial Emissions Licence, it is considered that:

(a) condition no. 10 (a) and condition no. 14 (b)(i) and (ii) are necessary and appropriate to govern the construction aspects of the development and are therefore in the interest of the proper planning and sustainable development of the area, and

(b) condition nos. 10(b), 10 (f), 13(a), 13(b), 13(c), 13(d), 13(e), 13(g), 13(i), 14(a), (b) (iii), (c) and (d) and 16 are unnecessary, as they are addressed in the Industrial Emissions Licence and would be contrary to section 99F of the Environmental Protection Act 1999 (as amended) and section 34(2)(c) of the Planning and Development Act, 2000 (as amended).

Deirdre MacGabhann

Planning Inspector

19th June 2021