



An
Coimisiún
Pleanála

Inspector's Report ABP-322598-25

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| Development | Point of detail in dispute regarding condition 16 relating to PL26.247626 planning register reference 20160122. |
| Location | Coolishal Quarry, Coolishal Upper, Gorey, Co. Wexford. |
| Planning Authority | Wexford County Council |
| Referrer(s) | Wexford County Council |
| Type of Application | Point of detail referral |
| Date of site inspection | None |
| Inspector | Colin McBride |

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1.0 Introduction

- 1.1. This is a referral under Section 34(5) of the Planning and Development Act, 2000 (as amended).

Section 34(5)

The conditions under *subsection (1)* may provide that points of detail relating to a grant of permission may be agreed between the planning authority and the person to whom the permission is granted and that in default of agreement the matter is to be referred to the Board for determination.

The referral is in relation to the terms of condition no. 16 applied under ref no. PL26.247626 which relates to a security bond for the restoration of the site following completion of quarrying. In absence of an agreement the case was referred to the Commission by Wexford County Council

2.0 Site and Location

- 2.1 The site with a stated an area of 9.9ha, is located approximately 2.0km due southwest of the town of Gorey in County Wexford. The site, at Coolishal Hill, (original height 175m OD: the summit of which is now quarried out) – is within a larger quarry site located between the 130m and 155m contours. The applicant company is stated to own 43.56ha in this area. The quarry is surrounded by agricultural lands with some land given over to newly-planted trees. There are a number of one-off houses flanking county roads L5057 & L5077 to the northwest, north and northeast of the quarry. Access to the site is from the old N11 (now designated the R772 Regional Road) linking the southern end of the new M11 motorway with the town of Gorey (via the hamlet of Clough).

3.0 Planning History

- 3.1 PL26.247626 (20160122): Permission granted for a proposed truck wash-bay and surface water re-cycling system and retention of a yard, batching plant, relocation of

a batching plant, all within an existing quarry. Granted 06/04/17. The following are notable conditions.

13. The restoration of the processing and ancillary areas, included within the red-line boundary of the application, shall be undertaken in associated with the restoration of the quarry pit, upon completion of quarrying. All machinery, plant., tanks, buildings, road, concrete aprons, walls and structures shall be permanently removed from the site for disposal at authorised waste facilities. This work shall be carried out within twelve months of cessation of excavation of rock from the quarry.

Reason: To ensure satisfactory restoration of the site, in the interests of visual amenity.

16. Within three months of the date of this order, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. The former and amount of the security shall be as agreed between the planning authority and the developer, or in default of agreement shall be referred to An Bord Pleanála for determination.

Reason: To ensure satisfactory restoration of the site in the interest of visual amenity.

- 3.2 PL 26.235738 (2009/0014): Permission granted for retention of asphalt plant on this site. Granted 26/07/10.
- 3.3 PL 26.235738 Ref. SU 26.SU0113: Permission granted for Substitute Consent for this quarry. A remedial EIS had been submitted with the application. Condition 3 required compliance with Board decision ref. PL 26.235738, save where the planning authority agreed in writing to details being waived. Granted 14/02/17.
- 3.4 QD 26.QD0027: The Board granted permission for continuation of quarrying for a twenty-year period within a 3.8ha expansion area. An EIS was submitted with the application. Granted 14/02/2017.

4.0 Legislative and Policy Context

4.1 EPA Guidance on assessing and costing environmental liabilities (2014).

The relevant guidelines for costing closure and reinstatement of the operation in question are the EPA Guidance on assessing and costing environmental liabilities (2014). And such guidance presents “a systematic approach for assessing environmental liabilities associated with”:

“Closure and restoration/aftercare”.

Under section 2.5.7 of the guidelines in relation to Closure plan costing the following is stated:

“When costing the closure plan, operators should keep in mind that the aim is to bring a site to the point where it no longer poses any risk of environmental pollution and, where pollution has been caused, to return the site to a satisfactory state”.

Under this section it is also stated that:

“The EPA is required to ensure that ‘necessary measures will be taken upon the permanent cessation of an activity (including such a cessation resulting from the abandonment of the activity) to avoid any risk of environmental pollution and return the site of the activity to a satisfactory state’. Accordingly, all closure costs should be included. It is not acceptable to exclude/reduce costs on the basis that closure is expected to be known in advance and quantities (e.g. of waste) will be reduced during a wind-down phase, that certain costs will be covered by the operator as part of normal operations (e.g. labour, security, management and utility costs) or that they will be off-set by assets. In addition, any additional costs if a facility closes suddenly (e.g. in the case of a landfill, additional structural works may be required if cells/phases are only partially filled) and it is necessary for third parties to complete the works should be included. Any variation to this requirement needs to be justified and supported by relevant documentation that indicates the costs will not arise. Estimates should be prepared for all closure items and included in tabular format within this section of the report”.

Table 2.2: Closure- quantification and costing template.

The guidelines indicate that “Table 2.2 is provided by way of guidance. It includes example items that should be considered for inclusion in the closure plan and a suggested format. Table 2.2 is generic and should be developed further by operators to achieve a robust costing plan that is specific to each site with sufficient information to be verifiable”.

- 4.2 EPA Guidance on assessing and costing environmental liabilities: Unit cost rates for verification (2014). This document provides unit costs for closure and restoration/aftercare in Table 1, with landfill specific unit costs given in Table 2. It accompanies the Environmental Protection Agency Guidance on assessing and costing environmental liabilities (EPA, 2014).

These guidelines contain Table 1, which relates to ‘Unit costs for closure and restoration/aftercare’ and is broken down into ‘item description’ (daily costs, unit costs, recovery/disposal gate fee (excluding transport)), ‘Unit’, and a cost valuation including a ‘low range’ and ‘high range’.

Both guidance documents are attached.

5.0 Point of detail referral submission

- 5.1. Wexford County Council have submitted a point of detail referral in relation to condition no. 16 of permission ref no. PL26.247626 (20160122).

Condition no. 16:

Within three months of the date of this order, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. The former and amount of the security shall be as agreed between the planning authority and the developer, or in default of agreement shall be referred to An Bord Pleanala for determination.

Reason: To ensure satisfactory restoration of the site in the interest of visual amenity.

- 5.2. The referrer (Wexford County Council) outlines the background noting that permission was granted in 2017 with condition no. 16 attached. A warning letter was issued in 2021 over non-compliance with the condition. The applicants/operators' response was that there is a bond in place, which the referrer considers to be not correct. A further enforcement notice was issued in 2021, and an Independent Site Statement Bond Assessment and Costing report was prepared for the Council in 2022 by Fehily Timoney Consultants. The Council agree with the costing conclusion of this report and the amount recommended by the report (€1,588,525.00) were put to the applicant/operator. The applicant/operator has made offers to the Council in relation to the bond, none of which have been deemed acceptable or match the independent costing valuation €1,588,525.00.
- 5.3. The Council now makes this referral to the Commission to determine the bond amount to be lodged. The referrer/Council have included the Site Reinstatement Bond Assessment and Costing report carried out by Fehily Timoney Consultants with their referral. The report indicates that it has been carried out having regard to the EPA Guidelines-Guidelines on Assessing and Costing Environmental Liabilities (2014).

6.0 Applicant's Response to referral

- 6.1 A response has been received from the applicants/operators of the quarry operation at this location, Fraser Court Ltd.
- Wexford County Council have incorrectly claimed that Fraser Court Ltd have indicated there was a bond in place on the 25/03/21. Fraser Court claimed there was a bond in place correctly of €184,099 in relation to a previously permission granted which has now ceased on the 06th July 2021. A copy of bank statement and notice of cessation of the bond are included with the response.
 - Fraser Court Ltd indicate that while they have been attempting to renegotiate a bond figure in relation to the permission in question, the Council engaged consultants to assess the quarry and compile a reinstatement costing. Fraser Court

Ltd dispute the figure for reinstatement recommended by the report due to spurious rates and measurements in the bill of rates at Appendix C of the report.

- It is indicated that the Planning Authority's own submission and timeline indicates that Fraser Court Ltd did not ignore correspondence from the Council and have been proactive in responding with rational offers for a bond figure as opposed to the over inflated figure recommended by the Fehily Timoney Report.
- The applicant/operation states that quarries of far bigger in size and operation in terms of buildings and facilities around the country are paying far less for their bonds than the amount the Planning Authority is requiring.
- Fraser Court Limited request that the Commission allow the company sufficient time to instruct an independent cost engineering company to assess the quarry on their behalf and subject to the findings contained in said report make a counter proposal to the Planning Authority which would allow them a fair and rational chance to determine what the bond cost should be.

7.0 Planning Assessment

7.1 The main planning issues in this referral, in my opinion are as follows:

- Bond cost and method of assessment

7.2 Bond Cost and Method of Assessment:

7.2.1 Wexford County Council have referred a point of detail dispute regarding condition no. 16 of ref no. PL26.247626.

Condition no. 16 states the following:

Within three months of the date of this order, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. The former and amount of the security shall be as agreed between the planning authority and the

developer, or in default of agreement shall be referred to An Bord Pleanala for determination.

Reason: To ensure satisfactory restoration of the site in the interest of visual amenity.

There has been a failure to reach agreement in the bond amount between Wexford County Council and the applicants/operators of the development subject to ref no. PL26.247626. Wexford County Council have requested a bond amount of €1,588,525. The applicants/operators of the development dispute this figure.

7.2.2 Wexford County Council's figure is based on a report carried out by Fehily Timoney Consultants, Site Reinstatement Bond Assessment and Costing (February 2022). The report highlights that under permission ref no. PL26.247626, Condition no. 13 requires the following:

13. The restoration of the processing and ancillary areas, included within the red-line boundary of the application, shall be undertaken in associated with the restoration of the quarry pit, upon completion of quarrying. All machinery, plant., tanks, buildings, road, concrete aprons, walls and structures shall be permanently removed from the site for disposal at authorised waste facilities. This work shall be carried out within twelve months of cessation of excavation of rock from the quarry.

Reason: To ensure satisfactory restoration of the site, in the interests of visual amenity.

The report includes a site description identifying four main areas within the redline boundary relating to ref no. PL26.247626, which are as follows:

Area 1: Pre-cast Concrete Storage Yard located to northern end of the development site.

Area 2: Block Storage Yards and Concrete Block Manufacturing Plant, located in the central area of the development site.

Area 3: Ready-mix Concrete Plant, Static Crushing Plant, Processing plant and Tarmacadam Plant (under separate planning permission) located at the southern end of the development site.

Area 4: Office Building, car park, wheel wash and weighbridge located in the south-eastern end of the development site.

The report includes an overview of the manufacturing activities on site and inventory of buildings plant, equipment and other infrastructure within the area subject to permission ref no. PL26.247626. No structures or items outside of the redline boundary have been included and a limiting factor of the bond assessment noted that the inventory is based on equipment and machinery available on site during the site visit as well as noting that the Consultants were unable to confirm that the full extent of works permitted under the permission have been completed with an allowance provided for items permitted under the permission yet to be constructed on site. The inventory of building, plant and equipment is provided for each of the four areas under Tables 2.1, 2.2, 2.3 and 2.4 respectively. Table 2.5 provides an inventory of drainage infrastructure. An inventory of raw materials, products and wastes for each of the four areas identified is provided under Tables 2.6, 2.7, 2.8 and 2.9 respectively.

7.2.3 Costing of the items listed in the inventory was carried out having regard to the EPA document, 'Guidance on assessing and costing environmental liabilities (2014) and its accompanying document EPA Guidance on assessing and costing environmental liabilities.: Unit Cost for Verification (2014). A number of assumptions are made to complete the bond costing. These are:

Reinstatement to be in accordance with condition no. 13 of ref no. PL26.247626, all items classified as raw materials, product or equipment assumed to have resale value of €0 on the assumption of a disorderly winddown (transportation cost to end-destination allowed for all items within this category). Remaining items in any other category to be decommissioned, demolished or disposed of to nearest waste facility. A consultant fee of €50,000 is allow for supervision of reinstatement works, contractor preliminaries cost of 12.5% of works sub-total and contingency of 12.5% of the works sub-total.

7.2.4 The relevant guidelines for costing closure and reinstatement of the operation in question are the EPA Guidance on assessing and costing environmental liabilities (2014). This guidance presents "a systematic approach for assessing environmental liabilities associated with"... "closure and restoration/aftercare". I would refer to the

Section 3.0 of this report outlining Legislative and Policy Context and in particular Section 2.5.7 of the guidelines in relation to closure plan costing and the aim to bring the site to the point where it no longer poses any risk of environmental pollution. Under this section of the guidelines, it is also indicated that all costs should be included with consideration that cessation of activity may result in abandonment of activity or disorderly wind down or exclusion of costs on the basis that closure is expected to be known in advance (refer to section 3.0 above). The guidelines indicate that 'Table 2.2: Closure-quantification and costing template' is provided by way of guidance for quantifying and costing closure of activity.

7.2.5 Appendix 1 of the Fehily Timoney Report are Planning Drawings associated with the site/operation, Appendix 2 is a comprehensive Site Visit Photo Log and Appendix 3 is the Site Reinstatement Bond Assessment and Quantification. The assessment under Appendix 3 is in a tabulated form breaking down costs for all elements associated with the four areas identified within the site boundary. This template for these tables is as per the template recommended under Table 2.2: Closure – qualification and costing template under the 2014 EPA Guidelines. In terms of actual costing the report uses the accompanying document to the 2014 EPA guidelines, 'Guidance on assessing and costing environmental liabilities: Unit cost rates for verification (2014). These guidelines contain Table 1, which relates to 'Unit costs for closure and restoration/aftercare' and is broken down into 'item description' (daily costs, unit costs, recovery/disposal gate fee (excluding transport)), 'Unit', and a cost valuation including a 'low range' and 'high range'.

7.2.6 The costing assessment under Appendix 3 of the Fehily Timoney report uses the rates under Table 1 of the guidance document to calculate costs. It is notable that the Table 1 is used for estimating costs in relation to demolition and decommissioning where cost for disposal and off-site transportation costs are estimated rates. I would note that the estimated costs use the low range figure in terms of Table 1.

7.2.7 The applicants/operators' response as outlined above raises concerns that the cost of the bond put forward by the Council and based on the Fehily Timoney report is over inflated, based on spurious figures and higher than bond costs applied to larger quarry operations nationwide. The applicants/operators have noted that they have

made offers of alternative bond amounts to the Council that have been rejected, and the applicants/operators' response ask for the opportunity to commission an independent cost assessment report of their own.

7.2.8 In terms of assessing this issue, I would consider that the report submitted by the referrer/Wexford County Council is a reliable source of information to determine the costs of the bond to comply with condition no. 16. I come to this view on the basis that the report is based the requirement under Condition no. 13 of the relevant permission under which "the restoration of the processing and ancillary areas, included within the red-line boundary of the application, shall be undertaken in associated with the restoration of the quarry pit, upon completion of quarrying". The report is based on a site visit and comprehensive inventory of the structures and activities that are contained within the redline boundary under the relevant permission. The assessment of cost of the bond is based on the most relevant guidance for assessing and costing environmental liabilities including closure and restoration/aftercare namely the EPA Guidance on assessing and costing environmental liabilities (2014) and its accompanying document, Guidance on assessing and costing environmental liabilities: Unit cost rates for verification (2014) in terms of the methodology used to assess costs and the rates used to calculate such.

7.2.9 In terms of the applicants/operators' objections to the costs of the bond, I would note that permission was granted in 2017 and agreement has failed to be reached on the amount required to comply with the condition. On the applicants/operators' point that other quarries have been subject to lesser amounts for bonds for reinstatement, I would note that no examples have been provided. In relation to the argument that reasonable offers have been made to the Council and rejected, I would note that the applicants/operators have not submitted a response that indicates what such offers are and the basis on which they have been calculated. In relation to the claim that the costs used to calculate the bond in the Fehily Timoney report are spurious, I would note that a significant amount of the rates used are based on Table 1 of the 2014 EPA guidance document, 'Unit cost rates for verification' and in such case the lower range figure is used. I would acknowledge that there are rates used that are estimates (waste disposal and off-site transportation costs), however the 2014 EPA guidelines are clear that under Section 2.5.7 in that "all closure costs should be

included” and “it is not acceptable to exclude/reduce costs on the basis that closure is expected to be known in advance and quantities (e.g. of waste) will be reduced during a wind-down phase, that certain costs will be covered by the operator as part of normal operations (e.g. labour, security, management and utility costs) or that they will be off-set by assets. In addition, any additional costs if a facility closes suddenly (e.g. in the case of a landfill, additional structural works may be required if cells/phases are only partially filled) and it is necessary for third parties to complete the works should be included”. The applicant would have had four weeks to submit their response, and I would consider that such was sufficient time to address the Council’s referral. It is clear from the information on file that discussions have been ongoing on this matter for a significant period of time (enforcement dates from 2021) and the Fehily Timoney report was authored in 2022 and the cost estimate for the bond based on this report was provided to the operators/applicants in 2022.

7.2.10 There may have been scope to reduce the figure based on the Fehily Timoney report on the basis that some materials from demolition on site could have been used to reinstate the site and would not be need to be transported off-site for disposal, however, it is notable that the wording of condition no. 13 of this permission states that “all machinery, plant., tanks, buildings, road, concrete aprons, walls and structures shall be permanently removed from the site for disposal at authorised waste facilities”.

7.2.11 The documents on file show the discussions that have taken place between the applicants/operators and Wexford County Council. In relation to the bond previously paid by the applicants/operators relates to ref no. 98/0589 of €184,099.25 and such is no longer in place. The applicants/operators had suggested that this amount be paid in addition to the proceeds of scrap value (letter March 2025) and such was rejected by the Council with a response suggesting a cash bond of €5000,000 as well as a deed to offsite land of equivalent value (April 2025).

7.2.12 If the Commission considers it necessary, they may wish to issue a Section 132 request to the operators/applicants, Fraser Court Ltd to provide an independent cost assessment for reinstatement of the site subject to ref no. PL26.247626. I would be of the view that this is unnecessary on the basis that the costing put forward by Wexford Council is based on a comprehensive inventory of the site in question and

the calculation of this figure and the methodology used is in accordance with the relevant guidance for assessing and costing environmental liabilities including closure and restoration/aftercare namely the EPA 'Guidance on assessing and costing environmental liabilities' (2014) and its accompanying document, 'Guidance on assessing and costing environmental liabilities: Unit cost rates for verification' (2014).

7.2.13 Conclusion: I recommend that a bond amount of €1,588,525 be applied in this case to satisfy the terms of condition no. 16 attached to ref no. PL26.247626.

8.0 Recommendation

I recommend that a bond amount of €1,588,525 be applied in the case of condition no. 16 attached to permission ref no. PL26.247626 and I would recommend a Board Order as follows:

DECISION

Having regard to the nature of the condition subject to the point of detail referral under Section 34(5) of the Planning and Development Act, 2000 (as amended) and based on the reasons and considerations set out below, the Commission determines that a bond amount of €1,588,525 be paid in respect of compliance with condition no. 16 attached to ref no. PL26.247626.

9.0 Reasons and Considerations

Having regard to the submission by Wexford County Council and the applicants/operators, Fraser Court Limited, it is considered that the bond amount recommended by Wexford County Council has been determined based on a detailed inventory of the site and was calculated based on the methodology recommended under the relevant and appropriate guidelines for assessing and costing environmental liabilities including closure and restoration/aftercare, namely the EPA 'Guidance on assessing and costing environmental liabilities' (2014) and using the rates recommended under the accompanying guidance document, the EPA 'Guidance on assessing and costing environmental liabilities: Unit cost rates for verification' (2014). No alternative figures or basis of calculation of the bond have

been provided by the owner/occupier; therefore, it is considered reasonable that the amount put forward by Wexford County Council should be the bond amount payable.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Colin McBride
Senior Planning Inspector

09th January 2026