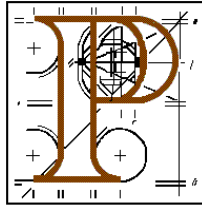


An Bord Pleanála



Inspector's Report

APPLICATION FOR LEAVE TO APPLY FOR SUBSTITUTE CONSENT

Board Reference: LS06S.0025

Planning Authority: South Dublin County Council

Applicant: Roadstone Ltd.

Date of Site Inspection: 27th April, 2016

Inspector: Kevin Moore

1.0 INTRODUCTION

- 1.1 This is an application for leave to apply for substitute consent pursuant to section 177D of the Planning and Development Act, 2000, as inserted by Section 57 Planning and Development (Amendment) Act 2010.

2.0 THE APPLICATION

The applicant submits that the requirement for the application arises from a misinterpretation of the substitute consent process by South Dublin County Council in their determination of 13th August 2012 under section 261A (refer to SU.06S.SU0061). The applicant's submission may be synthesised as follows:

2.1 Background

- 2.1.1 In accordance with section 261A(3), the Council determined that Roadstone should apply to the Board for substitute consent in respect of their quarry and that the application should be accompanied by a remedial Environmental Impact Statement (rEIS) and a remedial Natura Impact Statement (rNIS). There was no map or drawing attached to the determination outlining the extent of the substitute area.

- 2.1.2 A substitute consent application was made on 18th September 2013. A revised rEIS and rNIS were submitted to the Board on 24th July 2014 that related to the Council's substitute consent area shown on their drawing SCR-001 dated October 2013.

2.2 Substitute Consent Area

- 2.2.1 There was no drawing showing the required extent of the substitute consent area attached with the Council's section 261A determination of August 2012. Drawing SCR-001 was first provided to Roadstone by the Board on 26th November 2013.

- 2.2.2 It is apparent from the Council's Planner's report that the Council adopted a date of 1st May 1999 (the date at which the European Communities (EIA) (Amendment) Regulations, 1999 came into effect), rather than the 1st February 1990 as is required under the provisions of section 261A, and further reinforced by the section 261A Guidelines for Planning Authorities of January 2012 (Sections 3.2.2 and 3.2.8).
- 2.2.3 The incorrect interpretation by the Council has resulted in the requirement for this application to regularise part of the quarry area not covered by the existing planning permission of the current section 261A substitute consent application.
- 2.2.4 The applicant's drawing D01-A attached shows an area of c.33.6 hectares to which the application for leave applies. The development comprises part of an existing quarry that exceeds 5 hectares and thus falls within Class 2 Extractive Industry (2)(b) of Part 2 of Schedule 5 of the Planning and Development Regulations. An EIS is required and the application for substitute consent complies with the requirements of section 177D(1) of the Act.

2.3 **Exceptional Circumstances**

2.3.1 ***“Whether the regularisation of the development would circumvent the purposes and objectives of the EIA Directive or the Habitats Directive”***

Any application for substitute consent will include an rEIS and rNIS and, therefore, would not circumvent the purpose and objectives of the EIA or Habitats Directive.

2.3.2 ***“Whether the applicant had or could reasonably have had a belief that the development was not unauthorised”***

Roadstone registered with the Council in accordance with the requirements of section 261 of the Act. It has operated, and continues to operate, the quarry in accordance with the conditions of Ref. SDQU05A/2, EPA guidelines, DoEHLG

guidance and Irish Concrete Federation guidelines. Roadstone held a belief that the quarry development within the proposed substitute consent area was not unauthorised.

2.3.3 ***“Whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired.”***

This has not been substantially impaired. A rEIS and rNIS will be submitted with the substitute consent application if leave is granted.

2.3.4 ***“The actual or likely significant effects on the environment or adverse effects on the integrity of a European Site resulting from the carrying out or continuation of the development”***

The proposed substitute consent area is not located within any designated European site and, by virtue of the separation distances from the nearest European sites, the quarry operations have not had, and will not have, any adverse effects on the integrity of a European site. This assessment is supported by the rNIS submitted to the Board under the substitute consent application SU.06S.SU0061. Reference is made to the Council’s Heritage Officer’s report of 16th October 2013 in relation to the section 261A substitute consent application.

2.3.5 ***“The extent to which significant effects on the environment or adverse effects on the European site can be remedied”***

As the proposed substitute consent area is not located within a designated European site and does not affect the integrity of any European site, there are no remediation requirements in relation to same.

2.3.6 ***“Whether the applicant has complied with previous planning permissions or previously carried out an unauthorised development”***

Roadstone registered the quarry in accordance with section 261 and has operated, and continues to operate, with the conditions of the Council’s Ref. SDQU05A/2. Roadstone has obtained a number of planning permissions (details of each referred to) and has complied with these permissions.

2.3.7 **“Such other matters as the Board consider relevant”**

Reference is again made to the Council’s assessment of the substitute consent area and to the incorrect adoption of a date of 1st May 1999 rather than 1st February 1990. It is further noted that the legend on the Council’s drawing SCR-001 incorrectly refers to *“Post 1990 Land SDCC anticipated to be included in the application”* which should have read *“Post 1999 ...”* It is submitted that the drawing was only made available to Roadstone after the section 261A determination review period deadline had expired and thus they were precluded from submitting a review to the Board.

2.3.8 In conclusion, it is submitted that this is an exceptional circumstance that can only be rectified by granting an application for leave to apply for substitute consent on the balance of the post 1990 quarry development that is not covered by the section 261A substitute consent application before the Board.

3.0 PLANNING HISTORY

3.1 The following planning history relates to the quarry development:

File Ref. No. C.1488/Order No. P/6/5/16175

Permission was granted in 1972 for the erection of buildings and the utilization of land for quarrying purposes for an area of 50 acres.

File Ref. No. G.1350

Permission was granted in 1974 for direction signs at the entrances to the quarry.

File Ref. YA.1889

Permission was granted in 1984 for boundary walls.

File Ref. No. SD02A/0167

Permission was granted in 2002 for the development of a facility for recovery of pre-sorted construction & demolition waste (c. 3.2ha). The C & D facility is located on the western side of the site.

File Ref. No. SD06A/0915

Permission was granted in 2007 for an asphalt plant and ancillary facility (c. 1.124ha). This plant has not been constructed.

File Ref. No. SD07A/1047

Permission was granted in 2008 for a new site access onto the outer ring road and related new internal roadway, office, canteen, toilet facilities, security, wheelwash, weighbridges, oil interceptor, septic tank and associated percolation area, car parking and signage (c. 4.0ha). A section 42 application to extend the period of this permission was made to the planning authority and the duration of permission was extended by a further five years.

File Ref. No. SD08A/0731

Permission was granted in 2009 for the installation of an ESB 38kV overhead line switching compound (c. 0.24ha).

File Ref. No. SD12A/0137

Permission was granted in October 2012 for the importation and reuse of excess naturally occurring earthworks material generated by construction

projects to complete construction and landscaping of an existing partially completed screening berm (c.3.6 ha). This is located at the northern boundary of the site.

File Ref. No. SD12A/0156

Permission was granted in October 2012 for a recycled asphalt plant (RAP) addition to the existing asphalt plant and an open covered storage shed.

Section 261 Registration The site was registered by South Dublin County Council (P.A. Ref. SDQU05A/2).

Section 261A Process In accordance with this process (P.A. Ref. SDQU05A/2), South Dublin County Council determined on 13th August, 2012 that the applicant shall apply for Substitute Consent to the Board and that the application be accompanied by a remedial EIS and remedial NIS. Details of the planning authority's considerations under this process are set out below.

4.0 PLANNING AUTHORITY SUBMISSION

4.1 The Council does not accept the contention that it misinterpreted the substitute consent process in its determination under section 261A. The submission included the following:

- * The quarry was authorised in accordance with the Guidelines (rather than 'authorised and compliant').
- * Quarrying occurred after 1/2/1990. As the quarry was authorised by a planning permission and the first EIA Directive is not retrospective and is silent regarding extensions to a quarry, it is not relevant to this quarry.
- * Quarry development occurred (rather than commenced) after 26/2/1997. As the quarry was authorised by a planning permission and

the Habitats Directive is not retrospective and is silent regarding extensions to a quarry, this is not relevant to the quarry.

- * Quarrying occurred and the existing approved quarry expanded after 1/5/1999. The second EIA Directive was incorporated into Irish law by S.I. 93 of 1999. This defined an 'extension' to a quarry and the criteria that required an EIA whether the quarry or extension was authorised or not. The criteria include those set out in Schedule 7 of the Planning and Development Regulations. The extension to the quarry at Belgard after 1/5/1999 was determined to be an extension that required EIA or a determination that an EIA was not required. Neither was done. Substitute consent is therefore required for the unauthorised extension.
- * Quarry development occurred or expanded after 26/2/1997 and some of it was authorised.
- * Quarry development occurred or expanded after 3/7/2008 (EC Judgement date) and it was not material (i.e. it was not more than 25% of the existing quarry).

4.2 It is stated that the above formed the basis of the section 261A determination by the planning authority. It was further stated that no planning enforcement complaints were received in respect of the quarry since September 2012.

5.0 THE SITE LOCATION AND QUARRY OPERATION

5.1 Belgard Quarry is located to the south of the N7 national primary road (Naas Dual Carriageway) between Newlands Cross and Kingswood Interchange. It is approximately 1.7km north-west of Tallaght village. The existing limestone quarry holding is c. 241.3 hectares in area and is located within the townlands of Bedleshill, Belgard, Brownsbarn, Cheeverstown, Buckandhounds, Kingswood and Whitehall in Fortunestown, Tallaght. The quarry processes fragmented rock resulting from blasting using crushing, screening and

washing plant. The quarry produces a wide range of construction aggregates and stone products, concrete products, and road making materials. There is an extensive range of buildings, support structures and accommodation, and infrastructure to facilitate the operation.

- 5.2 The existing extraction area is located in the northern half of the quarry site and comprises an area of approximately 56.3 hectares. Perimeter screening has been provided by utilisation of overburden and topsoil stripped from the extraction area to form berms along the northern, southern and western boundaries. The primary crushing plant is located in the existing permitted quarry extraction area. The secondary and tertiary processing plants are located to the south of the extraction area in the permitted ancillary area. Ancillary manufacturing facilities include concrete manufacturing, blacktop production, concrete block production, a recycling asphalt plant, mortar plant, 'Flomix' plant, dry and wet sand plants, 804 plant, flag plant, precast wall panel plant, paving plant, packing plant, and 'Skako' concrete plant. There is a construction and demolition (C&D) waste recovery facility on the western side of the site and an inert soil and stone waste recovery facility at the northern boundary.
- 5.3 The northern quarry site boundary extends for approximately 1.5km along the N7 national primary road opposite primarily established residential development at Buckandhounds. There are amenity lands to the north west at Corkagh Demesne. The quarry is bounded to the west by the R136 Outer Ring Road and beyond this by a range of commercial properties at Kingswood and the Citywest campus. Baldonnel Aerodrome is west of this development, at a distance of approximately 1.8km from the quarry. It is bounded to the east by agricultural lands, Newlands Golf Club, the corporate headquarters of CRH Plc (Belgard Castle), and Cookstown Road. A covered water reservoir, residential caravan accommodation and a primary school lie beyond the eastern boundary of the applicant's landownership. The quarry is bounded to the south by Katherine Tynan Road opposite primarily residential development at Whitehall and Cookstown. The LUAS Red Line runs along

this section of road with stops at Fettercairn and Cheeverstown. The main entrance to the quarry is off Cookstown Road. The entrance at this location provides for access to the R113 Belgard Road, the R136 Outer Ring Road, and the N81 Tallaght By-Pass. There is access / egress to and from the N7 Naas Dual Carriageway directly for HGVs via a dedicated separate entrance on the northern boundary. This includes a dedicated underpass.

- 5.4 The quarry area associated with the application for leave to apply for substitute consent area comprises an area of c.33.6 hectares and is on the northern side of the overall extraction area. The operations within the substitute consent area appear to have comprised rock extraction only.

6.0 ASSESSMENT

- 6.1 The proceedings to date that have led to the making of this application are as follows:

- * In accordance with section 261A of the Act, South Dublin County Council determined on 13th August 2012, under P.A. Ref. SDQU05A/2, that Roadstone Ltd. should apply for Substitute Consent to the Board for its quarry and that the application be accompanied by a remedial EIS and remedial NIS. The Schedule attached with the determination set out the reasons for the determination made. In reference to section 261A(2)(a)(i), the following was stated in the Schedule:

“Following an examination of the available information it is considered reasonable to conclude that the unauthorised extension of the area of extraction at Cheeverstown quarry operated by Roadstone Dublin Limited, carried out after 1 May 1999, constitutes development which would have required an environmental impact assessment or a determination as to whether an environmental assessment or determination was carried out or made in that regard. This conclusion

is based on having regard to the EIS Directive and to the selection criteria set out in Schedule 7 of the Planning & Development Regulation 2001 (S.I. No. 600) as amended, and to the relevant provisions of the South Dublin County Development Plan 1998.”

* Roadstone Ltd. did not seek a review of this determination by the Board.

* On 18th September 2013, Roadstone Ltd made their application for substitute consent to the Board (ABP Ref. SU.06S.SU0061). This application sought substitute consent for a quarry area of c.133 hectares and an extensive array of ancillary activities within the quarry site.

* The planning authority made its submission to the Board on 23rd October 2013 in response to the application made. Therein the authority was forthright in its position that it informed the applicant to where the substitute consent application relates. I draw the attention of the Board to the planning authority’s submission to the Board received on 23 October 2013 wherein it was stated:

“The extent of the application area exceeds that of the area of the Planning Authority determination and as advised to the applicant by email on the 19th July 2013, in advance of the application being submitted to the Bord, having regard to Section 75(14) of the Act.”

The substitute consent area so determined by the planning authority was illustrated on Drawing SCR-001 submitted to the Board on 23 October 2013. This related to an area of 18.2 hectares at the western end of the quarry.

- The Board, having examined the original application received on 18th September 2013, the submission of the planning authority and the documentation available to it, determined that the extent of the land area associated with the application was far in excess of that so determined by the planning authority to be the applicable quarry area for the substitute consent application and that the range of activities so referenced as part of the application were significantly beyond that applicable to the substitute consent process. The Board, thus, requested the submission of a revised application to include a revised rEIA and revised rNIS, targeted to the area to which the planning authority made its determination. Revised documentation, including a revised rEIS and rNIS, limited to the land area so determined by the planning authority (i.e. 18.2 hectares), excluding other ancillary activities and extraction areas, was requested by the Board on 28th January, 2015.
- The applicant responded to this request on the 14th August, 2015. The response included a revised rEIS and a revised rNIS focusing on the relevant area so determined by the planning authority.
- Consideration of substitute consent application SU.06S.SU0061 is ongoing.

6.2 The Board has now received this application for leave to apply for substitute consent. The applicant submits that no drawing showing the required extent of the substitute consent area was attached with the Council's section 261A determination of August 2012. It further submits that Drawing SCR-001 was first provided to Roadstone by the Board on 26th November 2013. It is contended that the Council's assessment of the substitute consent area related to the incorrect adoption of a date of 1st May 1999 rather than 1st

February 1990. It is further submitted that, as the drawing was only made available to Roadstone after the section 261A determination review period deadline had expired, they were precluded from submitting a review to the Board.

6.3 My considerations following these observations are as follows:

- The planning authority issued its determination under section 261A and this determination included the reasons for its determination. The reason for the determination in relation to section 261A(2)(i) was explicit. The applicant could in no way have failed to understand what the planning authority based its determination on. The applicant chose not to review this determination. The Board cannot re-examine this determination.
- Notwithstanding the reason provided, the planning authority also informed the applicant in July 2013 of the extent of the area that was required to be the area associated with the application for substitute consent. This was before the original application for substitute consent was made to the Board.
- Despite the clarity of the reason set out with the planning authority's determination, that being in the possession of the applicant after the determination was made, and the applicant being informed by the planning authority of the actual extent of the quarry area that was determined relevant to the substitute consent application, the applicant proceeded to make an application to the Board for substitute consent for a land area of some 133 hectares and a very extensive range of ancillary activities. There appears to be no logic, reason or sense to the making of that application.
- It is evident that a number of matters do not add-up in the applicant's submissions in this application process to date. It is seen at first that the applicant applied for substitute consent for some 133 hectares (plus the

wide range of ancillary activities). The application is then revised to focus on the 18.2 hectares so determined to be the relevant land area by the planning authority. Then the Board is in receipt of this application for leave to apply for substitute consent which relates to a quarry area of c.33.6 hectares. This latter area in no way relates to the original area for which the application for substitute was originally made, either in itself or by addition of it to the 18.2 hectares now before the Board as the substitute consent application.

- I must conclude that there is no logic, reason or sense to the extent of the quarry area now requested to be permitted to be the subject of a substitute consent application. Furthermore, in the understanding of how the applicant has approached the substitute consent application process to date, I would have very grave concerns that the applicant appears to be suggesting that there may be an extensive quarry area that is unauthorised (if anything is to be gauged by the original application for a 133 hectare quarry area) and that allowing leave to apply for substitute consent could potentially encourage further such applications. I draw the attention of the Board to the applicant's response to the planning authority's submission on the original substitute consent application SU.06S.0061 relating to a quarry area of 133 hectares. Therein the applicant submits that, for the sake of completeness, all development that required EIA had been included in that substitute consent area so applied for.
- I am of the view that leave to apply for substitute consent cannot, and should not, be considered in such circumstances where this piecemeal approach to seeking to regularise unauthorised works bears no understanding of what legitimately is required to be considered and particularly where the applicant expressly chose not to review the determination of the planning authority under section 261A when in receipt of the full reasoning behind its decision. Furthermore, the applicant's claim that some 33.6 hectares of quarrying occurred between

1990 and 1999 has not been the subject of assessment and can only be considered conjecture at this stage. In addition, in light of the applicant's original application to the Board for an area of some 133 hectares, one cannot reasonably conclude that the applicant's submission at this stage can be relied upon.

6.4 I submit to the Board that to consider the assessment of the matters relating to exceptional circumstances so set out under section 177D(2) of the Act is somewhat futile in this instance. However, I must offer the opinion that I do not accept that the applicant could in any way have been of the belief that this very large scale of development so undertaken could not have been subject to the requirement for EIA (indeed the applicant's response to the planning authority's submission under SU.06S.SU0061 referenced above would suggest the opposite). I also do not accept the applicant's conclusion that this large quarry area the subject of this application has not had adverse effects on the integrity of a European site without the provision of sound, relevant information and rigorous assessment having been undertaken, particularly in the knowledge that it was determined by the planning authority under the provisions of section 261A that a significantly smaller area of 18.2 hectares was considered to be necessarily subject of an application that included a rNIS and given the potential cumulative impacts resulting from this with all other quarrying in the vicinity.

6.5 Overall, it may reasonably be concluded that it appears that this application appears to be an attempt to seek to review or revisit the decision by the planning authority under section 261A when the applicant clearly decided not to seek a review at the appropriate time and when the determination of the planning authority clearly explained the extent of their considerations under section 261A.

7.0 RECOMMENDATION

I recommend that leave to apply for substitute consent is refused in accordance with the following:

REASONS AND CONSIDERATIONS

On the basis of the nature of the application made to the Board, its direct association with the determination made by South Dublin County Council for this quarry under section 261A of the Planning and Development Act 2000 (as amended), the decision of the applicant not to seek a review of the planning authority's determination when in receipt of the planning authority's reasons for its determination, and this application now culminating in a proposal to review the determination by the planning authority under section 261A of the Planning and Development Act 2000, as amended, it is considered that it would be inappropriate for the Board to consider the granting of leave to apply for substitute consent in such circumstances.

Kevin Moore

Senior Planning Inspector

April, 2016.