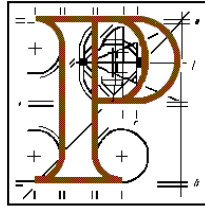


An Bord Pleanála



Inspector's Report

Development: Leave to apply for substitute consent in relation to a quarry, processing plant and concrete manufacturing plant at Rossmore Quarry, Rossmore & Barryscourt Townlands, Carrigtwohill. Co. Cork.

Application for Leave to Apply for Substitute Consent under Section 261A(20) of the Planning and Development Acts 2000-2015

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| Planning Authority: | Cork County Council |
| Applicant: | Kilsaran Concrete |
| Application Lodged: | 21 st August, 2015 |
| Inspector: | Sarah Moran |

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The subject site is located at Rossmore Bay on the eastern side of Cork Harbour, south of the settlement of Carrigtohill, Co. Cork and the N25 Cork to Midleton road. It is accessed via a local road c. 2km south of the N25. The site is a large sand, gravel and limestone quarry with ancillary facilities comprising a concrete batching plant, a crushing plant, a blockyard, an asphalt plant and areas of sand/gravel storage. The overall quarry site has an 'L' shape with the western and southern sides of the 'L' formed by the shoreline. There are agricultural lands to the north and east. There is a further separate quarry development to the immediate east and another quarry and associated asphalt plant nearby to the south east. The site adjoins Great Island Channel SAC (site code 001058) and Cork Harbour SPA (site code 004030).

2.0 RELEVANT STATUTORY PROVISIONS

2.1 Section 261A(20) Special Provisions for Quarries Regarding Applications for Leave to Apply for Substitute Consent

- 2.1.1 Any quarry owner/operator required to apply for substitute consent under section 261A (i.e. on foot a PA or Board determination/decision), and where such a requirement had arisen due to an invalid/defective permission by reason of-

- (i) Any matter contained in or omitted from the application for permission including omission of an EIS or NIS, or both, or inadequacy of an EIS or NIS or both, or
- (ii) Any error of fact or law or procedural error,

The owner/operator may apply to the Board for leave to apply for substitute consent in accordance with section 177E(2A), i.e. for development permitted under the original permission that has been carried out and all or part of the development permitted under that permission that has not been carried out. Where it is satisfied that the permission is invalid/defective in accordance with section 261A(20)(a), the Board shall grant leave to the making of an application for substitute consent in relation to all or part of the development the subject of the permission.

- 2.1.2 Section 261A(20)(f):

The Board shall decide whether to grant leave to the applicant to make an application for substitute consent in relation to the subject matter of the permission to which the application relates or to refuse to grant such leave.

- 2.1.3 Section 261A(20)(j)

Where-

- (i) An applicant submitted an application for substitute consent to the Board prior to the coming into operation of section 261A(20), i.e. 22nd July 2015, in respect of a quarry to which his or her application under 261A(20)(a) relates,

- (ii) The Board decides to grant leave to apply for substitute consent in respect of that quarry, and
- (iii) The applicant applies for substitute consent in accordance with section 177E(2A) in respect of that quarry,

The application for substitute consent referred to in subparagraph (i) shall be taken to be withdrawn.

2.3 Section 177 Applications for Substitute Consent

2.3.1 Section 177E

Generally relates to applications to the Board for substitute consent.

2.3.2 Section 177E2A

Where an application for substitute consent is made in respect of a development pursuant to a decision to grant leave to apply for substitute consent under section 261A(20)(a), the application may be made in relation to that part of the development permitted under the original permission that has been carried out and all or part of the development permitted under that permission that has not been carried out at the time of making the application. Where a remedial EIS/NIS was required in relation to development carried out, then an EIS/NIS will be required for the part of the development not yet carried out.

3.0 BACKGROUND AND PLANNING HISTORY OF SUBJECT SITE

3.1 General Planning History

3.1.1 37/81 PL4/5/54476

Permission was originally granted for sand and gravel extraction and the installation of a washing plant at the southern part of the subject site under 81/38. Stated area of 12.5 acres (5.06 ha).

3.1.2 99/3410

Permission granted in 2000 for an extension to and retention of an existing limestone quarry, to include extraction below the level of the water table and the construction of a settlement pond, within an area of 9.7 ha. The development included discharge of pumped out water to the estuary via the settlement pond. The planning application was accompanied by an EIS.

3.1.3 99/3411

A parallel planning permission was also granted in 2000 for the retention and extension of an aggregate processing plant incorporating aggregate crushing and screening, concrete batching, concrete block making, mortar production and an asphalt/macadam plant over a site of c. 6.3 ha. The application was accompanied by an EIS.

3.1.4 01/6604

Permission granted for sand manufacturing plant and relocation of concrete batching plant.

3.1.5 03/1644

Permission granted for change of use from dwelling to offices, sewage treatment unit and additional car parking spaces.

3.1.6 03/4570

Permission granted in 2004 for development at the site comprising restoration works in the northern section of the site using overburden extracted from the southern void (3.8 ha) and deepening of the quarry floor in the southern part of the site (19.9 ha) from that permitted under 99/3410 to 40m below O.D., also relocation of electricity poles in the south eastern part of the site. The application included retention of northern and southern quarry faces of an area of 0.872 ha over that permitted under 99/3410. The application was accompanied by an EIS.

3.2 Section 261 Registration

3.2.1 There was no requirement to register the quarry under section 261 as permission had been granted within the previous 5 years from the date of commencement of that section, i.e. 28th April 2004.

3.3 CKQY0106 QV0174 Section 261A Determination and Decision

3.3.1 Cork County Council made a section 261A determination/decision in relation to an area of 33 ha at the subject site, which had 3 elements (as per the Inspector's report of QV0174):

- Northerly area of worked out quarry which has been partially remediated and which had permission for remediation/filling under 03/4570.
- A central area generally covered by planning permission 99/3411 where most of the manufacturing activity took place with site offices, a weighbridge, a wheel wash, car parking, a large block yard, a concrete batching plant and crushing plant, storage sheds and an asphalt plant.
- A large area to the south, originally permitted by 99/3410 and amended by 03/4570, bound by Rossmore Bay to the west and south and by the Irish Asphalt quarry (QV0198) to the east. Quarrying was still taking place in the western part of this section and there was pond/sump in the south eastern corner, which was being pumped.

3.3.2 The PA issued the following determination/decision on 23rd August 2012, ref. CKQY0106:

- Determination under section 261A(2)(ii) that AA was required for quarrying carried out after 26th February 1997 and that no such assessment was carried out.

- Decision under section 261A(3) that permission had been granted for the quarry under ref. 99/3410, 99/3411, 01/6604 and 03/4570 which were not subject to AA and that, therefore, the quarry operator should apply to the Board for substitute consent.

3.3.3 The PA provided the following reason for the determination:

Having regard to the size of the quarry, its proximity to the shoreline of Rossmore Bay, the nature of works proposed under Planning Reg Nos. 99/3410, 99/3411, 01/6604 and 03/4570 and the location of the quarry in an area liable to tidal flooding there could be potential for the development permitted under these applications to give rise to impacts on both habitats for which the Special Area of Conservation is designated and the species for which the Special Protection Area is designated.

The following reasons for the decision were provided:

Permission was granted for the quarry under Pl. Reg. 99/3410, 99/3411, 01/6604 and 03/4570.

The assessment of these planning applications did not constitute an appropriate assessment in the context of the requirements of the Habitats Directive.

3.3.4 The Board confirmed the above determination and decision. Of note, the Board decision referred to the likelihood that there is a hydrological and hydrogeological link between the quarry site and the Great Island Channel SAC and the Cork Harbour SPA, also the extent of quarrying activity in the immediate area and the possibility of in-combination impacts on European sites which may have arisen from such quarrying.

3.4 SU0117

3.4.1 Cemex (ROI) Ltd. sought substitute consent for a quarry with a stated area of 26.8 ha, with associated sand and gravel processing facilities and plant. The application was submitted on 29th August 2014, including a remedial NIS dated August 2014. Additional information was submitted on 6th October 2014 and 23rd October 2014. The Board has not yet reached a decision on this current case, pending the subject application.

3.5 Adjacent Sites

3.5.1 Quarry to Immediate East

The quarry to the immediate east was the subject of QV0198 and substitute consent application SU0093.

3.5.2 Quarry to the South East

The quarry to the south east of the subject site was the subject of QV0167.

4.0 SUBJECT APPLICATION FOR LEAVE TO APPLY FOR SUBSTITUTE CONSENT

4.1 This application is submitted in accordance with section 261A(20), i.e. substitute consent permission is sought for development already carried out and for the remainder of the development permitted but not yet carried out. The application notes that if the Board grants leave to apply for substitute consent, then the previous application SU0117 will be deemed to have been withdrawn.

4.2 The applicant makes the following points in support of the application:

- The planning permissions granted by Cork County Council under 99/3410, 99/3411 and 03/4570 for quarrying and associated development at the subject site have been deemed to be defective in a material respect by a notice issued by the PA pursuant to section 261A(3), ref. CKQY0106. This notice was confirmed by the Board on review.
- The section 261A notice determined that development was carried out at the quarry after 28th February 1997, which would have required AA, having regard to the Habitats Directive, however such AA was not carried out. The applications for permission were invalid or defective as they did not include Natura Impact Statements (NIS).
- The quarry development that was the subject of 99/3410 has largely been completed and is superseded by the quarry extension granted under 03/4570.
- Planning under 99/3411 for the aggregates processing plant and concrete manufacturing plants is intrinsically linked to the quarrying activities at the site, and development is permitted until the quarries on the contiguous lands have been exhausted.
- The quarry development permitted under 03/4570 has a development term of 15 years from 12th August 2004, the date of the grant of permission. This permitted development is not yet complete. Figure 2 submitted indicates the lateral extent of the approved extraction area and the extent of the current extraction area. The current extraction depth is -20m OD, some 20m OD above the approved extraction depth of -40m OD.
- The applicant would wishes to apply for substitute consent for development that has been carried out as well as the remainder of that development permitted but not yet carried out.

5.0 SUBMISSION OF PLANNING AUTHORITY

5.1 The planning authority has not submitted any comment on the subject application.

6.0 ASSESSMENT

6.1 Scope of Development in Question

6.1.1 As per the Section 261A decision and determination, quarry development at the site was subject to EIA. However, the developments permitted at the site under 99/3410, 99/3411, 01/6604 and 03/4570 were subsequent to the Habitats Directive (26th February 1997) and to the application of legal protection to the

Great Island Channel SAC (designated July 1999) and Cork Harbour SPA (first classified November 1994). As per the Board decision on QV0174, these works would have required AA given their proximity to and possible hydrological and hydrogeological connections with the Great Island Channel SAC and Cork Harbour SPA, also the possibility of 'in combination' impacts due to the proximity of other quarries to the site. Section 261A(2)(a)(ii) therefore applies.

- 6.1.2 Substitute consent was sought for a total quarry area of 26.8 ha under SU0117, including the batching plant and processing areas, areas of sand and gravel extraction and a deep limestone pit, also excavation below the water table. A remedial NIS was submitted with the application.
- 6.1.3 Permission is now sought to apply for leave to apply for substitute consent under the new statutory provisions, i.e. substitute consent for works already carried out and for further development of works already permitted. However, the provisions of section 261A(20) specifically relate to quarries. The relevant definition of a "quarry" for the purposes of section 261A is set out in section 2(19) of the Planning and Development Act 2000 (as amended), as inserted by the European Union (Environmental Impact Assessment and Habitats) (No. 2) Regulations 2011, as follows:

"quarry" means an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or bore-hole or a well and bore-hole combined, and shall be deemed to include-

(i) any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on;

(ii) any place occupied by the owner of a quarry and used for depositing refuse from it but any place so used in connection with two or more quarries, and occupied by the owner of one of them, or by the owners of any two or more in common, shall be deemed to form part of such one of those quarries as the Minister may direct;

(iii) any line or siding (not being part of a railway) serving a quarry but, if serving two or more quarries shall be deemed to form part of such one of them as the Minister may direct;

(iv) a conveyor or aerial ropeway provided for the removal from a quarry of minerals or refuse.

Several of the operations mentioned in the substitute consent application and as permitted at the site under the previous applications outlined above would not

come within the scope of this definition, particularly with regard to section 2(19)(i), i.e.:

- 99/3411, permission for retention and extension of existing aggregate processing plant. I note the comment of the applicant that this development is intrinsically linked to the quarrying activities at the site, however it does not come within the scope of the above definition.
- 01/6604, permission for sand manufacturing plant and relocation of concrete batching plant.
- 03/1644, permission for change of use from dwelling to offices, sewage treatment unit and additional car parking spaces

It is considered that section 261A therefore does not apply to these aspects of the overall quarry operation and the Board cannot grant the applicant permission leave to apply for substitute consent for them under that section. However, Section 261A would apply to the quarrying works permitted under 99/3410 and 03/4570. I note the comment of the applicant that the development permitted under 99/3410 has largely been completed and has been superseded by the quarry extension granted under 03/4570.

6.2 Section 261A(20)

6.2.1 As noted above, section 261A(20)(a) provides that any quarry owner/operator required to apply for substitute consent under section 261A (i.e. on foot a PA or Board determination/decision), and where such a requirement had arisen due to an invalid/defective permission by reason of-

- (i) *Any matter contained in or omitted from the application for permission including omission of an EIS or NIS, or both, or inadequacy of an EIS or NIS or both, or*
- (ii) *Any error of fact or law or procedural error,*

The owner/operator may apply to the Board for leave to apply for substitute consent in accordance with section 177E(2A), i.e. for development permitted under the original permission that has been carried out and all or part of the development permitted under that permission that has not been carried out.

6.2.2 With regard to section 261A(20)(a)(i), ref. CKQY0106, the planning authority found with regard to section 261A that:

- Permission was originally granted for a quarry at the site in 1981 and other lands at the site were developed prior to the EIA directive in 1990. Adequate EIA was carried out in respect of the permitted quarry developments at the site. Therefore section 261A(2)(a)(i) did not apply.
- However, the applications did not include AA. There was no adequate consideration of potential impacts on the adjacent Natura 2000 sites, Great Island Channel SAC and Cork Harbour SPA and no NIS was submitted with these applications. Therefore, section 261A(2)(a)(ii) applied.

The Board review QV0174 did not consider the section 261A(2)(a)(i) PA determination but confirmed that section 261A(2)(a)(ii) did apply. I note that the section 261A determination and decision generally relate to quarrying works carried out at the subject site. As per the definition of a quarry set out above, the

relevant permissions are 99/3410 and 03/4570 as these specifically relate to quarrying works. On this basis, it is considered that section 261A(20)(a)(i) applies.

- 6.2.3 Section 261A(20)(f) provides that the Board shall decide whether to grant leave to the applicant to make an application for substitute consent in relation to the subject matter of the permission to which the application relates or to refuse to grant such leave. Where it is satisfied that the permission is invalid/defective in accordance with section 261A(20)(a), the Board must grant leave to the making of an application for substitute consent in relation to all or part of the development the subject of the permission.

6.3 Conclusion

- 6.3.1 The subject development comprises works which were granted planning permission and which would have required AA. Section 261A(20)(a)(i) therefore applies and the Board shall grant the applicant leave to apply for substitute consent. The applicant may only apply for substitute consent for works which come within the definition of a quarry as per section 2(19) of the Act, as set out above.

7.0 RECOMMENDATION

- 7.1 I recommend that the Board **grant** the applicant leave to apply for Substitute Consent under section 261A(20) of the Planning and Development Act 2000 (as amended), for the Reasons and Considerations set out below. I also advise that that the Board issue a notice to the applicants as outlined below.

REASONS AND CONSIDERATIONS

Having regard to Section 261A(20) of the Planning and Development Act 2000, as amended, the Board is satisfied that the permissions granted by the planning authority in respect of the quarry (PA Refs. 99/3410 and 03/1644) were defective in a material respect by reason of the omission of Natura Impact Statements.

The Notice to the applicants advising of the decision should also direct that the scope of the leave being granted as being confined to development of the quarry only and as per the two permissions cited.

Sarah Moran,
Senior Planning Inspector

8th December 2015