



An
Bord
Pleanála

Inspector's Report RP03.RP2159

Question:	Point of detail regarding condition nos. 1(a) and condition no. 4 of SU03.0127
Location	Fahey North, O'Briens Bridge, Co. Clare
Planning Authority	Clare County Council.
Planning Authority Reg. Ref.	EUQY53
Referral	
Referral Type	Point of detail referral
Referred by	Boltens Quarry
Owner/Occupier	Boltens Quarry
Date of Site Inspection	15 th January 2018
Inspector	Ronan O'Connor

1.0 Introduction

- 1.1. This case is a referral under Section 34(5) of the Planning and Development Act 2000, as amended. It was received by the Board from Boltens Quarry and concerns a point of detail regarding Conditions 1(a) and 4 of a Substitute Consent Permission issued by An Bord Pleanála (Ref 03.SU.0127). Condition 1(a) relates to plans and particulars and Condition 4 relates to the submission of a Restoration Plan.
- 1.2. Clarification is sought from the Board as to whether the consent issued under file ref 03.SU.0127 authorises the importation of fill for the sole purpose of complying with Condition No. 4 of the consent and the implementation of the Restoration Plan as detailed in the REIS.
- 1.3. Clarification and/or correction is also then sought on the six month timeframe for the implementation of the Restoration Plan, as it is considered unachievable and therefore unenforceable in its current form.

2.0 Background to Referral

- 2.1. In December 2016 An Bord Pleanála granted Substitute Consent to Boltens Quarry under Reg. Ref. 03.SU.0127 for a Quarry at Faheymore North, O'Briensbridge, Co. Clare.

- 2.2. Condition 1 states as follows:

1 (a) This grant of substitute consent shall be in accordance with the plans and particulars submitted to An Bord Pleanála with the application on the 4th day of December, 2014 and the further information submitted to An Bord Pleanála on the 22nd day of December, 2014, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority within six months of the date of this order, and the development shall be in accordance with the agreed particulars.

(b) This grant of substitute consent relates only to past quarrying that has been undertaken as described in the documentation supporting the application, and does not authorise any structures or any future development on this site, including excavation, unless authorised by a prior grant of planning permission.

Reason: In the interest of clarity.

2.2.1. Condition 4 states as follows:

4. Implementation-stage details of the restoration of the quarry shall be submitted to, and agreed in writing with, the planning authority, in accordance with Drawing Number 144-168-015-Rev PL1 (Restoration Plan) received by An Bord Pleanála on the 22nd day of December, 2014 and the measures set out in Section 2.7.1 of the remedial environmental impact statement (Site Restoration Scheme), which details shall include the following:

- (a) details of the finished gradients of the quarry faces,
- (b) details of secure fencing for the boundaries of the site,
- (c) a scheme of landscaping and tree planting, and control of invasive species,
- (d) the control of dust emissions until such time as planting is established, and
- (e) proposals for an aftercare programme of five years.

The restoration shall be completed to the written satisfaction of the planning authority within six months of the date of this order in accordance with the agreed details, unless a grant of permission for the further development of this site is implemented.

Reason: In the interest of protection of the environment, landscape and public safety.

3.0 The Referral

3.1. Referrer's Case

3.1.1. The referrer's case can be summarised as follows:

- Cannot comply with Condition No. 4 in its current state.
- Disagree with the planning authority's stance that a separate planning application is required to fill the land as per the Restoration Plan submitted with the application for substitute consent.
- The main issues relating to the dispute arises in relation to the proposal to import material on site.

- The importation of material is necessary to facilitate the restoration plan.
- Applicant has made a recent application for a Waste Permit to facilitate importation of material on site – the planning authority has advised that the Substitute Consent does not authorise the importation of such fill.
- Clarification is sought from the Board as to whether the consent issued under file ref 03.SU.0127 authorises the importation of fill for the sole purpose of complying with Condition No. 4 of the consent and the implementation of the Restoration Plan as detailed in the REIS.
- Condition No. 1 states that where details are to be agreed with the planning authority, these are to be agreed within six months of the date of the order. It is assumed then that details of the restoration plan are to be agreed within 6 months of the date of the order.
- Condition No. 4 states that the restoration shall be completed to the written satisfaction of the planning authority within six months of the date of the order.
- It is not practicable or possible to restore the 8.35 Ha of lands within a six month period, having regard to the extent and depth of the fill proposed and required along the site boundaries.
- Clarification and/or correction is also then sought on the six month timeframe for the implementation of the Restoration Plan, as it is considered unachieved and therefore unenforceable in its current form.
- It is submitted that planning permission has been granted for the infilling of land as per the Restoration Plan (Drawing number 144-168-015-RevPL1).
- Levels of fill cannot be achieved without importation of fill land this is referenced in Section 2.7.1 of the Remedial Environmental Impact Statement (REIS).
- There is no condition restricting/preventing the importation of fill on site.

3.2. Planning Authority's Response

3.2.1. The Planning Authority's response can be detailed as follows:

- Considers that there is an absence of detailed information in regard to the restoration plan as outlined in Section 2.7.1 of the REIS.

- Absence of information in relation to the existing profiles within the quarry, depths and height in order to determine the quantity of fill that would be required.
- The scale and scope of the works was not taken into account in the REIS
- Proposed to import 100,000 tonnes of fill – substitute consent did not authorise importation of same
- Also considered that there is a mandatory requirement for an EIA – Installations for the disposal of waste with an annual intake of 25,000 tonnes
- In-combination effects must also be considered
- Substitute consent only relates to the development already undertaken. Condition 1(b) did not authorise any further development in relation to this site.

4.0 **Assessment**

4.1. **Summary of Facts**

4.1.1. Section 34(5) of the Planning and Development Act 2000, as amended, states that conditions may provide that points of detail relating to a grant of permission may be agreed between the planning authority and the person carrying out the development; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination.

4.1.2. I have reviewed the submissions made by both the referrer and the Planning Authority. I consider the key facts of the case may be summarised as follows:

- Condition 1(a) states that the grant of substitute consent shall be in accordance with the plans and particulars submitted to an Bord Pleanála. except as may otherwise be required in order to comply with other conditions.
- Condition 1(b) states the consent only relates to past quarrying and does not authorise any future development, including excavation.
- Condition 4 Implementation-stage details of the restoration of the quarry shall be submitted to, and agreed in writing with, the planning authority, in accordance with Drawing Number 144-168-015-Rev PL1 (Restoration Plan) received by An Bord Pleanála on the 22nd day of December, 2014 and the

measures set out in Section 2.7.1 of the remedial environmental impact statement (Site Restoration Scheme), which details shall include the following:

- (a) details of the finished gradients of the quarry faces,
- (b) details of secure fencing for the boundaries of the site,
- (c) a scheme of landscaping and tree planting, and control of invasive species,
- (d) the control of dust emissions until such time as planting is established, and
- (e) proposals for an aftercare programme of five years
- The restoration shall be completed to the written satisfaction of the planning authority within six months of the date of this order in accordance with the agreed details, unless a grant of permission for the further development of this site is implemented.

4.1.3. There is an unfortunate lack of detail on file in relation to the details submitted by the referrer to the planning authority in order to comply with Condition 4. It does not appear that these details have been provided by either the referrer or the planning authority. The Board may consider it prudent to request these details from both parties.

4.1.4. However, should the Board wish to assess the case on the details contained within the file, which contains the submissions of both parties, I have set out a detailed assessment below.

4.1.5. The starting point is to consider the detail contained within Drawing Number 144-168-015 PL1 'Restoration Plan' as submitted to An Bord Pleanála on 22nd December 2014, and to review the detail as set out in Section 2.7.1 of the Remedial Environmental Impact Statement (REIS).

4.1.6. A key detail on Drawing Number 144-168-015 PL1 'Restoration Plan' is the note on same drawings which I shall transcribe in full as follows:

4.1.7. *'As part of the restoration plan, topsoil is to be spread across the entire site and reseeded. The topsoil to be used as part of these works will be taken from the various topsoil spoil heaps on site. These spoil heap contain the original topsoil which was stripped off prior to the extraction of the material.'*

4.1.8. Further information on the restoration of the site is contained within Section 2.7.1 'Site Restoration Scheme' of the Remedial Environmental Impact Statement (REIS). In the interests of completeness I shall transcribe the detail in full below:

The restoration scheme is shown on the restoration plan. There are existing stockpiles of topsoil on site to facilitate the restoration process and any imported soils / material necessary shall be subject to appropriate licencing. A process of restoration shall commence on the worked out areas of the pit and they shall be restored to natural habitat / pastureland. The restoration works will be carried out in accordance with international best practice as set out in the UK DoE Guidance on Good Practice for the Reclamation of Mineral Workings to Agriculture (1996) and the EPA Guidelines (2006). These proposals include:

- *Decommissioning of any ancillary equipment on site.*
- *Regrading of existing slopes steeper than 1 in 3 and planting with scrub vegetation where applicable;*
- *Levelling of spoil heaps/Removal of all heaps of stored material/Grading of finished ground levels by the redistribution of subsoil and topsoil heaps; and*
- *Re-instatement of the pit floor to natural grassland*

4.1.9. It is the referrer's contention that the REIS advised that the importation of fill would be necessary and would be subject to licence, and as the REIS was assessed as part of the Substitute Consent process, and Condition No. 1(a) states that the grant of substitute consent shall be in accordance with the plans and particulars submitted to An Bord Pleanála, the importation of fill is therefore consented.

4.1.10. It is the planning authority's view that there is a lack of detail within the REIS and that the substitute consent does not allow for the importation of 100,000 tonnes of fill, as is proposed by the referrer.

4.1.11. I do not concur with the referrer's viewpoint that the REIS is clear in stating that importation of fill would be necessary, as the wording in Section 2.7.1 of the REIS leaves considerable ambiguity as to whether importation of fill would be, in fact, necessary, and furthermore no reference is made to the volume of fill that would be necessary if this were the case. It was therefore not possible at assessment stage to consider the impacts of the importation of a large of quantity of fill as is now

proposed by the referrer. It is logical, in my view, that, if it was known at the time of making the substitute consent application that such a large volume of fill was necessary, then these details should have been provided at this point, and this would have been considered accordingly.

4.1.12. The key evidence on file, in my view, is the note on Drawing Number 144-168-015 PL1 'Restoration Plan'. From a reading of this note, it is clear and unambiguous that the soil to be used in the restoration plan is already on site, and therefore no importation of soil would be necessary. There is considerable discrepancy between this, and the proposal of the referrer to import 100,000 tonnes of soil in order to complete the restoration of the site.

4.1.13. Therefore it is my view that that the consent issued under file ref 03.SU.0127 does not authorise the importation of fill for the purpose of complying with Condition No. 4 of the consent.

4.2. Consideration of Other Issues raised by the referrer and the planning authority.

4.2.1. The referrer has asked for clarification from the Board on the six month timeframe for the implementation of the Restoration Plan, as it is considered unachievable and therefore unenforceable in its current form.

4.2.2. Section 146A of the Planning and Development Act, 2000 (as amended) allows the Board to amend a permission in certain circumstances, namely to correct a clerical error, to facilitate an action that could be reasonably be regarded as having been contemplated by the permission or decision, or otherwise facilitate the operation of the permission or the decision.

4.2.3. In this instance, the referrer has noted the six month timeframe does not allow the restoration plan to be completed, having regard to the volume of fill required to facilitate it.

4.2.4. It is apparent from the considerations above that the importation of fill could not be reasonably be regarded as having been contemplated by the permission or decision. Similarly the extension of the timeframe, by amending the condition, does not facilitate the operation of the permission or the decision.

- 4.2.5. From a pragmatic viewpoint, there is no benefit in amending the timescale for the completion of the restoration of the site, as the operations that are required to do so are not permitted under the substitute consent issued under file ref 03.SU.0127.
- 4.2.6. I do not consider it appropriate, then, that the Board utilise its authority under S146A to amend the condition, having regard to the considerations above.
- 4.2.7. The planning authority has stated that the importation of fill would constitutes both works and development, as defined in the Planning and Development Act, 2000, as amended. I note that this is not a referral under Section 5 of the Planning and Development Act, 2000, as amended, which allows for a determination on this matter, and as such I do cannot comment on same.
- 4.2.8. The planning authority has stated that the importation of 100,000 tonnes of soil would be subject to a mandatory EIA. However, this point of detail referral does not allow for consideration of this issue and as such I cannot comment on same.

4.3. **Recommendation**

I recommend as follows:

WHEREAS by order dated 20th day of December, 2016, An Board Pleanála, under substitute consent reference number SU03.SU0127, granted substitute consent for a quarry at Faheymore North, O'Briensbridge, Co. Clare:

AND WHEREAS condition 1(a) attached to the said substitute consent states that the said substitute consent shall be in accordance with the plans and particulars submitted to An Bord Pleanála with the application on the 4th day of December, 2014 and the further information submitted to An Bord Pleanála on the 22nd day of December, 2014, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority within six months of the date of this order, and the development shall be in accordance with the agreed particulars.

AND WHEREAS Condition 4 attached to the said substitute consent states that implementation-stage details of the restoration of the quarry shall be submitted to, and agreed in writing with, the planning authority, in accordance with Drawing Number 144-168-015-Rev PL1 (Restoration Plan) received by An Bord Pleanála on

the 22nd day of December, 2014 and the measures set out in Section 2.7.1 of the remedial environmental impact statement (Site Restoration Scheme), which details shall include the following:

- (a) details of the finished gradients of the quarry faces,
- (b) details of secure fencing for the boundaries of the site,
- (c) a scheme of landscaping and tree planting, and control of invasive species,
- (d) the control of dust emissions until such time as planting is established, and
- (e) proposals for an aftercare programme of five years.

and that the restoration shall be completed to the written satisfaction of the planning authority within six months of the date of this order in accordance with the agreed details, unless a grant of permission for the further development of this site is implemented.

AND WHEREAS the developer and the planning authority failed to agree on the said implementation-stage details of the restoration of the quarry in compliance with the terms of Condition 4 and the matter was referred by the developer to An Bord Pleanála on the 20th day of October 2017 for determination:

NOW THEREFORE An Bord Pleanála, in the exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, and based on the Reasons and Considerations set out below, hereby determines that the importation of fill, in the quantities as referenced to by the Planning Authority, of the order of approximately 100,000 tonnes, is not permitted by the said substitute consent. Furthermore, the Board has determined that the six month time frame for the completion of the restoration plan is an appropriate timeframe, and does not intend to utilise its powers under Section 146A of the Planning and Development Act, 2000, as amended, to amend the time-frame as set out in Condition 4.

Reasons and Considerations

The Board considered that the details contained in the plans and particulars submitted as part of the substitute consent application did not explicitly set out that the importation of fill would be necessary to complete the restoration of the quarry, nor did the plans and particulars submitted as part of the substitute consent application, make reference to any particular volume or tonnage of fill that would be

imported to complete the restoration. According, the proposals to import fill to complete the restoration of the quarry is not permitted under substitute consent reference number SU03.SU0127.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Rónán O'Connor
Planning Inspector

18th July 2018