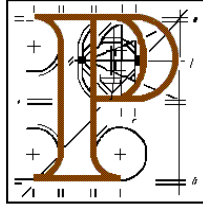


An Bord Pleanála



Inspector's Report

Development:	Substitute Consent for a sand and gravel pit at Curralane, Ferns, Co. Wexford.
Planning Authority:	Wexford County Council
Applicant:	Drumderry Aggregates Ltd
Type of Appeal:	Substitute Consent
Site Inspection:	21 st January 2015
Inspector	Colin McBride

1. SITE DESCRIPTION

- 1.1 The site, which has a stated area of 3.22 hectares, is located in the townland of Curralane, approximately 6 km north west of Ferns. It is accessed via a local road to the south of the settlement of Ballyroe buck. This is a rural area and the site is generally surrounded by agricultural lands.
- 1.2 The site is set back c. 1 km from the public road with access via an unpaved track through an agricultural field. The track also serves a cluster of agricultural buildings and a derelict dwelling some distance to the west. The entrance to the quarry was gated and closed on the day of site inspection, however pedestrian access was possible. The quarry was not being worked on the day of inspection.
- 1.3 The quarry is bisected by a stream running east to west and thus comprises two distinct areas that are linked by an unpaved access track. The southernmost segment is characterised by an area of hardstanding with bays for lorries. There is a small, disused shack and a derelict metal shed. Heaps of spoil lie along the edges of the area. They are overgrown and appear to have been in situ for some time. Piles of plastic piping are currently being stored in various parts of the hardstanding. A second, higher plateau has been created on top of spoil deposition further to the north, with a separate access from the track serving the site. This area is currently used to store hay bales.
- 1.4 The stream that traverses the site is surrounded by spoil from the quarry operation. It leads to a marshy area to the west of the site (indicated as such on O.S. maps) where it joins Ballingale Stream, a tributary of the Slaney River. The stream runs through a pipe under the track that connects the northern and southern sections of the site.
- 1.5 The northern section of the site appears to have been more recently worked as a quarry. An excavator and a screening/processing machine were present at the site on the day of inspection however they were not in use.

2. PROPOSAL AND BACKGROUND

- 2.1 The application is pursuant to a notice issued by Wexford County Council under Section 261A(3)(a) of the Planning and Development Act 2000 (as amended) directing that the applicant to apply for substitute consent for the quarry development under Section 177E of the Act. This notice was reviewed by An Bord Pleanála with the applicant directed to apply for substitute consent with the application to be accompanied by a remedial Natura Impact Statement
- 2.2 The substitute consent application relates to an area of 3.22 hectares. The quarry has been active since the 1950's and was acquired by the current applicant in 2008 to supply sand and gravel to the Drumderry Aggregates manufacturing facility (off-site) that produces concrete products

3. PLANNING HISTORY

3.1 Section 261 Registration

Application for registration made as Reg. Ref: Q015 was submitted prior to the closing date of registration in April 2005.

3.2 Determination Under Section 261A (2)(a)

The planning authority determined that development has been carried out after 26 February 1997 which development would require Appropriate Assessment and that Appropriate Assessment was not carried out. The area of the site which is the subject of this determination is identified on the attached map.

Quarrying works have taken place after 3 July 2008 which required EIA determination regarding EIA and/or AA.

3.3 Extension of time application under Section 177E(4) (Ref: 26.SH.0209)

The Board granted an extension of the period for the making of the substitute application for a further period of 16 weeks.

3.4 Review of notice served by Wexford County Council under Section 261(a)(i) (QV0247)

The Board decided to:

(i) confirm the determination of the planning authority under Section 261A(2)(a) of the Planning and Development Act 2000 (as amended) in respect of Appropriate Assessment, in accordance with the reasons and considerations

(ii) set aside the determination of the planning authority under Section 261A(5)(a) of the Planning and Development Act 2000 (as amended), that Section 261A(2)(a)(i) applies to development that took place on this site after 3rd July 2008,

(iii) set aside the determination of the planning authority under Section 261A(5)(a) of the Planning and Development Act 2000 (as amended), that Section 261A(2)(a)(ii) applies to development that took place on this site after 3rd July 2008,

(iv) in relation to the decision of the planning authority under Section 5(a)(i) and (ii) of the Planning and Development Act, 2000 (as amended), and in accordance with the reasons and considerations (4) set out below, that:

- (a) the quarry commenced operation prior to 1st October 1964, and
- (b) the requirements in relation to registration under Section 261 of the Planning and Development Act 2000 (as amended) were fulfilled.

4. SUBMISSIONS

4.1 Inland Fisheries Ireland (16/10/14):

- It is noted that a tributary of the River Slaney runs through the site and the River Slaney SAC is an important salmonoid system. The Fisheries Board wish to confirm a number of details including that no sand washing is carried out or to be carried out on site, confirmation that no pumping from the quarry site to surface water is carried out, that all sand extraction is carried out above groundwater level, concerns are noted about the culverting of the tributary of the Slaney through the site and the potential

for blocking the free passage of fish, confirmation that fuels and hydrocarbons are to be stored in bunded compound away from the water course and that systems are to be put in place to ensure no discharge of suspended solids to surface water drains/watercourses.

4.2 Health Service Executive:

- It is noted that there are a number of dwellings in the vicinity with boreholes for water supply and that the potential impact on water quality should be taken into account.
- It is noted that mitigation and remediation measures are incorporated into consent if granted and that satisfactory proposals for decommissioning are also required.

4.3 Development Applications Unit (21/10/14):

- It is noted that quarrying activity have resulted in the complete removal of a recorded monument. It is noted that the next nearest recorded monument is located an adequate distance from the works however that the developer be advised that under no circumstances shall any works relating to the activity on site be permitted within the confines or vicinity of the recorded monument. Recommendations include implementing a buffer zone of at least 20m

4.4 Wexford County Council (22/10/14):

- The PA does not consider that the works that have taken place have had a significant effect on the environment in respect of human beings, soil, air, climatic factors and the landscape.
- The PA note there may have been impacts in regards to water quality due to surface water drainage and in turn an impacts on the Slaney River Valley SAC.
- The PA note the effect of the operations in regard to recorded archaeological monuments and note that Wexford County Council abstract water from the Ballingale stream for the Ferns water supply in close proximity to the site.
- The PA considers that substitute consent could be granted subject to mitigation/remediation measures and have indicated a number of conditions it considers should be included.

4.5 Response by Williams Planning & Environmental on behalf of Sam Deacon, Drumderry Aggregates Ltd.

- The location of the quarry relative to existing dwellings in the vicinity and the nature of the underlying geology of the site and area is such that works carried out on site have not impacted upon the water supplies of the existing dwellings. It is also noted that there is a buffer of agricultural land between the quarry works and Ballingale Stream to the west with no quarry works in the immediate vicinity of the stream. The works are above the water table, no fuel or contaminants are stored on site. Monitoring of the stream shows water quality is good.
- The applicants confirm that no washing of material is carried out on site and the extraction is above the groundwater rest level. It is noted that the culvert of the stream has been in place for a considerable period of time with no record of blockages occurring. The applicant is willing to replace the culvert if required. It is noted that systems are in place to ensure no discharge of suspended solids to drains/watercourses.
- It is noted that other quarries in the vicinity are not located at a distance that would entail a cumulative impact. In terms of impact on the Slaney River Valley SAC it is noted that the remedial Natura Impact Statement has been submitted and concludes that there is no significant impact. It is noted that monitoring shows that water quality is of a good standard.
- It is considered that substitute consent should be granted and that in the event of a grant it is noted that there is no evidence that unauthorised development has taken place and the imposition of a financial contribution is not appropriate.

5. DEVELOPMENT PLAN POLICY

5.1 The relevant Development Plan is the Wexford County Development Plan 2013-2019.

Section 6.4.5 of the Plan set out policy in regards to Aggregate resources and Extractive Industry.

6. ASSESSMENT

6.1 This is an application for substitute consent made in response to a notice issued by the Planning Authority under Section 261(a) of the Planning and Development Act, 2000 (as amended) and the subsequent review of that notice by An Bord Pleanála under Section 261(6(a)(i)), which determined that development has been carried out at a quarry at Curralane, Ferns Co. Wexford after the 26th day of February 1997 that would have required, having regard to the Habitats Directive, an appropriate assessment, but that such assessment was not carried out. The applicant has now submitted a substitute consent application accompanied by a remedial Natura Impact Statement (rNIS) to the Board. The Board has invited submissions from prescribed bodies and third parties and the Planning Authority has submitted a report to the Board in compliance with Section 177(l) of the Act. Essentially, this substitute consent application relates to an area of 3.22 hectares consisting of sand and gravel extraction. Having considered the contents of the application and the submitted rNIS, together with all reports, submissions and responses and the observations from my site visit, I consider that this application should be considered under the following:

- Appropriate Assessment/remedial Natura Impact Statement
- Conclusion
- Conditions

6.2 Appropriate Assessment/ remedial Natura Impact Statement

6.2.1A remedial Natura Impact Statement (rNIS) was submitted. The rNIS consists of a description and background to the quarry operations on site, a Stage 1 Screening Assessment and a Stage 2 Appropriate Assessment.

The remedial NIS identifies 2 Natura 2000 sites within 15km of the site which are

Slaney River Valley SAC (site code 000781)
Blackstairs Mountain SAC (site code 000770)

The Wexford Harbour and Slob SPA (site code 004076) is beyond a 15km radius of the site but is identified as a designated Natura 2000 site that could be potentially impacted by the works in question.

The screening assessment although noting that the activity in question is not located within or directly connected to a designated Natura 2000 site, has the potential to impact on one or more of such sites in terms of the potential impact of surface water.

6.2.2 The Stage 2 Appropriate Assessment outlined the qualifying interests, vulnerabilities, conservation status of all Natura 2000 sites that could be potentially impacted by the quarrying activity.

Slaney River Valley SAC

The Slaney River Valley SAC comprises the entire Slaney system from the Wicklow Mountains to Wexford Harbour and contains a number of Annex 1 habitat types. The designated site includes a number of habitats along the River as well as the aquatic environment. The habitats in question also support a number of Annex I and II species including bird and aquatic species.

Blackstairs Mountains SAC

The Blackstair Mountain SAC is located at the southern end of the Leinster Mountain Chain. The site is designated due to the presence of Annex 1 habitats primarily dry and wet heath, which support Annex II species.

Wexford Slob SPA

The site is located at the lower end of the River Slaney and consists of the natural estuarine habitats of Wexford Harbour and the reclaimed polders known as the north and south 'slobs'. The site is a mixture of sand and mud flats and grassland and is of particular importance as a habitat for a significant level of bird species.

6.2.3 Identification and evaluation of likely significant effects.

Direct Impacts

In relation to direct impacts on any Natura 2000 sites, it is noted that the development is not located within any designated sites and there will be no direct impacts associated with the development.

Indirect Impacts

It is noted that quarrying activity that has taken place has the potential to have an indirect impact on surface/ground water. It is noted that both the Slaney River Valley SAC and Wexford Harbour and Slobs SPA are dependent on maintenance of water quality with any changes in water quality likely to have significant impact upon the conservation status of these designated areas. In terms of indirect impacts it is not foreseen that there would be any indirect impacts upon the Blackstairs Mountains SAC

6.2.4 The application for substitute consent is also accompanied by an assessment of the development carried out on site in regards to hydrological issues and the rNIS refers to this report in terms of assessing the likely significant impacts on any designated Natura 2000 sites. This report describes the history and activity on the site. It is noted that activity consists of a sand and gravel pit that supplies a manufacturing facility (off-site) that produces concrete products. It is noted that all of the sand and gravel on site has been worked 'dry' and above groundwater level with no dewatering and no requirement for pumping, It is noted that there is an existing stream running through the site that drains into a tributary stream of the Slaney River (Ballingale stream) and that the stream on site is culverted where the access road traverses it. It is noted that material was washed on site as part of a closed circuit system with a settlement lagoon and recycling of settled water. It is noted that some abstraction of water from the stream took place to top up the lagoon system, but the levels of such in the context of overall flow would have been negligible.

6.2.5 In terms of assessment of impacts in relation to surface water, the system used by the Environmental Protection Agency (EPA) to measure water quality is outlined. It is noted that the water quality of the Ballingale Stream to the north and upstream of the site from 2004 to the present time fell into category Q2-3 which indicates poor status. It is also noted that the water quality south and downstream of the site is Q4 indicating good water quality status. The assessment also includes monitoring results for the Ballingale stream for 2013 and 2014 which indicate good water quality in the stream. It is concluded that the activity on site has not had a significant impact in terms of reduction in water quality of the surface water receptors in the vicinity of the site. In regards to impact on groundwater it is noted that the extraction level is above the static groundwater table and has been 'dry'. It is noted that a layer of permeable sand and gravel offers a protective

filtering layer to underlying groundwater. It is noted that the activities on site have not impacted upon ground water levels or ground water flow.

6.2.6 The rNIS also includes a number of mitigation/preventative measures including maintenance of a minimum level of cover above bedrock, secure storage of fuels/lubricants, refueling of machinery off-site, use of a bowser for refueling machinery on site, no water to be discharged directly from site, surface water to be prevented from discharging to watercourses/off-site, maintenance of vehicles to be carried out off-site, working practice to minimise the introduction of sediment to any watercourse, water within settlement pond to remain in a closed circuit and an adequate buffer zone to be maintained between any site operations and watercourses. It was concluded that the quarrying activity carried out on this site on its own and in regards to cumulative impact in relation to other plans and projects has not had an adverse impact on the integrity of any designated Natura 2000 site.

7. CONCLUSION

7.1 I am satisfied with the scope and adequacy of the submitted rNIS and consider that it has been carried out in accordance with Article 6(3) of the Habitats Directive. Although not located within a designated Natura 2000 site, the activity does have the potential to have an adverse impact due to proximity to a watercourse that drains into a tributary of the River Slaney, which is designated as a Special Area of Conservation (Slaney River Valley SAC (site code 000781)) and also the Wexford Harbour and Slobbs Special Protection Area (site code 004076), which is located at the lower end of the Slaney river system. Both of the designated areas are dependent on maintenance of good water quality to achieve the conservation objectives of the area. The potential impact of the activity in question would be discharges to surface water in the form of suspended solids or hydrocarbons associated with the quarrying activity on site and contamination or alteration of groundwater flow. Based on the information included in the rNIS and on the data submitted that demonstrates that water quality in the local water network has not been significantly impacted in terms of its overall quality and that the activity in question has not had an impact on groundwater characteristics of the area, I am satisfied that it has been adequately demonstrated that the quarrying activity at this location subject to this application for substitute consent has not had a significant or

adverse impact upon the integrity of any Natura 2000 site. In this regard I would recommend that substitute consent be granted.

8. CONDITIONS REVIEW

- 8.1 It should be noted that substitute consent relates only to works that have been undertaken as described in this application and the rNIS and does not authorise any future extraction/development. In this context operational conditions cannot generally be deemed to be necessary, directly relevant or capable of enforcement. The Planning Authority has suggested a number of conditions in the event that the Board is minded to grant permission. A Schedule of these conditions is included with their S177I Report. Any conditions which relate to the ongoing and future operation of quarrying activity such as monitoring, emission limits on noise, dust, vibration, provision relative to future vehicular movements, hours of operation etc do not apply as substitute consent only covers works carried out to date. Accordingly the conditions recommended for inclusion with the substitute consent are more limited in their scope. In the event of further applications for continuance of quarrying or expansion of activities at the site these matters would be re-visited.

The scope for inclusion of conditions in relation to substitute consent is provided in S177K(3) of the Planning and Development Act 2000 as amended provides that conditions may include:

- (a) one or more than one condition referred to in S34(4),
 - (b) a condition or conditions relating to remediation of all or part of the site on which the development the subject of the grant of the substitute consent is situated,
 - (c) a condition or conditions requiring a financial contribution in accordance with S48, or
 - (d) a condition of conditions requiring a financial contribution in accordance with a supplementary development contribution scheme under S49.
- 8.2 Development Contributions
- The current Wexford County Council Development Contributions Scheme (effective from the 1st March 2006) includes the extractive industry as one of the categories of development that incur development contributions.

The list of suggested conditions the by Local Authority does include a development contribution condition.

8.3 Regard to Section 177J

Section 177J of the Planning and Development Act, 2000 as amended, provides that the Board where it forms the opinion that the continuation of all or part of the activity or operations on or at the site of the development the subject of the application, is likely to cause significant adverse effects on the environment or adverse effects on the integrity of a European site to issue a draft direction to the applicant for substitute consent to cease within a specified period, all or part of the activity or operation. As the development is not considered to have significantly adversely affected the environment or integrity of the Natura 2000 sites, it is considered that such a direction by the Board is not warranted in this instance.

9. RECOMMENDATION

I recommend that permission for substitute consent be granted for the reasons and considerations outlined below.

REASONS AND CONSIDERATIONS

Having regard to the nature and scale of the activity and operations on the site for which the application to the Board has been made, and on the basis of the information available on file, including a remedial Natura Impact Statement, it is considered that subject to compliance with the conditions set out below, the development which has been undertaken has not had and is not giving rise to an unacceptable level of environmental impact nor has it caused adverse effects on the integrity of a European site, and is, therefore, in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The grant of substitute consent shall be in accordance with the plans and particulars submitted with the application on the 11th September 2014 and relates only to works undertaken prior to the decision of Wexford County

Council to serve notice on the 22nd August 2012 of the requirement to apply for substitute consent. It does not authorise any excavation which has taken place since that date and does not authorise any future excavation.

Reason: In the interest of clarity.

2. A comprehensive plan for the restoration of the entire quarry following the cessation of quarrying works shall be submitted to, and agreed in writing with, the planning authority within six months of the date of this order. This plan shall include proposals for re-use of the quarry and measures to ensure public safety therein. The developer shall commence implementation of the agreed site restoration plan within the area of the site within one month of cessation of extraction in this area and shall have completed this part of the plan within 12 months of commencement.

Reason: In the interest of public amenity and public safety.

3. Within three months of the date of this decision, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory restoration of the site, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form 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 the satisfactory completion of the development.

4. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the

planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Colin McBride
31st January 2015