



An
Bord
Pleanála

Inspector's Report SU04.SU0136.

Development	Application for substitute consent at existing quarry.
Location	Rossmore & Barryscourt Townlands.
Planning Authority	Cork County Council.
Planning Authority Reg. Ref.	N/A
Applicant(s)	Kilsaran Concrete.
Type of Application	Section 177E.
Planning Authority Decision	N/A.
Type of Appeal	N/A
Observer(s)	Connolly family Eamonn Finn and others.
Date of Site Inspection	21 st October 2016.
Inspector	Philip Davis.

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1.0 Introduction

The application is for substitute consent in accordance with S.177E2(a) of the Planning and Development Act 2000 as amended.

2.0 Site Location and Description

Rossmore and Barryscourt townlands are located at the sheltered coastline between two small peninsulas which extend into the saltwater channel (the Belvelly Channel) separating the mainland from Great Island in Cork Harbour. It is 2 km south of the small town of Carrigtwohill, an extended settlement along the N25 just east of Cork City and about 2km east of the Fota estate with its wildlife park and hotel. Cork city is 15 km to the west and Midleton is 5 km east.

The landscape of the area is characterised by rolling eroded limestone lowlands which have been partially submerged by a locally rising sea level. The seashore is sheltered, characterised by mudflats and salt meadows at the shoreline. The wider locality is agricultural in nature, with medium sized fields of usually well drained grassland bounded by high hedges. There are a number of quarries in the area both active and abandoned and, at the very end of the peninsula just east of Rossmore, a civic amenity site within a former quarry. This civic amenity site is on an extended peninsula which forms one side of Rossmore Bay. This area is served by a country road running east to west – the quarry in question has a direct access to this road. There is a private road running south from this road to the adjoining quarry and the civic amenity site. The road links with the minor road network south of Carrigtwohill and east of Fota.

The quarry in question is a sand, gravel, and limestone quarry with a site area given as 29.4 hectares. It is irregular rectangular in shape, and excavates into the southern and eastern side of a low ridge of limestone which extends east to west. The base is occupied by an area of sand and gravel processing facilities and an asphalt plant. There is a settlement pond and the main working face into the limestone bedrock is to the east. The northern boundary is with some fields and the country road, while to the east another large limestone quarry, separated by a narrow bund and unexcavated wall of limestone. The southern and western side of the site is bounded with a high bund, this directly adjoins the shoreline with the

Great Channel. The shore is marked by a small erosional shelf, a rocky tidal zone, and extensive mudflats. The remains of what seems to have been an agricultural track along the shore is visible where it runs through a gap in the bund.

3.0 Proposed Development

The application is for substitute consent in accordance with S.177E2(a) of the Planning and Development Act 2000 as amended.

4.0 Planning Authority

4.1. Planning Authority Reports

The planning authority, on the basis of the environmental and engineering reports available considers that it '*will not unacceptably compromise the amenities of the area*'. It is considered that it will not materially contravene the policies in the development Plan as the extractive industry is well established in the area. A total of 54 conditions are recommended.

4.2. Prescribed Bodies

Fisheries Ireland: Recommends a condition such that ongoing and wide ranging monitoring of the discharge from the final settlement pond to the infiltration pond. The monitoring should include but not be limited to analysis for heavy metals and bacteria.

I note a response from the **Department of Environment, Community and Local Government** on the adjoining file SU04.SU0010 – this may also refer to this application. It is indicated that it does not appear that there is any development on State owned foreshore. It is noted that a discharge to the foreshore would require a discharge license.

4.3. Third Party Observations

Dermot, Jackie, Sarah and Laura Connolly of Barryscourt

- They object on the basis of what they submit is a long history of dust emissions impacting upon their property. They also raise strong concerns about the impact of traffic on the area. They argue that there are noise impacts, and that there has been a history of breaches of existing planning conditions.

Eamonn Finn and others of Barryscourt

- It is submitted that there has been a long history of unauthorised works in the quarry and breaches of conditions.
- They submit that the application is in effect for the retention of the existing quarry and works.
- It is submitted that there have been continuous ongoing problems with fugitive dust impacting upon local residents – photos are attached.
- It is also submitted that the site notice was in a newspaper which is not in wide local circulation.

5.0 Planning History

An application for substitute consent under S.177E was submitted in 29th August 2014 (**SU04.SU0117**). The Board issued a request for additional information which has been responded to as part of this application. That application is deemed to be withdrawn.

In 1981 permission was granted for sand and gravel extraction on the southern part of the site (**81/38**). In 2000, permission was granted for an extension of an existing quarry to include extraction below the level of the water table and the construction of a settlement pond, and the retention of an extension of a quarry use (**99/3410**). Permission was also granted for a concrete batching plant and associated works (**99/3411**). In 2004 permission was granted for works including the restoration of some parts of the works, and the retention of northern and southern quarry faces (**03/4570**). The quarry was not registered under S.261 – this was not required as there was an extant permission. There is a concurrent application on the quarry to the east belonging to Lagan Bitumen Limited - This application in respect of further development of a quarry in County Cork was made under Section 37L of the

Planning and Development Acts 2000, as amended **SU04.SU0092** and **SU04.SU0010**.

6.0 Policy Context

6.1. Development Plan

The site is in open countryside in an area designated as greenbelt. The area is stated by the planning authority to have an historic use for quarrying. General policy objectives relating to mineral extraction are set out in Objective EE 12-3 of the current County Development Plan.

6.2. Natural Heritage Designations

The site is immediately adjoins tidal mudflats and related tidal habitats to the west and south that are subject to Natura 2000 designations.

7.0 The Application

The applicant submits an rNIS along with a response to queries sent by the Board in the letter dated 25 February 2016. I would summarise the responses as follows:

- In response to the query in relation to whether the site has overlapped with a European Site, three drawings overlaid on OS maps are submitted. These indicate what are claimed to be a digital mapping discrepancy between the two mapping scales – they indicate that some of the permitted site is over an area identified as a Natura 2000 site. A revised rNIS is submitted, in which it is claimed that there are no measurable impacts on the SAC or the SPA and so there will be no significant effect on a European site.
- In response to the Boards request regarding apparently unauthorised discharges to the bay, a plan is submitted showing the current arrangements – water is pumped to ponds on lands to the east of the site. It is stated that there is no direct discharge from these ponds to Rossmore Bay.

8.0 Assessment

8.1. Overview

The observers to this application have outlined long term concerns over dust and other emissions arising from the works. I would note that during my site visit it was apparent that the site is dusty and so I would consider it credible that during dry weather dust impacts on local residents. I would also note that processing noise was apparent outside the site boundaries. Notwithstanding this, this application relates specifically to the rNIS and as such I would consider that the issues raised are enforcement matters relating to the existing permissions for the site.

8.2. Mapping issues and intrusion into Rossmore Bay

The key issue raised by the Board in its letter to the quarry operator relates to the possible overlap of the two Natura 2000 sites with the quarry. It would seem from the information submitted that the boundaries of the site are within those applied for in planning applications in 1999 and 2003. However, it is also clear that they overlap to some extent with the area indicated on the NPWS digitised plans for the two Natura 2000 habitats – the Cork Harbour SAC and Great Island SPA – a linear area of around 200 metres. It is submitted that this is a mapping discrepancy and that the works predate the designation of the two habitats, as such no adverse affects on the conservation objectives of either designated habitats would occur. Although there is no response from the NPWS or the Department on file, a letter for the adjoining site which appears to have been intended in response indicates that the **Department of Environment, Community and Local Government** does not consider that there has been intrusion onto the foreshore.

While it seems most probable from the information on file that any intrusion was accidental and essentially a mapping error, it would seem unambiguous that the quarry has indeed intruded upon a section of designated habitat, most likely after that habitat was designated (there is ambiguity about the date of the works in this part of the quarry taking place). While the revised rNIS addresses this, it concludes that the area is so minor as to be essentially an irrelevance in the context of a very extensive designated wildlife area. While I have some sympathy with this view, the overall hurdle for assessing whether impacts are acceptable is set very high by the relevant legislation. The Board must be satisfied that there are no impacts identified

on the integrity of the qualifying habitats for the SAC or SPA. I do not see how this can be stated with the required certainty if part of the coastal habitat has been effectively destroyed. It may be a very minor adverse affect, but it is still an adverse affect. For this reason, my recommendation to refuse in the previous application in SU0177 remains.

8.3. Discharge to the bay

The applicants have submitted that the site discharges all water from the site to a pond on lands to the east, across the access road to the Civil Amenity site. I can confirm that during my site visit this was the arrangement in place, a continuous flow of water was discharging to the semi-freshwater pond. I did not see any evidence of direct discharge to the bay. I note, however, that discharge directly to the bay clearly did take place at the time of my first site visit for SU0117 and the previous reporting inspector noted the same discharge some months previously. However, I am satisfied that this is no longer taking place and is essentially an enforcement issue for the planning authority.

8.4. Remedial Natura Impact Assessment (rNIS)

My comments in report SU0117 still broadly apply for the site, although as I note the issue of intrusion is not resolved. The two adjoining habitats are as follows:

Cork Harbour SPA, site code 004030

This SPA is an extensive area designated for its importance for 23 species of bird (mostly waders and other coastal feeders/breeders) and associated wetlands. Its conservation objectives are stated to overlap with those of the Great Island Channel SAC. In addition, it is a conservation objective to maintain the favourable conservation condition of the listed species, including the Great Crested Grebe, Cormorant, Little grebe, Grey Heron, Shelduck, Wigeon, Teal, Pintail, Shoveler, Red Breasted Merganser, Oystercatcher, Golden Plover, Grey Plover, Lapwing, Dunlin, Black tailed Godwit, Bar tailed Godwit, Curlew, Redshank, Black headed Gull, Common Gull, Lesser Black-backed Gull and Common Tern, and to maintain the favourable conservation condition of the wetland habitat in Cork Harbour as a resource for migratory waterbirds. For the latter objective, the target is that *'the permanent area occupied by the wetland habitat should be stable and not*

significantly less than the area of 2,587 hectares, other than that occurring from natural patterns of variation'.

Great Island Channel SAC, site code 001058

The Great Island Channel SAC is an extensive (1443.21 hectare) designated area covering much of the sheltered shallow coastal waters of the channel separating Great Island within Cork Harbour from the mainland and smaller islands. Its objective is to maintain or restore favourable conservation condition of mudflats and sandflats not covered by seawater at low tide, and Atlantic salt meadows.

8.4.1. Intrusion onto the designated habitats

I note that a conservation objective is to *'the permanent area occupied by the wetland habitat should be stable and not significantly less than the area of 2,587 hectares, other than that occurring from natural patterns of variation'*. While the loss of designated area is significantly less than 1 hectare, and hence very minor, I would consider that the permanent area has been reduced by the works. As such, I cannot agree with the conclusion of the rNIS that there is no adverse effects.

8.4.2. Noise intrusion on wading birds

The inner part of Rossmore Bay is within a few hundred metres of the sand and gravel processing works. I noted during both my site visits that there is significant audible noise outside the quarry within the mudflats area. The planning permission for this plant sets a limit of 55DB on the boundary of the site – the information submitted by the applicant indicates that this limit has been largely adhered to apart from a few anomalous readings.

The Council Ecologist raised concerns in the original submission that there was no analysis within the rNIS of the possible impact of these noise emissions on birds listed within the conservation objectives of the SPA. The rNIS does address this to some extent (page 14), where it states that *'it is considered unlikely that there would be an impact at noise levels below 80dB'*. There is no clear scientific basis for addressing the impacts on so many different species. I note that in the NIS for the adjoining site it is stated that particularly sensitive species are known to congregate in the area, and so it should be concluded that the birds in Cork Harbour are habituated to a certain degree of noise. I would concur that there is no direct evidence that the noise levels cause disturbance.

8.4.3. Water intrusion to the designated area

I note that the apparently unauthorised discharge of groundwater to the bay has stopped. I consider it likely that this did not have any adverse effects due to the very small scale and the clean nature of the water.

8.4.4. Other related issues

In other respects, the rNIS addresses direct and indirect impacts, and I would concur with the overall conclusion that if the operations are kept within the parameters set by the previous EIA's and related planning permissions, there should not be any significant effect on the conservation objectives of the two designated habitats. I note the observations by the local residents that dust and nuisance from the works are very significant, but it would appear from the data submitted that at least with regard to the Natura 2000 sites, there has not been any direct, indirect, or (with regard to other quarries in the vicinity), cumulative impacts, apart from specifically the removal of part of the habitat.

9.0 Recommendation

While I do not consider that the adverse effects on the SAC and SPA are particularly serious, the removal of a section of what was likely shingle and mudflat foreshore would have resulted in an adverse affect on the conservation objectives of the SAC and SPA and as such the Board is precluded from granting substitute consent.

10.0 Reasons and Considerations

The Board had regard, inter alia, to the following:

- (a) the provisions of the Planning and Development Acts, 2000 to 2011, as amended, and in particular Part XA,
- (b) the 'Quarry and Ancillary Activities, Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2004,
- (c) the provisions of the Cork County Development Plan, 2009,
- (d) the remedial Natura Impact Statement submitted with the application for substitute consent,

(e) the report and the opinion of the planning authority under section 177I,
the submissions/observations made in accordance with regulations made under
section 177N,

(f) the report of the Board's Inspector, including in relation to potential significant
effects on the environment, the planning history of the site, the pattern of
development in the area, the apparent incursion of the works onto the foreshore,
resulting in the irreparable loss and destruction of a significant area of
shingle/mudflat in the absence of a foreshore license or planning permission,

And the nature and scale of the development the subject of this application for
substitute consent.

The Board has concluded that the operation of the quarry could not have been
carried out without adverse affect on the integrity of the Great Island Channel
Special Area of Conservation (site code 001058) and the Cork Harbour Special
Protection Area site code 004030 by way of the unauthorised removal of
approximately 200 linear metres of shingle and mud foreshore.

Philip Davis
Planning Inspector

12th January 2017