

Sinead White

From: Appeals2
Sent: Tuesday, February 22, 2022 11:39 AM
To: Mary Tucker; Sinead White
Subject: FW: Environmental Health Submission Substitute Consent Application ref 311893-21
Attachments: Environmental Health Submission ABP ref 311893-21.pdf

SS

From: Bord <bord@pleanala.ie>
Sent: Tuesday 22 February 2022 11:19
To: Appeals2 <appeals@pleanala.ie>
Subject: FW: Environmental Health Submission Substitute Consent Application ref 311893-21

From: Sulley, Andrew <andrew.sulley@hse.ie>
Sent: Monday 21 February 2022 15:32
To: Bord <bord@pleanala.ie>
Cc: Luby, Mairead <maireadm.luby@hse.ie>
Subject: Environmental Health Submission Substitute Consent Application ref 311893-21

Enclosed is the EHS submission for the substitute consent application 311893-21
Quarry at Maplestown, Co Carlow


Andrew Sulley
Senior Environmental Health Officer

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An tOifig Náisiúnta um Sláinte Chomhshaoil
Feidhmeannacht na Seirbhíse Sláinte,
Urlár 2, Teach na Darach, Ascaill na Teile
Páirc na Mílaoise, An Nás, Co. Chill Dara.

National Office for Environmental Health Services
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Any queries with regard to this submission should be directed in the first instance to
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18th Feb 2022

ABP ref: 311893-21

EHS ref: 2225

Substitute Consent

Quarry, Mapplestown, Co. Carlow

Environmental Health Submission

The following observations are made by the Environmental Health Service (EHS) with regard to the application for substitute consent, reference ABP 311893-21.

Background

The area of unauthorised development, which requires Substitute Consent, comprises of an area of quarry and a previously infilled quarry which has been restored for agriculture use.

The Unauthorised Development comprises the following:

Application for substitute consent for the Unauthorised Development at the site since 2012 when planning permission expired in 2012 (An Bord Pleanála Planning Ref. 221741);

Approximately 192,240 tonnes of sand and gravel including 75,060 tonnes of overburden was extracted over an area of 4.177Ha since 2012;

Approximately 4.177Ha of the existing quarry was subsequently restored using surplus materials already on Site.



Figure 3-2: Area of Unauthorised Development for which Substitute Consent is Required (Drawing No. P-02)

From information contained in the rEIAR:

The subject site comprised approximately 15.205 hectares of agricultural grassland bounded to the West by the Kildare County Road L-8097; to the East by a fence and a farmhouse occupied by the Landowner and agricultural land; to the South by small west-flowing stream, fences and agricultural land, and to the North by fences, agricultural land and thin hedgerows.

The high ground at the centre of the extraction area sloped steeply to the North and to the South toward a low-lying area of boggy ground, which was occupied by mature coniferous copse.

The proposal for the Historic Development was to excavate 700,000 tonnes to 900,000 tonnes of sand and gravel site at an average rate of 90,000 tonnes per annum up to a maximum of 100,000 tonnes per annum over a period of 10 years.

Planning was granted for the extraction from 2007 to 2012, there was however unauthorised development at the Site and quarrying continued after 2012.

The unauthorised development comprised of the quarrying of an area of approximately 4.18 hectares in the central part of the Site.

It has been estimated by Enviroguide Consulting that the total tonnage excavated from the unauthorised development after 2012 was approximately 192,240 tonnes of material (included in this total figure is 75,060 tonnes of overburden). The area of the unauthorised development which was quarried after 2012 was subsequently restored during 2018 using overburden from the quarried areas.

General EHS Comments

Whilst the nature of a Remedial EIA (rEIA) is that it has to assess and predict what the likely significant effects were from development already carried out, it is noted by the EHS that an EIS was submitted with the Planning Application for the original development that was permitted on appeal ABP Ref: 221741 that permitted activity between 2007 and 2012.

There is therefore good baseline information for the site and the surround environment. Furthermore, there is a good knowledge and understanding of the significant environmental impacts of operating the quarry between 2007 and 2012 and the mitigation employed on the site during these activities.

The EHS also notes the conditioning of the Consent for operation between 2007 and 2012 states that a noise monitoring should be undertaken (condition 6) and dust monitoring should be undertaken (condition 11) results submitted to the Planning Authority.

6. (1) Noise levels attributable to the operation of the entire quarry complex, when measured at the nearest noise sensitive locations, shall not exceed 55 dB(A) (60 minute L_{Aeq}) during permitted operating hours and shall not exceed 45 dB(A) (15 minute L_{Aeq}) at any other time.
- (2) Notwithstanding (1) above, noise levels attributable to temporary works required in the construction of screening mounds around the site shall not exceed 70dB(A) during permitted operating hours. A timeframe for the completion of such works shall be agreed in writing with the planning authority prior to the commencement of activity on the site.
- (3) A quarterly noise survey and assessment programme shall be undertaken to assess the impact of noise emissions arising from the operation of the entire quarry complex. The scope and methodology of this survey and assessment programme shall be submitted to the planning authority for written agreement prior to commencement of any works on the site. The results obtained from the programme shall be submitted quarterly for the written agreement of the planning authority. The developer shall carry out any amendments to the programme required by the planning authority following this quarterly review.

Reason: In the interest of the protection of residential amenity.

11. (1) Total dust deposition (soluble and insoluble) arising from the operation of the entire quarry complex, based on TA Luft Air Quality Standard, shall not exceed 350 milligrams/m²/day (when averaged over a 30 day period) at any position along the boundary of the facility. Dust suppression measures shall be carried out on an ongoing basis within the quarry.
- (2) No activity within the entire quarry operation shall give rise to a point emission of particulate matter exceeding 50 mg/m³.
- (3) A monthly survey and monitoring programme of dust and particulate emissions shall be undertaken to provide for compliance with these limits. Details of this programme, including the location of dust monitoring stations, and details of dust suppression measures to be carried out within the entire quarry complex, shall be submitted for the written agreement of the planning authority prior to commencement of any quarrying works on the site. This programme shall include an annual review of all dust monitoring data, to be undertaken by a competent person, the results of which shall be submitted to the planning authority within two weeks of completion for its written agreement. The developer shall carry out any amendments to the programme required by the planning authority following this annual review.

Reason: In the interest of the protection of residential amenity.

The EHS can find no evidence in the rEIAR that this has been done or, if it has, that the monitoring results are being used in the rEIA. There are no reported monitoring or measurements of dust deposition or noise emissions from the activities up to 2012 reported in the rEIAR. This appears to be the same for monitoring of ground and surface water that was a requirement of condition 8 of the Consent to operate between 2007 and 2012.

The rEIAR relies on predictive methodology from the original EIA undertaken, which was the basis for the Consent to operate between 2007 and 2012. But the conditioning of this Consent required monitoring of dust emissions, noise emissions and surface and ground water. It is these results that are pertinent to the rEIA.

If it is the case that conditions stated above have not been complied with, i.e. there was no monitoring of dust, noise or surface and ground water during the Consented activities, then the EHS considers this a significant issue with regard to the protection of Public Health, irrespective of any compliance with Planning Legislation. If the condition has been complied with, then the results of the monitoring are relevant and pertinent to the rEIA. If there are monitoring results, then their omission in the rEIA is a significant omission for the validity of the process.

As the unauthorised development was materially similar, and might even be considered a continuation of the Consented activities, it is reasonable to state that the assessment of impacts for the unauthorised development (remedial EIA) should have been closely aligned to measurement of the actual impacts from the activities, prior to the unauthorised development. This would be a much more accurate methodology than reliance on predictive methodology assessed in 2002/2003.

In addition to the above, the EHS notes condition 21 of the Consent to operate prior to the unauthorised development:

21. On an annual basis (by the end of January each year) for the lifetime of the facility, the developer shall submit to the planning authority five copies of an environmental audit. Independent environmental auditors approved by the planning authority shall carry out this audit. The audit shall be carried out at the expense of the developer and made available to the public. This audit shall contain:

- (a) an annual topographical survey carried out by an independent qualified surveyor agreed by the planning authority. This survey shall show all areas excavated and restored. On the basis of this, a full materials balance shall be provided to the planning authority,
- (b) a full record of any breaches over the previous year for noise, dust, and water quality, and
- (c) a written record of all complaints, including actions taken on each complaint.

In addition to this annual audit, the developer shall submit quarterly reports with full monitoring records of dust monitoring, noise monitoring, surface water quality monitoring and groundwater monitoring, details of such information to be agreed with the planning authority. Notwithstanding this requirement, all incidents where levels of noise or dust exceed agreed levels shall be notified to the planning authority within two working days. Incidents of surface or groundwater pollution, or incidents that may result in groundwater pollution, shall be notified to the planning authority without delay.

This, if undertaken, would inform the rEIA, but there is no reporting of this in the rEIAR.

The Conditioning of the time span for the quarry prior to the unauthorised development is significant in considering the rEIAR. Authorised development is subject to public participation and mitigation based on stakeholder consultation. Potential nuisance aspects of development can be less significant if there is a fixed time span (in this case 5 years). Unauthorised development is not subject to this. Therefore, the environmental impacts are likely to be more significant, particularly around the public health areas of noise exposure and dust nuisance. The rEIAR has not demonstrated that Authorised activities were within the predicted limits to protect health with regard to dust or noise or protection of ground and surface water and therefore has not demonstrated that the unauthorised development operated within the health protection standards.

The rEIAR relies on predictive methodology that has not been validated, despite the Consent conditioning that this must be the case for the authorised development.

Air Quality and Climate

The EHS can find no reference in Chapter 8 on Air Quality and Climate to the actual impacts on Air Quality from activities up to 2012 which would be particularly relevant in carrying out the rEIA.

The EHS makes the following comments on the methodology stated in section 8.2:

1. The use of the historic EIS is not retrospectively assessing the impacts from the unauthorised development as stated in section 8.2.1 of the rEIA. It is extending a predictive methodology and assessment from 2002/2003 to covers a separate time period when unauthorised activities were being carried out.
2. For the rEIA, the baseline environment is not therefore as per the original EIA but is the baseline environment after 5 years of authorised activities. The baseline air quality in 2002 is potentially different. The baseline at the start of the unauthorised activities was the original air quality together with any contribution from the 5 years of authorised activity, together with any cumulative activity.
3. Reference is made to the statement in the rEIA ***'The cumulative dust deposition level is estimated to have peaked at 130 mg/m²/day, which is only 36% of the LA Luft Limit Value'***. This is a predicted dust deposition from the original EIS and based on a predicted dust emission from Consented activities. The actually level of dust deposition should have been measured during the authorised activities as per the conditioning of the Consent.
4. The rainfall data that would have significance for potential dust nuisance is collected for the period 2018 to 2020 and the wind data from 2011 to 2020. The relevant time for the rainfall data would be when the unauthorised development was taking place, after 2012.
5. The rEIA states: ***'Only a small number of sensitive locations were identified as being potentially affected by dust deposition in the previous EIS and these are presented in Figure 8-4. The proposed location of the facility was in an area with a low population density and the nearest sensitive locations beyond the site boundary were generally greater than 60m from the extract and processing of material. The following Figure 8-4 identifies the sensitive receptors which were included in this assessment'***, the rEIA should not have relied on an assessment undertaken 20 years ago for identification of sensitive receptors.
6. The rEIA states (page 218): ***'Bigstone National School, which is located approximately 0.25 km southwest of the plant area, was considered a high sensitivity receptor. However, due to the distance from the dust generating sources, there has been no impact on this receptor'***
There is no evidence to support this statement in the rEIA.
7. The rEIA states (page 218): ***'no dust nuisance is predicted to have occurred as a result of the operation of the facility at the nearest residential receptors'*** This statement is not supported by 3rd Party submission on the public planning files.

8. The rEIAR states (page221): '*The Disamenity Dust Assessment carried out in Section 8.5.1.2.2.1.1. has concluded that there was a potential for overall Negligible impact on sensitive receptors as a result of the Unauthorised Development. However, the adherence and full implementation of the appropriate control and mitigation measures have ensured there was potential for cumulative impacts to arise*'. This section is not in the rEIAR. It's not clear what this sentence means.

Impacts from Noise

It is noted by the EHS that the operational times during the unauthorised development were as per the permission 221741, i.e.

Monday to Friday (excluding Bank Holidays) 07:00 - 18:00hrs

Saturday 07:00 - 13:00hrs

Sunday Closed

The EHS notes the Conditions of the Consent to operate between 2007 and 2012 and the requirement to provide noise monitoring reports to the Planning Authority.

The EHS has considered chapter 9 of the rEIAR on noise and makes the following comments:

1. The statement on page 233 '*No noise complaints were made throughout the duration of the operations undertaken at the Site to date*'. Contradicts 3rd Party submission on the public planning file.
2. The rEIAR does not include any noise monitoring results carried out during the authorised operational activities. The monitoring of noise was a condition of Consent. Reproduced below from order case number 221741 (Planning ref 06/842)



6. (1) Noise levels attributable to the operation of the entire quarry complex, when measured at the nearest noise sensitive locations, shall not exceed 55 dB(A) (60 minute L_{Aeq}) during permitted operating hours and shall not exceed 45 dB(A) (15 minute L_{Aeq}) at any other time.
- (2) Notwithstanding (1) above, noise levels attributable to temporary works required in the construction of screening mounds around the site shall not exceed 70dB(A) during permitted operating hours. A timeframe for the completion of such works shall be agreed in writing with the planning authority prior to the commencement of activity on the site.
- (3) A quarterly noise survey and assessment programme shall be undertaken to assess the impact of noise emissions arising from the operation of the entire quarry complex. The scope and methodology of this survey and assessment programme shall be submitted to the planning authority for written agreement prior to commencement of any works on the site. The results obtained from the programme shall be submitted quarterly for the written agreement of the planning authority. The developer shall carry out any amendments to the programme required by the planning authority following this quarterly review.

Reason: In the interest of the protection of residential amenity.

3. The EHS is not satisfied that using background data from 2002/2003 is an appropriate method for assessing any like impacts that have occurred. The assumptions around other industrial activities and background noise and the interpretation of EPA Guidance NG4 should be validated in the rEIA, not assumed to be the same in 2012, when the unauthorised development commenced, as they were in 2002/2003 when the original EIA was carried out.
4. Table 9.5 is cited as the predicted noise exposure at different distances for different noise sources. Reference is then made to a noise assessment in the original EIS. The rEIAR should consider the noise exposure at NSL, which is a combination of all noise sources, not just one individual noise source at a time. Table 9.5 and the subsequent text is misleading. Two equal noise sources would increase noise exposure by around 3 dB(A), so the screener and the bulldozer operating at the same time would give a predicted noise exposure at 250m above the limit value of 55dB(A). The conclusion reached that there were no adverse noise impacts has no validation in the information provided in the rEIAR. It is the opinion of the EHS that if the original EIA was to be used in the rEIA it should be properly duplicated and reported on and the rationale given as to why the conclusions are valid.
5. Section 9.8 of the rEIAR states that noise monitoring was not required as part of the original planning permission. The EHS is not aware of any changes to the Conditioned Consent where condition 6 clearly states noise monitoring is required.

Impacts on Surface and Ground Water

Reference is made to condition 8 of the Consent to operate between 2007 and 2012

8. A Groundwater Monitoring Programme shall be implemented for the protection of groundwater. Groundwater monitoring wells shall be installed around the boundary of the site, the number and locations of which shall be agreed in writing with the planning authority prior to commencement of development. Water levels and quality shall be recorded every month and a log of the results shall be submitted to the planning authority for written agreement on a quarterly basis. Where activities on the subject site are found to adversely affect local water supplies, replacement water supplies shall be provided to the written satisfaction of the planning authority.

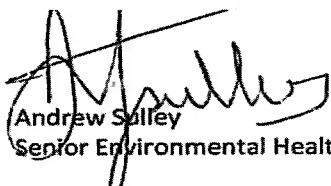
Reason: In the interest of proper planning and sustainable development and to monitor groundwater in the vicinity of the site.

It does not appear that any monitoring data is available or reported in the rEIAR chapter 7 Hydrology.

Conclusions

1. The EHS has considered the Remedial Environmental Impact Assessment Report (rEIAR) and is of the opinion that the assessment has not demonstrated that the unauthorised activities, subject to the assessment, operated within standards that protected public health with regard to dust and noise emissions from the site.
2. The unauthorised activities subject to rEIA were, in essence, a continuation of activities that had been permitted for the previous 5 years. A requirement of the permission to operate for the previous 5 years was to demonstrate, and make publicly available, evidence that the health protection standards with regard to dust and noise emissions from the site were being met. There is no evidence in the rEIAR that this has been done.
3. The condition in the Consent to demonstrate compliance is an important public health protection. It enables the Planning Authority to ensure the mitigation measures outlined in the EIS are working effectively in protecting public health. If there has been failure to comply with this condition it would not only demonstrate a disregard for the planning process, but also a disregard for the protection of public health.
The EHS would emphasise that the duty to comply with public health protection standards, and to demonstrate compliance, is the sole responsibility of the operator of the facility.

4. The rEIAR is not robust with regard to the likely significant impacts on public health from noise emissions, in that:
- a) The Report states that no complaints were received with regard noise. This statement is not supported and is in contradiction to 3rd Party submissions on planning files.
 - b) Reference is made to an EIS accompanying the previous planning application to support a conclusion that there are no significant impacts from noise, but the data is not reproduced or assessed in the context of the rEIA. Furthermore, table 9.5 and accompanying text that purports to predict noise levels at different distances does not accumulate noise sources for a total noise exposure. The conclusions in the noise section of the rEIAR are based on the predictive methods from another document that are not reproduced in the rEIAR.
 - c) Consideration is not given to the significance of noise from an unauthorised development and the significance of the noise being for a period longer than that given permission for and longer than expected within the receiving environment.
5. The conclusion that dust emissions did not cause a nuisance at sensitive receptors is not supported by any evidence and is contradicted by 3rd Party submission on the planning file. The conclusion is based on predictive methodology in the EIS of 2004. There was a requirement to monitor dust emissions during the authorised operation, 2007 to 2012, which would have shown compliance, or not, with the health protection standards and informed the conclusions reached in the rEIAR. There is no evidence in the rEIAR that this requirement was met.



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21/2/22