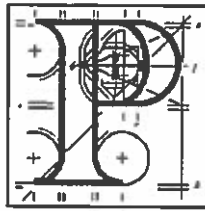


# An Bord Pleanála



## Inspector's Report

### Development:

Extraction of sand and gravel over an area of 7.8 hectares and all associated development on an overall site of 13.9 hectares at Ballinderry, Carbury, Co. Kildare.

### Planning Application

Planning Authority: Kildare County Council  
Planning Authority Reg. Ref.: 02/1475  
Applicant: Goode Concrete Ltd.  
Type of Application: Permission  
Planning Authority Decision: To refuse permission

### Planning Appeal

Appellant: Goode Concrete Ltd.  
Type of Appeal: First party against refusal of permission.  
Observer: Jerry Walshe et al  
Date of Site Inspection: 3<sup>rd</sup> March 2004

Inspector: Andrew Boyle.

## THE SITE

The site is located in a rural area in the townland of Ballinderry in Co. Kildare. It is about 5 kilometres to the north of the village of Carbury and 28 kilometres to the north-west of the county town of Naas. The site consists of two adjoining fields of 6.61 hectares and 7.64 hectares. These fields are currently in grass. The site is irregular in shape, but may be described as approaching rectangular, with its long access running east - west. This long access measures, on average, about 470 metres. Its north-west dimension is about 270 metres. The site can generally be described as dome shaped rising to a high point about 200 metres north of its centre. It rises by about 13 metres from the east, 12 metres from the south, 1.5 metres from the west and 2.5 metres from the north. Towards the eastern boundary of the site, the incline is markedly steep, rising by 7 metres over a horizontal distance of about 20 metres (see E.I.S. figure 9.4 – scale 1:2500). The lowest point of the site is shown to be about 81 metres O.D. towards the north-eastern corner of the site and the highest point to the north of centre is shown to be over 94 metres O.D.

On its north side, the site is bounded by a minor county road, on the opposite side of which is Kilcandrick House a farm complex with some horses. On its east side the site adjoins a more major county road linking Carbury to the south with the N4 to the north. On its south side, the site adjoins further fields. On its west side, the site adjoins a gravel quarry operated by Roadstone and also, towards its northern boundary, the sites of two houses. A stream runs from south to north along the eastern boundary of the site. A 400 Kv power line traverses the site from about midway along its eastern boundary to its south-western corner. The site is divided by an intermittent field hedgerow from north to south, approximately centrally. The site is bounded by field hedgerows and trees.

## THE PROPOSED DEVELOPMENT

It is proposed to extract 1.6 million tonnes of sand and gravel from the site. The production would be 200,000 tonnes per annum. The extraction area would be 7.8 hectares out of the total site area of 13.9 hectares.

Following a request for additional information from the Planning Authority, the proposed development was revised to include a realignment of the county road to the north of the site, commencing at a distance of about 200 metres to the west of Clonuff Bridge and redirecting the road in a south-easterly direction, thereby cutting off a triangular area of the site at its north-eastern corner and removing about 1.6 hectares from any development works. Following this amendment, the proposed excavation would be carried out in five phases. The first phase would take place at the south-eastern corner of the site. The second phase would consist of the excavation of the western “half” of the site in a northerly direction for a distance of about 140 metres from its southern boundary. Phase 3 would consist of the excavation of the remainder of the western “half” of the site, again in a northerly direction. Phase 4 would consist of the excavation of the first part of the eastern “half” in an easterly direction and Phase 5 would consist of the excavation of the final part of the site in an easterly

direction up to the realigned county road. Following the operational phases of the proposed development, there would be a restoration and closure phase. The western boundary of the site, about half the northern boundary of the site and two thirds of the southern boundary of the site would have screening bunds up to about 4 metres in height constructed of extracted top soil.

Sand and gravel extraction would take place to the maximum proven mineral depth of 70.5 O.D. As the water table beneath the site has been identified as lying between 75 metres and 84 metres O.D., wet working of the mineral below water table would be required. This would be undertaken by dragline, the extracted sand and gravel being deposited on a shelf to drain off.

The restoration phase would see the screening bunds removed and the material used on the 1 in 2 excavation slopes which would then be seeded, with natural vegetation being allowed to colonise on their lower slopes. A lake would form at the centre of the excavation pit. This is shown to have an indicative water level of 76 metres O.D., but would fluctuate due to seasonal change.

The development would include a new entrance, internal roadway, wheelwash, shipping office and weighbridge, site office and canteen and a surface water settlement lagoon.

The application was accompanied by an Environmental Impact Statement.

## THE ENVIRONMENTAL IMPACT STATEMENT

As the proposed development consists of the extraction of gravel and sand over an extraction area exceeding 5 hectares, the submission of an Environmental Impact Statement is mandatory under the Planning and Development Regulations, 2001, Schedule 5, Part 2, Paragraph 2(b). An Environmental Impact Statement has been submitted with the application. The EIS is structured into 13 sections as follows:-

- Introduction
- Description of the Site
- Description of the Project
- Human Beings
- Flora and Fauna
- Soil and Water
- Air, Dust and Climatic Factors
- Noise
- Landscape and Restoration
- Material Assets
- Traffic and Transportation
- Archaeology and the Cultural Heritage and
- Interaction of the Foregoing.

The EIS commences with a non-technical summary.

On human beings, it is noted that there are houses addressing the eastern, north-western and western boundaries of the site. It is claimed that due regard has been afforded to the amenities of these dwellings, particularly on the county road to the north of the site, in the design of the proposed development and provision of mitigation measures.

On flora and fauna, the site is claimed to consist of ordinary farmland without features of ecological interest except for a small badger sett in one of the hedges. A stream at the eastern end could form a feeding ground for salmonid fish fry from the Boyne. The badgers would be removed from the site before site preparation works, but most of the hedges with their flora and fauna would be retained.

On water and soils, it is noted that the groundwater contour map for the sand and gravel aquifer shows a ground water flow direction towards the south-east. The proximity of wells to the site and the high vulnerability rating for the aquifer makes these wells possible targets of groundwater pollution originating from the site. The proposed development would operate with a closed system for mineral washing and a silt press for removal of fines. A water settlement lagoon would be built on the southern side of the site. Fuel tanks would be bunded and there would be a concrete paved area for machinery parking.

On air and climate, it is noted that dust would be generated as a result of excavation of material, stripping of soil and construction of earth mounds, transporting of materials from the site, employee vehicle movements and the operation of the sand and gravel screening plant. Mitigation measures would include planting, the lowering of the site through the excavation process, the fact that the sand and gravel are relatively coarse materials, water spraying and the provision of a wheelwash unit.

On noise, it is noted that the most significant source of noise at all monitoring locations, including noise sensitive locations, is the traffic on the third class roads and, in particular, that on the Carbury to Ballinderry Road. Screening banks would contribute to noise attenuation arising from the excavation, recovery, processing and transport of raw materials. There will be just 9 truck movements per hour and 10 car movements per day. There are no adverse noise impacts predicted at noise sensitive receptors in the vicinity.

On landscape and restoration, it is noted that landform and the high level of mature field boundaries play a large part in screening views to the site. Bunds would be erected to screen views into the site.

On material assets, it is noted that predominant landuses in the area are agriculture, one-off rural residential development and extractive operations. The operational plan has been designed to minimise impacts on the receiving environment, particularly the protection of residential amenity. The removal of 13.9 hectares from agricultural use is not a significant impact on landuse or agriculture in the area. The impact is temporary and short-term, as the lands will be progressively returned to agricultural use as extraction proceeds through the site.

On traffic and transportation it is noted that there would be no interchange between the L1002 Broadford to Carbury Road and the M4, now under construction. The only

effect of the construction of the M4 would be to reduce base traffic flows. The proposed development would ultimately give rise to 210 traffic movements per day. However, this would essentially result from a staged relocation from the existing production at Kilglass. All junctions along the proposed haulage route have ample capacity to cater for the development traffic through the lifetime of the operation. The road geometry is such as to allow for two-way heavy goods vehicular traffic. The proposed junction access will provide for the safe turning of HGVs into and out of the quarry and would minimise the effect on nearby residential units.

On archaeology and cultural heritage, it is noted that there are no recorded archaeological site or monuments within the area of the proposed development. There is an east - west linear depression set into the east facing slope of the gravel. Also in the eastern portion of the site there is a very low linear platform or rampart flanking the stream, with the occasional field stone on its surface. Both of these would require assessment in the form of test trenching prior to any ground disturbance on site. The potential for as yet unrecorded archaeological remains is recognised. All site preparation works involving clearance of vegetation, topsoil stripping and ground reduction are recommended to be monitored by a qualified archaeologist.

On the interaction of the foregoing, it is noted that these have been identified in the scoping exercise in advance of the preparation of the EIS and have been considered in detail in the respective reports included in the relevant sections.

#### **Comment**

In general, the Environmental Impact Statement is comprehensive. It meets the requirements set out in Schedule 6 of the Planning and Development Regulations, 2001. It adopts the "grouped format" structure, examining each aspect of the environment as a separate section referring to the existing environment, the proposed development, likely impact and mitigation measures. Consideration of alternatives was restricted to alternative designs and processes, but does not appear to have extended to the consideration of alternative sites.

The most serious criticism that can be levelled at the Environmental Impact Statement is that it relates to the proposal as originally lodged with the Planning Authority. Following the Planning Authority's request for additional information, the proposed development was significantly modified, realigning the county road to the north of the site diagonally in a south-easterly direction through its north-eastern quadrant and effectively cutting off part of the site, leaving it free of development. No supplementary environmental impact statement was submitted to cover these changes. However, it may generally be said that the changes are of a positive nature, although the extraction of the reduced reserve of 1,600,000 tonnes of sand and gravel evenly at 200,000 tonnes per annum, rather than the extraction of 2,200,000 tonnes at the rate of 200,000 tonnes per annum for the first two years and 600,000 tonnes per annum thereafter, prolongs the life of the pit, giving rise to lower traffic movements over a longer period.

## **OBJECTIONS TO PLANNING AUTHORITY**

19 letters of objection to the Planning Authority have been forwarded to the Board. Most of these letters consist of objections to the original proposal and follow up letters to the submission of additional information.

## **THE PLANNING AUTHORITY'S DECISION**

On 21<sup>st</sup> October 2003, Kildare County Council refused permission for this development for five reasons. These reasons related to the proposed development been in an area of Class A soils, being closely proximate to the bloodstock industry, interfering with the landscape, views, setting and character of the area, giving rise to an unacceptable intensification of sand and gravel extraction in the immediate area and thereby reducing road capacity and materially and adversely impacting on the residential amenity of nearby houses. Two of the reasons for refusal, namely those in relation to the site being located in an area of Class A soils and being closely proximate to the bloodstock industry are claimed to materially contravene the Development Plan.

## **RELEVANT PLANNING HISTORY OF THE SITE**

I am unaware of any previous planning applications on this site.

Under PL 09. 118274, the Planning Authority's decision to grant permission under its Reg. Ref. 99/1200 for a sand and gravel pit over an area of 23.2 hectares, on the adjoining site to the west, was upheld on appeal. The applicant was Roadstone (Dublin) Ltd.

The Planner's Report notes that the appellant operates a sand and gravel pit to the south-west of the appeal site. There is no record of planning permission having been granted for this pit and its planning status is unclear. Under PL 09. 098683, the Planning Authority's decision, under its Reg. Ref. 1236/95, to grant permission for a concrete block and Readymix plant on this site, was upheld on appeal.

## **DEVELOPMENT PLAN PROVISIONS**

The site lies within the functional area of Kildare County Council. It is thus affected by the provisions of the Kildare County Development Plan, 1999.

Section 1.7 of the Development Plan, on soils, notes that these are an important resource of the county. They have a direct bearing on agricultural landuse and on future development aspects in this sector. Section 1.8 of the Development Plan, on agricultural landuse, notes that this follows the suitability and use range of the soils.

Section 1.9 of the Development Plan, on the bloodstock industry, notes that this is one of the most significant landuses in the county. Approximately 6.2% of total arable

land in the county is attached to stud farms. These provide considerable levels of employment and a high level of wealth generation.

Part 2 of the Development Plan sets out policy.

Section 2.11, on the bloodstock industry, states that the Council recognises the importance of this industry in the county, both in landuse and landscape terms and in the direct and indirect employment it generates. The expansion of the industry is one of the primary goals of the Council, as a development agency. It is policy to protect the environmental qualities necessary for its successful operation. It will be protected from incompatible developments.

Section 2.29 is on extractive industries. This section is copied at the end of this report.

Part 4 of the Development Plan sets out development control standards and guidelines. Section 4.22 is on sand and gravel extraction. Again, this section is copied at the end of this report.

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## THE APPEAL

This is a first party appeal against the Planning Authority's refusal of permission for this development.

The appeal explains the rationale for the proposed development. The appellant operates a sand and gravel extraction and processing plant at Kilglass, Carbury, approximately 1 kilometre south-west of the appeal site. This has an output of 600,000 tonnes per annum. It has a reserve of about 2,500,000 tonnes or about 4 years operation. The appeal site was acquired as a natural extension of the Kilglass reserve, to supply the concrete and block plants on site and the appellants' regional market. Initially it is proposed to work the appeal site resource as a supplementary supply to the Kilglass operation. The output from the combined plants would be in the order of 600,000 tonnes per annum, equivalent to the existing output from the Kilglass facility. 200,000 tonnes per annum would be extracted at the appeal site and 400,000 tonnes at Kilglass. There would thus be no net increase in the quantity of material extracted or the number of traffic movements on the local road network. The Kilglass operation is expected to be exhausted by mid-2006. There would thus be a maximum of two years in which extraction would occur at both sites. The appeal points to the existing level of investment by the appellant in the area, the local employment provision and skills and the requirement for a source of aggregate close to the existing plant and established markets, and states that this led to the seeking of an additional site in the Carbury area.

On the strategic national and regional importance of aggregate reserves, the appeal quotes from Section 1.3 of the Consultation Draft Guidelines for Planning Authorities in respect of the Control of Quarries, wherein it is stated that "aggregates are an essential input to the construction industry, which is worth about 20 billion euro to the Irish economy each year. Over 100 million tonnes are used annually in the manufacture of concrete products, road materials and other ancillary products. For

example, it is estimated that an average of over 300 tonnes of aggregates are consumed in the construction of an ordinary single house. About 70% of aggregates are obtained from hard rock quarries by drilling and blasting, and about 30% is extracted by direct digging from sand and gravel pits”.

The Consultation Draft Guidelines note that “by their nature, aggregates can only be worked where they occur. Sand and stone have a low value to weight ratio and therefore it is generally not economical to transport them any great distance to their market. Many pits and quarries tend to be located within 25 kilometres of urban areas, where most construction takes place”.

In relation to the economic importance of quarries, the Consultation Draft Guidelines conclude that “there is thus a need to identify and protect aggregate resource areas through the planning system, to ensure an adequate supply of aggregates to meet the likely scale of future demand, while at the same time protecting Ireland’s natural and cultural heritage”.

The appeal notes the designation of the Naas Newbridge Kilcullen area as a major growth centre in the Strategic Planning Guidelines for the Greater Dublin Area, 1999. The anticipated growth in this area will give rise to a major demand for sand and gravel resources, the availability of which, within economic haul distance of the growth centres, will be critical to retaining competitive construction material prices. The Strategic Planning Guidelines recommend the instigation of “a review of aggregate resources in and close to the Greater Dublin area and of planning policies affecting their extraction with a view to ensuring that adequate supplies of aggregates are available to meet the needs of the strategy” (Appendix 6). As the reserve at the appeal site provides a guaranteed and secure supply of construction materials over a period of eight years, it is submitted that it is a strategic economic resource of local and regional significance.

In relation to the Planning Authority’s first reason for refusal, wherein it is held that the proposed development materially contravenes the provisions of its Development Plan by virtue of its location in an area of Class A soils, it is pointed out that the eastern side of the site is covered by A4 soils and the western part of the site is covered by B1 soils. The National Soil Survey describes A4 soils as “pastures somewhat liable to poaching; cultivation and harvesting difficult in unfavourable seasons”. B1 soils are defined as “moisture deficit in places in dry periods; crops mature unevenly; some steep slopes”. Immediately to the north of the appeal site there are D1 soils and accordingly, it is submitted that the general area is characterised by a variety of soil types, which include Class A types. Teagasc have pointed out that the National Soil Survey in the 1970’s was for the purpose of categorising lands for grant aid and subsidies. They regard the survey as obsolete and it was never intended to be a tool to determine land uses appropriate in the rural areas of any county. 48.5% of the area of Co. Kildare is covered by Class A soils. Taking a conservative estimate that 70% of the soils on the appeal site are Class A, the extraction area under such soils would be about 5.4 hectares or 0.000065% of the Class A soils in the county. The A4 soil type is less than fully ideal as grazing animals need to be removed in very wet conditions. In any case the soil would be stored on site and replaced after the resource had been extracted and there are



indications that in some instances the temporary movement and restoration of such top soil may have a beneficial effect on its structure.

There is considerable precedent for the granting of extractive operations on sites at least partly characterised by Class A soils in Co. Kildare e.g. PL 09.118274 (Planning Authority Reg. Ref. 99/1200), PL 09.123207 (Planning Authority Reg. Ref. 99/2042) and PL 09. 130086 (Planning Authority Reg. Ref. 1270/01). In the last case, the Planning Inspector did not consider the incursion into Class A soils to provide valuable materials for a major local construction project to be unacceptable in planning terms. It is noted that the Consultation Draft Guidelines for Planning Authorities on the Control of Quarries do not recommend that extraction of aggregates on any particular soil types should be precluded.

The appeal notes the provisions of Section 37 (2) of the Planning and Development Act, 2000 and in particular subsection (b) (i), (iii) and (iv), allowing the Board to grant permission in cases where a Planning Authority has held that a development materially contravenes its Development Plan.

In relation to the Planning Authority's second reason for refusal, referring to the proximity of the site to the existing bloodstock industry and thereby contravening the Development Plan, it is noted that as part of the scoping exercise in connection with the E.I.A. process, the Irish Field Directory, 2002 was consulted to identify bloodstock interests in the area. A visual inspection was undertaken from all roads in the vicinity and the appellants' own personnel working and living in the area, were consulted for the purposes of identifying bloodstock locations. All were negative. Objections were received from the owners of Kilcandrick House, 25 metres north of the planning application boundary and 50 metres north of the extraction boundary, and the owners of Ballinderry House, 350 metres south of the application boundary and 400 metres south of the extraction area on the basis that they were connected with the bloodstock industry. However, neither location is included among the 127 locations in Co. Kildare listed in the Irish Field Directory, 2002. No bloodstock activity was observed during visits to the area at either location. It is submitted that it is inappropriate to use such a reason for refusal where even a single horse or pony is kept for the enjoyment of the occupants. An incorrect standard has been adopted in respect of what constitutes the "bloodstock industry".

It is the Council's policy to protect the environmental qualities necessary for the successful operation of the bloodstock industry. It is submitted that the E.I.S. clearly establishes that the proposed development would not affect the environmental qualities necessary for the successful operation of these modest horse rearing operations, nearby. The revised layout submitted as additional information would further reduce the impact of the proposed development on Kilcandrick House. The extraction area would be set further back from the property and would occur over a much shorter period in the vicinity of the house. The road realignment would remove the existing Roadstone traffic from the county road to the front of the property resulting in a reduction in traffic noise in the vicinity of the house and a general improvement in its amenity. Potential impact on the bloodstock industry, agriculture and residential amenities have been assessed in detail in the EIS, with particular regard to dust, noise and visual impacts.

Again, the provisions of Section 37(2) of the Planning and Development Act, 2000 are noted, allowing the Board to grant permission, where the Planning Authority has held that a development is in material contravention of its Development Plan.

In relation to the Planning Authority's third reason for refusal, which holds that the proposed development would constitute an incongruous and artificial interference with the landscape, views, setting and character of the area and particularly that of Clonuff Bridge, it is stated that due regard has been afforded in the preparation of the EIS to the potential impact the proposed development might have on the landscape and character of the area. The Board is referred, in particular, to Section 9 of the EIS. There are no amenity designations in the vicinity of the site, nor are there any listed views or settings. The appeal includes a report from a firm of landscape architects in response to this reason for refusal. The report notes the existence of several permitted sand and gravel pits which must be similarly incongruous and artificial interferences with the landscape, but this has not been sufficient to warrant a refusal previously. There are three overhead power lines in the local area and industrial buildings in a visually prominent location a quarter of a mile east of the site boundary. The proposed development would not add significantly to the accumulation of artificial structures as it would be screened by grassed bunds from sensitive viewpoints. The main processing plant would be sited at low level within the extraction pit. The timescale for the operation and final restoration of the site is only 6 years, unlike the much longer duration of the existing buildings, power lines etc. Views to the site are highly localised owing to the local topography and tree and hedge cover. Grassed screening bunds would be constructed to screen the site from nearby dwellings. On completion there would be views towards the new lake on the restored site. The redesign of the north-eastern corner of the site minimises the impact on Clonuff Bridge. 1.6 hectares of existing landform closest to the bridge will be left untouched. There will be no significant interference with existing views in the vicinity of the bridge. The existing county road would be stopped-up west of Kilcandrick House and this would reduce the volume of traffic over the bridge and thereby prolong its life. The bridge itself is not a protected structure and there are no designated listed views towards it or from it.

In relation to the Planning Authority's fourth reason for refusal, that the proposed development would lead to an unacceptable intensification of sand and gravel extraction in the immediate area, setting an unacceptable precedent and generate additional traffic movements and reducing the capacity of the road, the overlap between the appellants' existing operation at Kilglass and the appeal site, is again noted. There will be a maximum of two years in which extraction would occur at both sites. There will be no net increase in quantity of material extracted or the number of traffic movements on the local road network. There will be just a two year period in which an additional pit will be operating in the area. There is no adverse recommendation in the County Council's Roads Department Report in respect of the capacity of the road network to cater for the proposed traffic generation. There would be significant road improvements in the vicinity of the site with the realignment of the county road. This is a significant planning gain for the area.

In relation to the Planning Authority's fifth reason for refusal, referring to loss of residential amenity, it is submitted that this reason is unsubstantiated, particularly having regard to the report from the County Council's Environment Section which

had no objection to the proposed development and recommended that 14 conditions be imposed. It appears to be at variance with the planner's intention, expressed in his report, that he would concentrate on the planning aspects of the proposed development, as the application had been referred to a number of prescribed bodies and the relevant sections of the County Council, such as the Environment Department. There is no detailed assessment or mention in the planner's report of the possible emission of dust or noise or consideration of the mitigation measures proposed in the EIS. This reason for refusal is contrary to the detailed assessment included in the EIS. As in the case of Reason 3, a report from landscape architects is included with the appeal, in relation to Reason 5. They conclude that inspection of the plans and photomontages submitted with the application shows that there would only be minor impacts on nearby residential properties, once the mitigation measures and new road alignment are in place. As shown on Drg. 1424/001/A, the proposed phasing northwards from the south-western corner and then keeping the extraction face moving from west to east, the working face will be kept in the lee of the existing landform, screened from properties close to the northern and eastern site boundaries. The eastern end of the existing landform would remain as a permanent screen. This, together with keeping the processing plant at a low level within the excavation would also contribute to the reduction of noise impact. Once restored, after about 6 years, as shown on Drg. 1424/002/A the site would be unlikely to materially depreciate the value of local properties. The creation of a new lake with fringing vegetation with consequent benefits to wildlife will be likely to increase the attractiveness of the area.

### THIRD PARTY OBSERVATIONS

A multi-signatory letter, objecting to the proposed development and supporting the Planning Authority's decision has been received by the Board.

The observation notes that the observers had been in conflict with the appellant for almost 2 years. The appellants' activities have given rise to many sleepless nights and tiring days, with lorries working 24 hours a day. This was despite "the fact that planning permission set down for this site (i.e. the appellants' existing site), dictated working hours between 8 a.m. and 6 p.m. Monday to Friday and 8 a.m. and 12.00 noon on Saturdays". The observers were forced to take court proceedings against noise pollution and, after initial denials, the appellant sought to negotiate a compromise. It is suggested that the only reason a compromise was reached was to encourage the Planning Authority to look favourably on the appellant for this new site. The observers ask that the Board uphold the Planning Authority's decision.

The observers do not believe the appellants' contention that if permission is granted for the present proposal that there would be no increased activity in the area. They fear that aggregate would be transported between the appeal site and the appellants' existing site for processing. They claim that the appeal site is almost 3.5 times the size of the existing site.

The observers claim that the appellants have broken their agreement with the residents in relation to their present operations. They fear that they would show an equal contempt for any conditions imposed on the present site. Conditions would not be "worth the paper that they are written on".

The observation notes the statements in the additional information submission that “the existing industrial operations are not dominant sources of noise and do not generate significant noise levels in the area” and “cumulative HGV movements per hour consist of 12 movements per hour”. It is implied that between the hours 0630 to 0800, this is very much an underestimate. If the existing industrial operations were not a dominant source of noise levels in the area, the observers query why seven local families would have initiated court proceedings for noise pollution. The additional information submission further strengthens the observer’s belief that this appeal should be rejected.

The observation includes a handwritten agreement between the appellants and the observers in which it is agreed to undertake certain limitation and mitigation measures in return for adjournment of the District Court proceedings with leave to re-enter by either party.

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Following the publication of the newspaper notice in relation to the Environmental Impact Statement, two further third party observations have been received by the Board. These observations are from David and Margaret Miller, the owners of Kilcandrick House on the adjoining site to the north and Alan and Eleanor Cox, the owners of Ballinderry House, on the adjoining site to the south.

The owners of Kilcandrick House point out that the Irish Field is not an exhaustive list of those in the bloodstock industry. It is in fact, a list of stud farms keeping stallions. The observers rear and train horses and ponies. The appeal notes that no bloodstock activity was observed during visits to the area, but the observers premises were not visited despite their request, shortly after the lodging of the application for a meeting with the appellant to discuss the matter. The observation includes copies of letters sent to the Planning Authority in relation to the original lodgement and the lodgement of additional information. The first of these letters concludes that the proposed development would have a detrimental effect on the amenity value of the area. It would pose a health hazard to the observers, with a risk of pollution of groundwater and the well supplying their house. There will be noise and air pollution which could be detrimental to their livestock, particularly foals, young horses and ponies. If permitted, the observers might be forced to vacate their property, but might find it difficult to sell owing to its proximity to a quarry. Their second letter objects to the creation of a cul-de-sac which could become a halting site for caravans or used for the dumping of rubbish. The cul-de-sac would result from the revised road alignment submitted as additional information.

The observation from the owners of Ballinderry House notes that this is a protected structure and claims that this implies that no development should be allowed to damage its curtilage or heritage value. The claim in the appeal that impacts would be of minor significance on nearby residential properties, owing to the proposed phasing of the development disregards the impact to the south, where Ballinderry House is situated. The letter refers to the report from the Heritage Council stressing the negative impact of the proposed development on Ballinderry House. Like the owners of Kilcandrick House, the observers note that the Irish Field Directory is not a definitive list of those involved in the bloodstock industry. In the observer’s case, they

have simply chosen not to be listed. Despite the regular parking of the appellants' lorries directly in front of the main gate to Ballinderry House, the observers express surprise that the drivers of these lorries do not appear to have seen the horses which are always present in the front field. The observers have never been contacted by the appellants at any time.

## **RESPONSE OF THE PLANNING AUTHORITY**

No response has been received from the Planning Authority with respect to this appeal.

## **ASSESSMENT**

A range of issues requires to be considered in assessing this development. These arise directly from the Planning Authority's reasons for refusal and also from other concerns. They include the location of the site in an area of Class A soils, its proximity to the bloodstock industry, its visual impact, its contribution to an overintensification of sand and gravel pits and traffic generation, injury to residential amenity, pollution of groundwater sources, impact on Ballinderry House and third party observations. The issues are now considered under the above categories.

### **Location in an Area of Class A Soils**

In this regard, the appeal makes a generous estimate of the area of the site which is covered by Class A type soil. It points to the minuscule area of the site covered by this soil type, by comparison with the area of Class A soils covering almost half the county. The appeal points out that the site is located in an overall area of mixed soil types and that, in any case, Teagasc does not consider its soil type classification to be suitable for eliminating developments of a particular type. The appeal also notes the considerable precedent for granting sand and gravel pits in County Kildare, despite the fact that their sites were wholly or partially covered by Class A type soils. The information contained in the appeal was submitted to the Planning Authority as additional information. The planner noted the submission of "a very detailed 5 page response on this issue and that of proximity to the bloodstock industry and briefly summarised its content in relation to Class A type soils". In a 3 line assessment and conclusion on the additional information, the planner remained of the opinion that permission should be refused, as in his original report.

In my view, there is considerable validity in the appeal submission. The appeal site is located in an area with an established precedent of sand and gravel workings, notably the Roadstone facility on the adjoining site to the west and the appellants' own sand and gravel pit, a short distance to the south-west. It is clearly stated to be the appellants intention to continue to use the concrete block and readymix plant on their existing site and to use aggregate extracted from the appeal site to supply this site. The Planning Authority has claimed that by virtue of its location on a Class A type soil, the proposed development would contravene materially its Development Plan. The appellant notes the circumstances under which the Board may consider granting permission in such circumstances. I concur, generally, with the views expressed in

this regard. I have reservations about the weight to be placed on the Control of Quarries Guidelines, as a measure of strategic or national importance under Section 37(2)(b)(i) of the Planning and Development Act, 2000, as these are only in consultation draft form. I have similar reservations about their invocation in relation to Section 37(2)(iii) of the Act. In relation to Section 37(2)(b)(iv) I consider that the permission granted on the adjoining site to Roadstone is of particular relevance. Under PL 09.118274, this permission was granted by the Board on 14<sup>th</sup> August 2000, the Planning Authority having decided to grant permission under its Reg. Ref. 99/1200 on 17<sup>th</sup> January 2000, both dates subsequent to the adoption of the Kildare County Development Plan, 1999.

### **Impact on the Bloodstock Industry**

The lack of entries in the Irish Field Directory, 2002 (or on their website for 2003) is not a definite indicator of the non-existence of bloodstock interests on the properties of the two objectors who wrote to the Planning Authority in this regard. Following the receipt of copies of these letters from the Planning Authority, I reinspected the two properties. There were just three ponies present at Kilcandrick House, although the stables at this property suggested the potential to accommodate a greater number. There were just five horses in the field to the front of Ballinderry House. I concur with the view expressed in the appeal that the Planning Authority may have been overzealous in its interpretation of these adjacent properties as constituting part of the bloodstock industry. Again, I note the appellants' reference to Section 37(2)(b) of the Planning and Development Act, 2000, which specifies the circumstances under which the Board may grant permission, where a Planning Authority has refused permission on the basis of a material contravention of its Development Plan. In addition to the matters set out in sub-section (i), (iii) and (iv), I consider that the objectives of the Development Plan could be considered to be not clearly stated, as specified in sub-section (ii) as there is no definition of the bloodstock industry in the Development Plan. I am not convinced that the proposed development would have a detrimental impact on adjacent, relatively low intensity equine operations. I note also that the revised proposal removes a considerable portion of the development from the vicinity of Kilcandrick House and would divert traffic from the existing Roadstone operation away from this property.

### **Visual Impact**

In relation to the third reason for refusal stating that the proposed development would constitute an incongruous and artificial interference with the landscape, views, setting and character of the area and particularly to the unique setting and character and visual amenities of Clonuff Bridge, I consider that the bund screening should be sufficient to mitigate the impact of the proposed development during its operational phase. Following restoration, I concur with the view expressed in the appeal that the formation of a new lake might well enhance the visual amenity of the area, rather than constituting an incongruous interference with the landscape. In relation to the impact of the proposed development on Clonuff Bridge, the only logical interpretation of this claim is that the Planning Authority has reverted to the development as originally proposed to it and has disregarded the amended layout which was submitted as additional information and readvertised. The revised layout leaves Clonuff Bridge and its associated infilled mill pond unaffected. Indeed, as noted in the appeal, it will

remove traffic from this bridge, thereby prolonging its life expectancy. I do not agree with the implication in the appeal that the existence of other unattractive features in the area such as the 400 Kv power line and nearby industrial buildings would be an appropriate precedent for any further degradation.

### **Overintensification of Sand and Gravel Pits and Traffic Generation**

In relation to the alleged unacceptable intensification of sand and gravel extraction in the area, and additional traffic generation, there are discrepancies in the appeal submission. The appellants' nearby sand and gravel operation at Kilglass is estimated to have a remaining reserve of 2,500,000 tonnes which, at an annual output of 600,000 tonnes, gives it a remaining lifespan of 4 years (Appeal Section 4). The appeal anticipates the commencement of extraction operations at the appeal site by mid-2004, at which time the output from the Kilglass facility would be reduced to 400,000 tonnes per annum. The calculation that the Kilglass operation would be exhausted by mid 2006 is thus erroneous. It would appear likely to continue until the end of 2007. The claim that there would be no additional traffic generated in the area as the combined output of the appeal site and the Kilglass operation would be 600,000 tonnes, annually, the same as the present output of the Kilglass pit. There would also be additional new traffic between the two pits as it appears that even after exhaustion of the Kilglass reserve, aggregate would still be transported from the appeal site to the concrete plant on that site.

As noted in the appeal, the proposed development involving the realignment of the county road to the north of the site would make a positive contribution to traffic safety.

### **Injury to Residential Amenity**

This is the essence of the Planning Authority's fifth reason for refusal. However, as noted in the appeal statement this issue was covered in the Environmental Impact Study in terms of noise and dust generation. The appeal notes the report of the County Council Environment Section which included specific conditions relating to noise levels and dust emissions. However, the reason refers to the duration of the operation and there are discrepancies in this regard in relation to the appeal submission. At one point (Section 3) it notes the reserve to be 1.6 million tonnes and that the annual extraction rate would be 200,000 tonnes, implying a life expectancy of 8 years. Elsewhere, (Section 6.3) it gives the planned timescale for the operation and final restoration as "only 6 years". In addition, there is the issue of the additional traffic between the appellants' existing site at Kilglass and the appeal site which would generate further noise and dust.

### **The Risk of Water Pollution**

The proposed development envisages the excavation of sand and gravel below the water table level using a dragline. Although such a procedure is relatively commonplace in river beds, it is highly unusual in a purposely constructed gravel pit. On the adjoining site to the west, operated by Roadstone, it was intended to extract sand and gravel to a level, no lower than 1 metre above the winter water table level and this development was conditioned accordingly (PL 09.118274 - Planning

Authority Reg. Ref. 99/1200). The recommendation from the Planning Authority's Senior Environmental Health Officer, a copy of which has been submitted with the appeal, states that there is no objection to quarrying activities that take place 1 metre above the winter groundwater table level. In order to prevent pollution of groundwater she recommended that quarrying should not take place below 1 metre above the winter water table level. She pointed out that local residents are entirely dependent on groundwater for their water supplies. Contrary to the implication in the Environmental Impact Statement, she stated that the provision of a group scheme in the area was not imminent. I consider that the risk of contamination of groundwater supplies through a hydrocarbon leakage in this type of operation is unacceptable and that the implications of the imposition of a condition limiting the proposed development to excavation at least 1 metre above water table level need to be investigated. The well supplying Kilcandrick House is located centrally in the gravel to the front (east) of the house. The Eastern Regional Fisheries Board was also concerned about the possible contamination of the River Glash running along the eastern boundary of the site. This river is an important salmonid nursery river. A report from a firm of groundwater engineering consultants was submitted in response to a request for clarification of additional information in this regard. A response from the Fisheries Board submitted by the Planning Authority with objectors' correspondence indicates their continuing concern should an accident occur on site.

### **Impact on Ballinderry House**

During its consideration of the application, the Planning Authority received correspondence from the Heritage Council in relation to the impact of the proposed development on Ballinderry House, a protected structure about 0.5 kilometres to the south of the appeal site. The letter attests to the importance of Ballinderry House and states that the Heritage Council considers it to be a cultural asset of high significance and one which is in remarkably good condition in terms of its original features and fabric. The letter points to shortcomings in the EIS in relation to Ballinderry House, noting its finding that the setting of the house would not be affected by the proposed development. The Heritage Council are at a loss as to how this conclusion was reached. They noted that no Viewpoint Sensitivity Assessment had been undertaken from the house.

In a request for clarification of additional information, the Planning Authority noted that the Heritage Council was not satisfied that its concerns had been addressed. The appellants were advised to contact the Heritage Council directly in this regard. The response to the request for clarification of additional information includes a letter to the Heritage Council noting that the revised layout had pushed the proposed quarry development further to the south-west than originally planned, thereby leaving the former mill pond adjoining the River Glash undisturbed. However, the letter says nothing of Ballinderry House, nor is there any indication of a response from the Heritage Council.

I consider that a Viewpoint Sensitivity Assessment should have been undertaken from Ballinderry House.



## The Third Party Observations

The third party observations appear to be based largely on a mistrust of the appellants arising out of their existing operations at Kilglass. In this regard, the final planner's report recommending refusal for this development notes the topics of the extensive objections received by the Planning Authority. It notes the provision under Section 35 of the Planning and Development Act, 2000, whereby a Planning Authority may apply to the High Court to refuse planning permission for a developer based on his previous record of carrying out development. Having regard to the submissions received, the report considers that there might be such a case in the present instance, but that the Planning Authority would need to carry out a full examination of the matter, before making such an application.


## RECOMMENDATION

Having regard to the foregoing, I consider that several matters require clarification before making a final recommendation on this appeal. Accordingly, I recommend that the appellants be written to, pursuant to Section 132 of the Planning and Development Act, 2000, as follows:

1. Confirmation that the life expectancy of the proposed development is 8 years (and not "only 6 years" as stated at Page 18 of the appeal submission) based on the extraction of 1.6 million tonnes at 200,000 tonnes per annum.
2. In the event that the answer to Item 1 above is affirmative, or that the lifespan of the proposed development is substantially longer than the 5 year period specified in the Environmental Impact Statement for the development, as originally proposed, a revised newspaper notice shall be published specifically advertising to this extended period. A copy of this notice shall be submitted to the Board.
3. Confirmation that the remaining reserve at the Kilglass pit was calculated at 2,500,000 tonnes at the time of the appeal submission and not 2,000,000 tonnes as specified in the Environmental Impact Statement and that, accordingly, this reserve will be exhausted in late 2007 based on a continuing extraction rate of 600,000 tonnes per annum up till the commencement of operation of the appeal site and 400,000 tonnes per annum thereafter.
4. Clarification as to whether or not the Kilglass pit would close completely on exhaustion of its sand and gravel reserve or if it would continue to function for the purposes of a concrete block making and readymix plant.
5. In relation to the claim of no net increase in traffic generation, clarification as to whether or not there would be additional traffic generated between the appeal site and the Kilglass pit to transport materials to the concrete block and readymix plant. In the event that this transport will involve additional traffic movements, these shall be quantified, their commencement date shall be clarified (i.e. on commencement of operation of the appeal site or on

exhaustion of the Kilglass reserve) and a map shall be submitted of the county road between the two sites indicating all existing residential properties and any further residential developments for which planning permissions are outstanding.

6. Clarification and quantification of the implications of the imposition of a condition requiring that quarrying should not take place below 1 metre above the winter water table level, as envisaged in the Senior Environmental Health Officer Report submitted with the appeal and similar to that imposed in the case of the adjoining sand and gravel pit to the west of the appeal site under PL 09.118274 (Planning Authority Reg. Ref. 99/1200).
  7. Clarification by means of diagrams and maps of the process of extraction by dragline below water table level in relation to each of the five phases of the proposed development.
  8. Details of the proposed dragline excavator, e.g. manufacturer's specification.
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9. A detailed report on the impact of the proposed development on the protected structure, Ballinderry House including a Viewpoint Sensitivity Assessment with appropriate photographic montages, with the lens setting stated clearly thereon.
  10. A representative visual assessment of the mobile wash plant as it is relocated within the site. It is noted that this mobile plant is shown to be in an area where it would ultimately be under water on Drg. 1424/001/A.
  11. A map to a minimum scale of 1:2500 showing the location of the 20 private wells located in the survey, as reported at Section 6.3.4 of the Environmental Impact Statement.

  
**Andrew Boyle**  
**Inspectorate**

**25<sup>th</sup> March, 2004.**

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