



Submission

Submitter:	Mr. David Malone
Submission Title:	Submission
Submission Reference No.:	S010097
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Application

Applicant:	GCHL LIMITED
Reg. No.:	W0298-01

See below for Submission details.

Attachments are displayed on the following page(s).

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Environmental Action Alliance-Ireland

Promoting Sustainable Development through a process of Democracy, Human Rights and the Rule of Law

Environmental Action Alliance-Ireland

Submission to Environmental Protection Agency

Re: GCHL Licence W0298-01

Dated 7 September 2021

Prepared by David Malone Eurolaw Environmental Consultant

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Introduction

The following is Environmental Action Alliance- Ireland (EAA-I) response to the Environmental Protection Agency (the Agency) letter dated 4 August 2021 to Ms. Ruth Treacy on behalf of GCHL Limited (GCHL). It will show that the information requested by the Agency is the same as was requested over 3 years ago. Despite this GCHL is again requesting an extension of time, while at the same time carrying out unauthorised developments at the Ballinderry site in violation of inter alia,

- 1) The High Court order of 21 March 2016 (App No: 2015/383MCA);
- 2) Regulation 42(1) of the European Communities (Birds and Natural Habitats) Regulations 2011 as amended;
- 3) Section 42(1B) of the Waste Management Act 1996;
- 4) The European Court Justice (ECJ) judgements in the Cases C-215/06, C-50/09 and C-494/01;
- 5) European Union (Environmental Impact Assessment) (Planning and Development Act 2000) Regulations 2012 and its amendments to Section 2 (a) (i) and (ii) and Section 171 A and subsections (I B), (I C), (I D), (I G) and (I J) (c) of Section 172 of the Planning and Development Act 2000, as amended;
- 6) The European Union (Environmental Impact Assessment) (Waste) Regulations 2012 and its amendments to the Waste Management Act 1996. Articles 3(3) to (7) and Article 4(2) to (4) of the Public Participation Directive 2003/35/EC, Articles 2(2) and 6 (4) of the codified EIA Directive 2011/92/EU and Article 6 of the Aarhus Convention;
- 7) The European Communities (Public Participation) Regulations 2010 (S.I. No. 352 of 2010) or the provisions of Article 6 of the Aarhus Convention.

Accordingly, EAA-I is requesting the Agency refuse the extension of time and inform the company that because of the many unauthorised developments that have taken place at the Ballinderry site, GCHL will have to apply in accordance with Section 177C(2)(b) of the Planning & Development Act 2000, as amended to An Bord Pleanála (not Kildare County Council) for leave to seek “substitute consent”. This must be done prior to GCHL submitting a licence application to the Agency under Section 40 of the European Union (Environment Impact Assessment) (Waste) Regulations 2012.

The following are EAA-I observations pertaining to issues raised by the Agency in its letter dated 4 August 2021 to Ms. Ruth Treacy (Golder Associates Ireland) on behalf of GCHL.

1. *The proposed works which are the subject of the licence application appear to be development or proposed development.*

In accordance with Article 5(1)(a) of the EIA Directive 2011/92/EU, as amended by Directive 2014/52/EU the description of a proposal development should comprise of information on the site, design, size and other relevant features of the project. The licence application claimed that a High Court ordered (App No: 2015/383MCA) the disposal of over 1.2 million tonnes of waste, in order to comply with breaches of conditions 1, 2, 4 and 12 of Planning permission from An Bord Pleanála (PL 09.205039) and the illegally disposing of over 10,000 tonnes of waste in March 2017 from a development site at Sybil Hill, Raheny, Dublin.

On the 6 March 2017, Colm Lynch, Executive Engineer, Kildare County Council inspected the Ballinderry quarry and observed that approximately 20-25 trucks were entering the site on a daily basis. Dockets in the office were checked, which established that the waste was coming from Sybil Hill, Raheny, Dublin.

Photograph 1 and 2 shows further unauthorised developments taking place on 1 September 2021.



Photo 1



Photo 2

GCHL failed to comply with conditions 1, 2, 4 and 12, of permission (PL 09.205039). This inter alia, resulted in sand and gravel been extracted up to 20 meters below the water table level. Section 261(1) (aa) of Planning and Development Act 2000, as amended states that *“Notwithstanding any other provisions of this Act, the operation of a quarry in respect of which the owner or operator fails to comply with conditions imposed under paragraph (a)(i) shall be unauthorised development.”*

Therefore, prior to submitting a valid licence application the applicant will under the provisions of Section 177B (of Part XA) of the Planning and Development Act 2010, as amended make an application to An Bor Pleanála for substitute consent arising from the numerous unauthorised developments at the Ballinderry site.

2. *On 31 August GCHL requested an extension of time till 30 September 2021, claiming it needs time to contact Kildare County Council.*

The European Court Justice (ECJ) in case C-215/06, rendered it unlawful to seek retention for unauthorised developments. The ruling did allow for the regularisation of developments requiring EIA in **exceptional circumstances**. The new Part XA of the Planning & Development Act 2000, as inserted by Section 57 of the Planning & Development (Amendment) Act 2010, makes provision for a substitute consent process for the regularisation of certain developments coming within the scope of EIA or Appropriate Assessment.

In accordance with Section 177C(2)(b) of the Planning & Development Act 2000, as amended, GCHL will have to apply to An Bord Pleanála (not Kildare County Council) for permission to seek substitute consent.

3. *In our letter of 23 January 2020, we had sought confirmation from you pursuant to Section 42(1B) of the Waste Management Act 1996 ("the 1996 Act"). In summary, the Agency requested either:*

- *Confirmation in writing from a planning authority or An Bord Pleanála that an application for permission comprising or for the purposes of the activity to which the application for a licence relates is currently under consideration, together with the EIA Report already submitted; or*
- *A letter from the planning authority confirming the proposed activity is approved in accordance with Condition 12 of the original permission.*

The Agency indicated that in the absence of such confirmation, we would be precluded by Section 42(1C) of the 1996 Act from further considering your application

On 13 September 2017, An Bord Pleanála, in accordance with the requirements of Section 42(1B)(b) Waste Management Act 1996, informed the Agency that the EIS submitted by GCHL with the Licence application is not to be the same as that submitted to the Board under planning Appeal reference number PL09.205039.

The ECJ in Case C-215/06, ruled that the processing of a license application before an EIS was submitted to the planning authority was an infringement of Articles 2 to 4 of the EIA Directive. In order to implement this judgement, Section 23(c) of the Planning and Development (Amendment) Act 2010, amended Section 34(12) of the 2000 Act, to provide that a retention application cannot be accepted by a planning authority for a development which would have required an environmental impact assessment (EIA).

Accordingly, in exercising its powers conferred on it by the Waste Management Acts, 1996 to 2011, the Agency must return the licence application W0298-01 and inform GCHL Ltd that it must apply to An Bord Pleanála in accordance with the provisions of Section 177 of the Planning and Development Act 2010, as amended for substitute consent.

4. *If you are of the view that the proposed development does not require planning permission, we invite you to request and thereafter provide to us a declaration under Section 5(1) of the Planning and Development Act 2000 (as amended) from Kildare County Council to confirm that the proposed work the subject of the waste licence is or is not development or is or is not exempted development.*

The proposed waste disposal activity is for an annual intake of 400,000 tonnes of waste per annum. This significantly exceeds (16 times greater) the following threshold in Schedule 5, Part 2, of the Planning and Development Regulations 2001 as amended:

11. (b) Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.

Section 9 (1) of the Planning and Development Regulations 2001 -2021, under the heading restrictions on exemption states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would:

- contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act;
- comprise development in relation to which a planning authority or An Bord Pleanala is the competent authority in relation to Appropriate Assessment and the development would require an Appropriate Assessment because it would be likely to have a significant effect on the integrity of a European site.

On 2 August 2019, the Agency in accordance with Regulation 42(1) of the European Communities (Birds and Natural Habitats) Regulations 2011 as amended, carried out appropriate assessment screening to assess, in view of best scientific knowledge and the conservation objectives of the site, if the proposed activity individually or in combination with other plans or projects is likely to have a significant effect on a European Site(s).

The screening revealed that the proposed activity is not directly connected with or necessary to the management of any European site and that it cannot be excluded, on the basis of objective information, that the proposed activity, individually or in combination with other plans or projects, will have a significant effect on any European site and accordingly determined that an appropriate assessment of the proposed activity is required, and for this reason determined to require the applicant to submit a Natura Impact Statement.

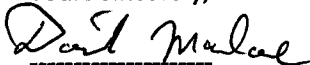
Conclusion

The Agency is precluded by Section 42(1C) of the Waste Management Act 1996, as amended, from considering an application where the requirements under Section 42(1B) have not been satisfied. This submission has clearly shown that despite numerous requests over the past 3 years the applicant has not complied with the requirements under Section 42(1B).

Accordingly, in exercising its powers conferred on it by the Waste Management Acts, 1996 to 2011, the Agency must return the legally flawed application W0298-01 and inform GCHL Ltd that it must apply to An Bord Pleanála for substitute consent. Also, inform GCHL Ltd that any new application for a waste licence must include a remedial environmental impact statement and a remedial nature impact statement undertaken in accordance with Section 177 of the Planning & Development Acts 2000-2011.

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Yours sincerely,


David Malach

Dated: 7 September 2021