

Original

Ms Ewa Babiarczyk
Environmental Licensing Programme
Office of Environmental Sustainability
Environmental Protection Agency
Headquarters
PO Box 3000
Johnstown Castle Estate
County Wexford



Date:
18/06/2018

Your Ref:
Reg. No. W0295-01

Our Ref:
WL: Notice Art 16(1) WM
(licensing) Regs

Dear Ms Babiarczyk,

With reference to the Notice issued in accordance with Article 16(1) of the Waste Management (Licensing) Regulations on 22nd May 2018, in respect of the above referenced licence application (W0295-01) please see attached a response which has been formulated to address said Notice by the applicant and their legal representatives.

I trust that this response is adequate and request that should you have any further information requests that you do not hesitate to contact me.

Yours Sincerely,

Raphael Mc Evoy MSc

RME Environmental

Environmental Protection Agency
19 JUN 2018

Encl: 1 original of the submission and 2 copies. In addition two copies in electronic searchable PDF format attached on CD-ROM.

Attachments to Document:

ATTACHMENT 1 | Correspondence from Robert Coonan Solicitors, Kilcullen Co Kildare

EPA
PO Box 3000
Johnstown Castle Estate
Wexford, Y35 W821

18th June 2018

Re : Reg No WO295-01. Re: Notice in accordance with article 16(1) of the Waste Management Licensing regulations dated 22nd May2018.

Dear Ms Babiarczyk,

Kindly note our interest on the part of Kildare Sand and Gravel Limited.

The Notice states that the information submitted dated Feb 2nd 2018 is insufficient for the Agency to agree that the applicant complies with the following section of the Waste Management act 1996 as amended.

Section 40(4)(d) if the applicant is not a local authority, the corporation of a borough, or the council of an urban district, subject to subsection (8), he or she is a fit and proper person to hold a waste license,

Section 40(7)(C) in the opinion of the Agency, that person is likely to be in a position to meet any financial commitments or liabilities that the Agency reasonably considers will be entered into or incurred by him or her in carrying on the activity to which the waste license will relate in accordance with the terms thereof or in consequence of ceasing to carry on that activity.

With regard to 40(4)(d) there is no basis to suggest that Kildare Sand &Gravel is not a fit and proper person

The Applicant prepared a comprehensive Waste License application

The Applicant prepared an EIS

The Applicant furnished all the information required and in such circumstances Kildare Sand &Gravel (the Applicant) is a fit and proper person for the the purpose of section 40(4)(d)

In addition, Kildare Sand &Gravel have never been the subject of proceedings be that criminal or civil or of a conviction in any court, have never had a judgement registered against it and there is no basis to assert that it is not a fit and proper person and the very suggestion that it might be categorised as such is clearly of some concern.

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The concept of fit and proper person would contemplate for example, persons who would have been subject to proceedings in a case leading to a conviction which clearly our applicant is not and the very suggestion that we would fall into that category is clearly a cause of some concern.

We note that the Agency in recent months, in a case taken against Oxygen Environmental considered that by virtue of the large number of convictions that it had, which we understand to be in excess of 20, including convictions on indictments, form the basis of its conclusion that it was not a fit and proper person and you will understand our concern, that The Applicant in this case should be categorised in the same manner.

Indeed, because The Application now being made before the Agency, arises from an obligation under an extant Planning Permission, to reinstate the lands, failure to comply with which, could lead to proceedings, by virtue of failure to comply, it would be entirely unacceptable to place the Applicant in that position on the basis of any reliance on section 40(4)(d).

In respect of Section 40(7)(c) in the opinion of the Agency, that person is likely to be in the position to meet any financial commitments or liabilities that the Agency reasonably considers will be entered into or incurred by him or her in carrying on the activity to which the waste license will relate in accordance with the terms thereof or in consequence of ceasing to carry on that activity.

This provides for a consideration by the Agency of whether there is any reasonable basis that financial contributions and liabilities might be incurred arising from the activity from which the license relates.

The background to the waste license is an obligation in Planning Permissions 01/1270. 07/188. 15/515 16/526 to reinstate the lands and it is difficult to see how there could be any financial contributions or liabilities that could arise from an activity which has an origin in the condition of the planning permissions which required the restoration of the land in the context of sand and gravel extraction.

What is proposed in that regard is deposition of inert material into an already excavated area and again it is difficult to see how there could be any financial liability that could arise, given the nature of the material and the location of the facility where the activity will be taking place.

The activity has already been the subject of Planning Permission to Kildare Co Council who carried out an EIA assessment and concluded that there was no likely adverse effects "that would arise" and the development was consistent with the proper Planning and Development of the area.

These conclusions were upheld by An Board Pleanala on appeal.

There is no "reasonable" basis that an activity carried out in accordance with this permission would give rise to any financial contributions or liabilities and it is submitted that the Agency must have regard to the nature of the activity, the context in which the activity is being carried out, the findings of The Planning Authority and The Board with regard to this activity and the obligations of the Applicant to comply with conditions which have been imposed.

The Applicant has now in addition applied for a waste license which is identical in all material respects with that already approved by the Planning Authority and An Board Pleanala and no issues have been raised which would ground an opinion that any financial contributions or liabilities would be entered into or incurred. Notwithstanding what is set out above and notwithstanding the nature of activity which involves the deposition of inert material only, the manner with which this is to be carried out, the agreement that is required to be put in place as required by planning permission and our contention that no financial contributions or liabilities would be incurred. We have furnished to the Agency in addition an agreement, dated 01/02/2018, between Michael Ennis of Thomastown, Rathangan, Co. Kildare and Kildare Sand and Gravel LTD. Of Hazelwood House, Prosperous, Co. Kildare, whose directors are Thomas Graham of Hazelwood House, Prosperous, Co. Kildare and Christopher O'Neill of Moyglare House, Ballycannon, Kilcock, Co. Kildare. In this agreement, the directors of Kildare Sand and Gravel have agreed, both in the name of the company and in their personal capacity, to jointly and severally, to comply with all aftercare and remedial works required, both by the Planning Permission and by the Environmental protection agency. This also incorporates an agreement with the owner of the land, who has given similar undertakings and the obligation required that these parties, which for avoidance of doubt include not only the applicant but the individual directors in a personal capacity, the owner of the land, agree to comply with all aftercare and remedial works required by the EPA for such a period as the EPA think fit.

In addition, there is a provision for insurance, having a policy for employer liability and public liability, and a commitment on the part of all the parties to the agreement to comply with the conditions of the permissions. In light of this agreement, with regard to the language of section 40 (4,) (d) and section 40 (7) (c) and having regard to the nature of the activity, authorisations already in place and the undertakings given both on behalf of the landowner and the personal undertakings of the directors of the company that there could be any concern in respect of the matters set out in your letter of the 22nd of May 2018

We would be grateful in light of these clarifications, that you would proceed and determine the application as we have given an undertaking to Kildare County Council, that we would proceed expeditiously with the restorations works. The necessary resources have all been put in place and the only outstanding issue that now remains is the waste licence, which is now been with the EPA since 16/12/2016.

If there are any further clarifications with respect to this information please do not hesitate to contact me, however we are most anxious to proceed In relation to the development in light of the consequences that can flow with any failure to comply with conditions of the planning permission.

You will also be aware that there is now no objection, and no third party are raising any concern and this is indicative of the uncontroversial nature of what is being proposed, which is primarily directed to land restoration.

Yours faithfully,


Robert Coonan Solicitor

Please note: This submission was emailed on
18.06.18 to Ms Ewa Babiarczyk at her
official GMA address. It was confirmed by
Ms Babiarczyk that that email was sufficient.
The Client however have requested the hard
copy be sent nonetheless.

Yours faithfully

For inspection purposes only.
Consent of copyright owner required for any other use.

Richard O'Leary

RMS Environmental

