



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Planning Processes for Mining and Related
Exploratory Work for Minerals and Gold:
Department of the Environment Officials

9 October 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mrs Pam Cameron (Deputy Chairperson)
Mr Cathal Boylan
Mr Colum Eastwood
Mr Alban Maginness
Mr Ian McCrea
Mr Barry McElduff
Mr Ian Milne
Mrs Sandra Overend
Mr Peter Weir

Witnesses:

Mr Stephen Hamilton	Department of the Environment
Mr Simon Kirk	Department of the Environment
Mr Niall Marshall	Department of the Environment
Mr Scott Symington	Department of the Environment

The Chairperson (Ms Lo): Thank you very much for coming. I welcome Simon Kirk, planning manager, strategic planning division, planning and local government group; Scott Symington, principal planning officer; Stephen Hamilton, Planning Service; and Niall Marshall, Planning Service. I remind members that this session is being recorded by Hansard.

Thank you very much for your briefing paper; it is certainly very interesting and very detailed. I am aware of the time. If you can give us five minutes' presentation, members can ask you questions afterwards.

Mr Simon Kirk (Department of the Environment): Thank you, Chair. I will summarise the main points that we provided in our detailed briefing. Currently, minerals applications are dealt with by a small team in strategic planning division for the whole of Northern Ireland. For the purposes of the planning legislation, minerals are defined as:

"all minerals and substances in or under land ... ordinarily worked for removal by underground or surface working",

and a "mining operation" means:

"the winning and working of minerals in, on, or under land whether by surface or underground working".

Therefore, the minerals team deals with planning applications that relate to sand and gravel extraction; quarrying of hard rock; underground mining, for example for salt and precious metals; and applications relating to exploration for fossil fuels — oil and gas. I must stress that, at this moment, we have no current applications for the extraction of fossil fuels for commercial purposes, simply for exploration.

The plant and machinery associated with existing quarrying or mining is either permitted development or dealt with by our local offices. The team has also dealt with applications for gas transmission pipelines and underground storage of gas. The underground storage of compressed air is the subject of a current pre-application discussion. We have provided, in our briefing, examples of the current types of casework that we are dealing with.

Such applications raise many issues relating to impacts on the built and natural environments — water quality, air quality, noise, wildlife habitats, visual impacts and traffic impacts. Some of the applications represent environmental impact assessment (EIA) development under the current environmental impact assessment regulations, and some applications, where appropriate, are accompanied by environmental statements.

In determining any of the applications that the team deals with, advice is taken from a wide range of consultees, including all parts of the Environment Agency; councils' environmental health offices; the Health and Safety Inspectorate; and the Geological Survey, which is part of DETI. In the assessment of any proposals, the Department must balance the potential environmental impacts and proposed mitigation measures against the need to protect the environment, while at the same time recognising the importance of extractive industries to the construction sector and the wider regional economy. Given the nature of mineral extraction applications, they are often controversial and locally unpopular and, in many cases, generate significant public opposition.

That is a brief overview.

The Chairperson (Ms Lo): OK, Simon. Thank you.

You said in your paper that:

"Currently the Minerals Team has approximately 70 applications. Planning applications are mainly for quarries".

My understanding is that, during the downturn in the housing market, a lot of quarries stopped working and became inactive. Why are there still so many applications for quarries?

Mr Kirk: Well, there are applications for the extraction of hard rock in association with the construction industry here, and there is also a significant export of aggregates from Northern Ireland.

The Chairperson (Ms Lo): To China and other places.

Mr Kirk: Yes, throughout the world. Really I suppose the answer is that people will be making planning applications where they need to extract for commercial reasons.

The Chairperson (Ms Lo): So it is not just for the local market.

Mr Kirk: No.

Mr Niall Marshall (Department of the Environment): I suppose sites will be planning ahead in terms of securing reserves. They will also have different applications, for instance, for non-compliance with a condition on a site, perhaps relating to the expiry date of working at the site, and such other types of applications. They are not for quarrying.

The Chairperson (Ms Lo): OK. I have just a bit of information. The Dalradian briefing was agreed on 18 September 2014, and recorded in minutes which were agreed on 25 September, so we did ask the Committee for approval for this.

Mr Boylan: Thank you very much for your presentation. You are welcome back, Simon.

Mr Kirk: Thank you.

Mr Boylan: You always come back on the controversial ones, but you are grand.

We generally, as a Committee, do not get involved in single applications. The issue for us in relation to this is that, as with a lot of these cases, there are genuine concerns from residents. I am not going to get into the argument. The applicants are entitled to make the application. It is up to you to assess it under the policy. However, the issue here has been raised with us, and obviously Dalradian is coming up next. We have some questions for it, but the main questions should be for you, because you assess the application and give the go-ahead. There are genuine concerns, and rather than go into the number of specific points that are here, I intend to put them to the Department in writing. I am putting that on record today. I will not put you to the test today in relation to that.

It seems to me, generally speaking — I want you to take me through this — that there are specific questions as to whether or not the application process and procedures were followed properly. Now, in normal circumstances an ordinary MLA could write to the ombudsman on behalf of any individual or any applicant. That is the process. This one has obviously come to the Committee.

First of all, there was an exploration licence. This was a brownfield site originally. There were operations carried out on this long before, right? Leaving that aside, can you take me through the actual application in 2013? There seem to be questions in relation to the tunnels and the vehicle parking and all of that. Arising from that, there is the issue over a magazine store or whatever to carry out the operation. Can you go into a wee bit of detail on that? There seem to be questions in relation to that, and how they came to a justification. Can you take me through that whole process, please, and how the Department has come to the justification given to that application?

Mr Kirk: We determined the application as we would determine any application, taking account of all relevant material considerations, including comments and objections. As you say, we have a complaints procedure, which a number of the concerned residents are going through at the moment. They have recourse to the ombudsman if they feel that we have not processed the application properly. However, we are happy that we have done that.

Mr Boylan: There is a reason I am asking you. There is a 2013 application, and there is a 2014 application. The 2014 application follows on from 2013. I imagine that, for an application of this significance — there are not too many operations of that type going on in the North at the minute — there would be more assessment and scope and you would look at it in fine detail. I take it that things were missed in the first application, because there has been a subsequent application to bring forward issues relating to the magazine. Is that a fair assumption?

Mr Marshall: Do you mean in relation to the repositioning of the store?

Mr Boylan: Yes, exactly.

Mr Marshall: Originally, the location of the store was assessed as part of the application, and that was approved. We were approached by the company because it had some difficulty with the separation distances required by the Manufacture and Storage of Explosives Regulations, a separate licensing regime administered by the Department of Justice. It has come through the proper channels. They requested a minor amendment to the proposal when it was being looked at in that context, and the Department ultimately requested a planning application for the repositioning of the store.

Mr Kirk: There are some other associated works —

Mr Boylan: That is fine, Simon. That is what is just a wee bit concerning. I understand that, at some point, somebody thought, "Hang on a minute, another application has to be put in to deal with it, for one reason or another". The reason I am asking is that I have some concerns that it was not spotted in the first instance. I cannot see past that. It was a major application in the first place. It was a first-timer; if I can put it to you that way. The Department has not really dealt with many applications relating to this in the past. I am just trying to tease it out.

Mr Kirk: We have dealt with two applications for gold mines: Cavanacaw and —

Mr Marshall: One is current, but there was a previous mining application.

Mr Kirk: We have a current application for a different site. The issue about the store was that, in the original application, we were content with the position of the store. It was an ancillary store for the workings of a mine. There were issues with the licence, which is separate licensing from the Department of Justice, to store the explosives. However, an ancillary store —

Mr Boylan: Simon, that is grand. That is why I asked; to clarify the point. Questions are being asked of us as to why that was happening, and you have given me an answer today. It was not your responsibility to check with the Department of Justice; it is just something that came along after the fact. Is that what we are saying?

Mr Marshall: The application for the storage of the substances would have been made to the Department of Justice. It was aware of that. As I understand it, there are a couple of different separation distances: one to the nearest dwelling, which I believe was satisfied; and an internal separation distance. As I said, that is administered by the Department of Justice in conjunction with the Health and Safety Executive HSE in GB —

The Chairperson (Ms Lo): Sorry, Niall. Could you speak up a little? We are not picking you up on the recording equipment.

Mr Marshall: Yes.

I believe that it was about the internal separation distance, but you could maybe seek clarification on that from Dalradian.

Mr Boylan: That is grand, Niall. I am just trying to tease it out. Could it not have been picked up, albeit it is a different Department? We have seen work across Departments on planning applications before. Are you saying that it was possibly an oversight or is it the responsibility of another Department? I am just trying to tease out the responsibility of Planning Service.

Mr Kirk: It is a proposal to amend the original permission. That would not be uncommon.

Mr Boylan: That is fine. That is the type of question that has been asked, so I am just seeking clarification. Unfortunately, that is why it has ended up with us; there are questions like that. I have a number of questions.

Simon, as we go forward, I would have thought that in this case there could have been a wee bit of cross-departmental work, because, from my experience of working with some quarries, no matter what type of mineral extraction it is, some of them hire in groups to carry out explosive works. Not all of them would have explosives on site.

Mr Kirk: That is correct; not all quarries store explosives. Some bring them in as and when they need them rather than store them on a longer-term basis.

Mr Boylan: Right. Chair, I will wind up on this point and let other members in. So, you are saying to me that the company put in an amended application, yes? You are saying that it should have but may not have been picked up the first time; it is just a natural process?

Mr Kirk: I think the point that we want to make is that the store could be positioned anywhere on the site. Niall, what size is the site?

Mr Marshall: It is just over 50 ha.

Mr Kirk: So, there alternative areas in which to site the store.

Mr Boylan: That is fine. The only reason I ask that is that it is part of our responsibility to ask those questions.

Mr McElduff: I have a number of questions, and I will pose them together, if that is OK? I welcome the delegation from the Department. It is a good senior delegation, and that is exactly what we need

to see in front of us. We have a duty to give voice to the concerns of residents. It is a duty placed on public representatives. The first of three questions that I will run together is this: what weighting does the Department give to the environmental protection of rivers and bogs in areas such as the Sperrins, which might be described as areas of special scientific interest and special areas of conservation, with respect to mining? Secondly, what planning restrictions tend to be placed on an area where there is mining? For example, there are rumours and suggestions that a fair amount of restriction is placed on the development of housing in or around a gold mine or any mine. So what type of development would not be permitted in future in an area where gold-mining or exploration for gold-mining was taking place? Thirdly, surely the description as a "minor amendment" for an explosives store has to be the misnomer of the century? How could that be described as a "minor amendment"?

Mr Kirk: In answer to your first question, the Department obviously takes very seriously the protection of the environment, and we will consult our colleagues in the Northern Ireland Environment Agency on water quality or the impact on habitats and take their advice prior to making any decisions. They will provide us with necessary conditions of consent to protect, as you say, water quality or natural habitats or protected species, for example. That is all dealt with as part of the process of a planning application.

As for development being restricted, I know that there are rumours circulating that there are extensive areas where development cannot take place. That is categorically not true. There would be an area round a mine or a quarry where blasting is taking place, where policy would direct us to restrict new development.

Mr Marshall: We would have no blasting within 100 metres of any property. So, where there is an underground mining operation, there is potential for blasting, and that would affect that. There are restrictions on blasting as regards vibration levels and noise levels, and those are placed by planning condition on planning approvals.

Mr Kirk: In relation to the "minor amendment" question, that is a matter of judgement for the Department, and we usually judge these things as either de minimis — so minor as to have no legal consequence — or they are immaterial to the overall approval. That was the request in this case, but the Department determined that, while we accepted that it was minor in relative terms, it was material enough to warrant an application. That was what we then told the company, and said that it had to apply. We would not grant it as a minor amendment, effectively, and that is why it had to go through the application process.

The Chairperson (Ms Lo): Is the application being looked at by the Department of Justice at the moment?

Mr Scott Symington (Department of the Environment): That is in relation to the licensing, which controls the explosive store —

The Chairperson (Ms Lo): Do they need the licence to keep it?

Mr Symington: Yes.

The Chairperson (Ms Lo): Do you approve whether the site is in the right place?

Mr Symington: Yes. In land-use planning terms, the movement of the building itself, as an ancillary building, is relatively minor in terms of planning approval, but the licensing regime is a different thing. It looks at the explosives, which, I think, generated the application in the first place.

The Chairperson (Ms Lo): As there are no other questions, can I ask —

Mr Boylan: Can I come back?

The Chairperson (Ms Lo): Do you want to come back on the same issue?

Mr Boylan: No, No, Chair.

The Chairperson (Ms Lo): I want to ask about dredging of sand on Lough Neagh. Apparently the Ulster Angling Federation asked for details of the planning approval for the operators dredging the bottom of Lough Neagh, and the Department says that there are no records of them being ever granted permission to dredge. We all know that that has been going on for years. Why has the Department not intervened in this?

Mr Kirk: I cannot answer because I genuinely do not know why. There was never any retrospective application, and I think that our Minister is on record as saying that. We are investigating and we have an enforcement case open. That is really all I can say about that at the moment. We have an ongoing enforcement investigation as to the appropriate course of action in terms of sand extraction at Lough Neagh.

The Chairperson (Ms Lo): Would there be any sanctions or anything like that imposed on them for operating for so many years without a licence or planning permission?

Mr Symington: Again, this goes back to the question of the weighting of environmental concerns. Clearly, this is a highly protected site, so we are proceeding on a precautionary basis, which is why enforcement action has commenced. We are also aware of the significant tradition of employment and the importance of sand dredging for the industry and so forth, so we are proceeding with caution on that basis. But, again, we are conscious that there are economic considerations here as well as environmental ones.

The Chairperson (Ms Lo): But it needs to be regulated, obviously. It cannot just be a free-for-all, where they can just extract as much sand as they want.

Mr Symington: It ultimately could end up in a planning application to regularise these things. I know that the Northern Ireland Environment Agency is already working on the case to find out what impacts, if any, there are.

The Chairperson (Ms Lo): Would it be asked for an impact assessment?

Mr Symington: That, I think, is ongoing.

Mr Kirk: The sand and gravel companies on Lough Neagh may choose to submit a planning application to regularise it; that would be a matter for them. We have not requested an application at this time. As Scott said, the Environment Agency is looking at the impacts of sand extraction from Lough Neagh, which, we understand, has been going on since at least the 1930s.

The Chairperson (Ms Lo): Surely at that time there should have been a planning application.

Mr Kirk: That would pre-date the planning system that we are in now, which has been established since 1972.

The Chairperson (Ms Lo): It is kind of historic.

Mr Kirk: There is a historic extraction.

Mr Boylan: I appreciate the opportunity to come back. I am reluctant to get bogged down in too much detail. However, I have questions on the two applications — 2013 and 2014. I take it that there are conditions. Where is the 2014 application at the minute?

Mr Marshall: For the revised position of the store? I understand that that was agreed at council.

Mr Stephen Hamilton (Department of the Environment): It was presented to council on Tuesday evening, and it has gone through council as an approval. We have not issued any decision notice on it yet. It was the Department's opinion that had gone before the council.

Mr Boylan: I take it that there will be conditions on it.

Mr Stephen Hamilton: Yes, there will be.

Mr Boylan: Likewise the 2013 application.

Mr Stephen Hamilton: There are 44 conditions attached to the 2013 application.

Mr Boylan: Who enforces compliance with those conditions?

Mr Kirk: The Department.

Mr Boylan: To date, have any issues been raised with regard to the transportation of materials? Has there been any suggestion of what will happen with the 2014 application? Have any concerns been raised, has the Department to go back out on site? Are there ongoing issues?

Mr Stephen Hamilton: There are. Concern has been raised with the Department on the planning, and colleagues in NIEA were out on site as recently as Tuesday to make some assessments. A live enforcement investigation is taking place on the 2013 application at the moment.

Mr Boylan: I have a final point, and I know that it is a difficult one. The Committee may have to look at the overall policy in light of some of the issues that have been raised. What assurance can we be given on those types of major applications? I know that we brought forward suggestions in the new planning policy that there would be discussions with the general public and that they would be asked their opinion beforehand. That would be the applicant's responsibility, of course. Are we looking at that in terms of minerals extraction as well so that there would be full engagement from the start so that these issues do not keep recurring? I am not saying that I am for or against the application; I am only trying to tease out our responsibility and ask some questions. Representatives from Dalradian are next, and we will ask them questions as well. What about the future process?

Mr Kirk: The future process will require pre-application community consultation for major applications. I think that you are aware that the Department has carried out a consultation on the new hierarchies for regionally significant major and local applications, and it may have given the Committee some information. However, I believe that the Department will be returning with a synopsis of the consultation exercise and its recommendations, and those types of applications will form part of that hierarchy. If it is a major or regionally significant application, it will require pre-application community consultation under that new hierarchy.

Mr Boylan: Would somebody like to comment on whether we have got the balance right for this application with regard to protecting and facilitating the applicant in terms of mineral extraction or the possibility of mineral extraction?

Mr Kirk: We consider that we have; otherwise we would not have approved it. We have a number of conditions — 44 — that we will have to enforce where necessary.

Mr McElduff: Can I check whether there are 44 conditions or 42? Is it the case that two of those conditions were subsequently removed or revoked?

Mr Marshall: There is an application for non-compliance with two of the conditions.

Mr McElduff: Could that be explained? What is at the heart of that?

Mr Weir: I appreciate that we are going to get Dalradian in, and I appreciate what was said earlier. I really think that there is a big danger that we are getting into the detail of an application rather than the wider policy issues. That is irrespective of who is giving the evidence. I think that we need to take care with this, because there is the danger of us setting a precedent. Maybe we should not have gone down the whole route, to be perfectly honest.

The Chairperson (Ms Lo): I am aware of the time, members. There is one more presentation and a research paper. We may now have to axe the presentation of the research paper on EU matters.

Mr Eastwood: On something completely different: the famous one, Tamboran. Can I ask for an update, given that we have had publicity around it recently with the DETI announcement? Where are we or have you or DETI had any communication from the company or anybody else about what is next?

Mr Kirk: No, we have had absolutely no contact from the company since it put in its notification to use its permitted development rights, which, as you are aware, the Minister decided was an EIA development and that permitted development did not apply. I have read the speculation in the press that Tamboran will judicially review the decision of our Minister and, indeed, the ETI Minister's decision not to extend the exploration licence. However, we have had no formal correspondence.

Mr Eastwood: Are you comfortable with your legal advice?

Mr Kirk: We would have to see. The first step is a pre-action protocol letter, which we will respond to, taking advice from the Departmental Solicitor's Office. The Department will always robustly defend its decisions where it is appropriate to do so.

The Chairperson (Ms Lo): I presume that the Minister has got legal advice on his decision.

Mr Kirk: Legal advice is always available to the Minister through the Departmental Solicitor's Office, should he need it on any issue.

The Chairperson (Ms Lo): I am sure that he got it.

Mr Weir: It is not like it is BMAP or something.

The Chairperson (Ms Lo): Ian, is it a specific issue on Dalradian?

Mr Milne: It is, but I feel that I have to make the point. I appreciate what Peter Weir said, but we are having a presentation next that is about a single application.

The Chairperson (Ms Lo): We can maybe ask Dalradian.

Mr Milne: Would one of the conditions be for visibility displays to be in place before any work commences on site?

Mr Marshall: Yes, that is correct.

Mr Milne: That is all, Chair.

The Chairperson (Ms Lo): Thank you very much, gentlemen, for a detailed paper and for answering questions.