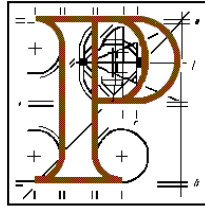


## An Bord Pleanála



## Inspector's Report

|                                     |   |
|-------------------------------------|---|
| <b>Appeal Ref. No:</b>              | PL26.245359                                     |
| <b>Proposed Development:</b>        | Retain quarry including crushing and screening. |
| <b>Location:</b>                    | Drumgold, Enniscorthy, County Wexford.          |
| <b>Applicants:</b>                  | Aidan Egan                                      |
| <b>Planning Authority Reg. Ref:</b> | 12015-0549                                      |
| <b>Planning Authority:</b>          | Wexford County Council                          |
| <b>P.A. Decision:</b>               | Grant with conditions                           |
| <b>Appeal Type:</b>                 | Applicant vs conditions                         |
| <b>Appellants:</b>                  | Aidan Egan                                      |
| <b>Observers:</b>                   | None  |
| <b>Date of Site Inspection:</b>     | 21 <sup>st</sup> January 2016                   |
| <b>Inspector:</b>                   | Hugh Mannion                                    |

## **1. SITE AND SURROUNDINGS**

The site has a stated area of 3.2ha is located about 2kms east of Enniscorthy the town centre at Drumgold, Enniscorthy, County Wexford. The site comprises a working quarry with access road from a local level public road. There are a number of machines on site related to the quarrying and grading of sand/gravel.

## **2. PROPOSED DEVELOPMENT**

The proposed development comprises the retention of a quarry and quarry operations including crushing and screening operations and sale off site and site rehabilitation at an existing quarry at Drumgold, Enniscorthy, County Wexford.

## **3. HISTORY**

**QB26.594** the planning authority determined that the quarry would require EIA and that operations should cease.

**QV26.0193** the Board set aside the planning authority's determination that the quarry required EIA.

## **4. PLANNING AUTHORITY DECISION**

The planning authority decided to grant permission subject to 19 conditions.

Condition 3 required the payment of a financial contribution in the sum of €99,000 towards the cost of public roads in the functional area of the planning authority.

Condition 4 required the payment of €16,500 towards the provision or improvement of recreation and community facilities in the functional area of the planning authority.

## **3. APPLICANT'S GROUNDS OF APPEAL**

The grounds of appeal may be summarised as follows;

- The planning authority has not applied the adopted Development Contribution Scheme correctly. The planning authority is constrained to interpret the scheme having regard solely to the ordinary meaning of the scheme.
- The adopted scheme provides that in relation to quarries development charges will be due on the 1<sup>st</sup> of April each year based on the previous years output.
- The correct way of interpreting the scheme and consequently calculating the contribution is to apply the scheme so that only the previous year's output is used to calculate the figure. When the applicant raised this issue at pre-planning stage he was assured that this would be the case.
- The planning authority distinguished between the methods of calculating the figures sought on conditions 5 and 6 and conditions 3 and 4 without explaining this contradiction.

#### **4. PLANNING AUTHORITY RESPONSE**

The planning authority responded as follows;

- The application is for retention of quarrying activity and therefore the planning authority considers it reasonable to apply the financial contributions to the previously unauthorised development which is authorised by this grant of permission.
- The planning authority estimated the volume of the material extracted and based its calculation on that.

#### **5. FURTHER SUBMISSIONS**

There applicant commented on the planning authority's submission as follows;

- Contributions may only be levied on the basis of the ordinary meaning of the adopted development contribution scheme.
- The applicant was informed in preplanning discussions that a contribution would be levied on the basis of the previous year's quarry production.

The Board sought further information from the applicant under section 132 of the Act in relation the quantity of sand/gravel extracted from the quarry between the 1<sup>st</sup> April 2014 and 30<sup>th</sup> April 2015. The applicant response with supporting documentation that the amount was 36,379.3 tonnes.

The planning authority responded to a request for comment on the applicant's submission stating that it would not be making further comment.

## **6. PLANNING POLICY FRAMEWORK**

The Wexford County Council Development Contribution Scheme is the relevant contribution scheme for the area of the site.

## **7. ASSESSMENT**

**7.01** This application originally set out to regularise quarrying operations on this site. In its decision the planning authority imposed four financial contribution conditions. Condition 3 sought a contribution towards roads provision in the sum of €99,000. Condition 4 sought a contribution towards recreation and community facilities in the sum of €16,500. Condition 5 sought a future per annum payment of 30 cents per m<sup>3</sup> towards roads in the area of the planning authority. Condition 6 sought a future per annum payment of 5 cents towards the provision of recreation and community facilities in the area of the planning authority.

**7.02** The applicant appealed conditions 3 and 4.

**7.03** The adopted development contributions scheme provides that quarries will be liable to a payment of €0.35 per cubic metre per annum of extracted material and "will be due on the 1<sup>st</sup> of April of each year based on the previous years' (sic) activity". There is a certain ambiguity in the published scheme but reading the scheme as a whole I agree with the applicant that it must be understood as requiring a payment based on the previous year's production. An objection to this reading is that the scheme may impose a sort of annual tax – however I still prefer a reading which allows only a single year's retrospection in this case.

**7.04** The Board requested a statement from the applicant as to the quantity of material extracted by the applicant from the quarry in the period 2014 to 2015. The figure given by the applicant for extraction was 36,379.3 tonnes. The Board's request for further information from the applicant referred to the period 1<sup>st</sup> April 2014 to 30<sup>th</sup> April 2015. This

should more properly have referred to the period 1<sup>st</sup> April 2014 to 31<sup>st</sup> March 2015.

**7.05** I recommend averaging the monthly extraction figure for 13 months and subtracting that figure from the total of 36,379.3 to give an extraction figure of 33,581 tonnes for the period of 12 months from 1<sup>st</sup> April 2014 to 31<sup>st</sup> March 2015. It is necessary to convert tonnes to cubic meters to apply the figures set out in the contribution scheme. Therefore 33,581 tonnes is equal to 19,976m<sup>3</sup> (using a standard conversion table from <http://www.engineeringtoolbox.com/dirt-mud-densities>) Therefore; condition 3 would give rise to a contribution of €5,992.80 (19,976m<sup>3</sup> by 30 cents) and, condition 4 would give rise to a contribution of €998.80 (19,976m<sup>3</sup> by 5 cents).

**7.06** Finally I have revised the standard wording of the contribution conditions set out below to reference the payment to the past only; not to the future which is covered by conditions 5 and 6 which are not before the Board for consideration.

## **8. RECOMMENDATION**

Having regard to the foregoing I recommend amending conditions 3 and 4 so that they shall be as set out below.

### **Reasons and Considerations**

It is considered reasonable that the applicant should make a contribution towards the provision of roads and recreational and community facilities benefiting development in the area of the planning authority in accordance with the adopted Wexford County Council Development Contribution Scheme 2013.

### **Conditions**

3. The developer shall pay to the planning authority a financial contribution of €5,993.00 (five thousand, nine hundred and ninety three euro) in respect of the provision of public roads benefiting development in the area of the planning authority that have been provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid in a manner which shall be agreed with the planning authority and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The timing and method

of payment and the application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

4. The developer shall pay to the planning authority a financial contribution of €999.00 (nine hundred and ninety nine euro) in respect of the provision of recreational and community facilities benefiting development in the area of the planning authority that have been provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid in a manner which shall be agreed with the planning authority and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The timing and method of payment and the application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Hugh Mannion  
Planning Inspector  
27<sup>th</sup> January 2016