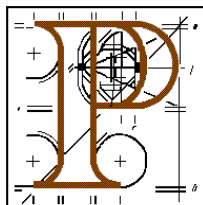


## An Bord Pleanála



## Inspector's Report

**Reference:** PL92.245499

**P.A. Reference:** 14/600418

**Title:** Extension to existing sand and gravel quarry.

**Location:** Ballybeg, Toomevara, County Tipperary.

**Applicant:** Seamus Ryan Sand and Gravel Limited

**Appellants:** Same

**Observers:** None

**PA:** Tipperary County Council

**Type of Appeal:** First party against S.48(2)(c) contribution

**Decision:** Permission granted with conditions

**Date of Site Visit:** 16<sup>th</sup> December 2015

**Inspector:** Philip Davis

## 1. Introduction

This appeal is by the applicant against a special development contribution (S.48(2)(c) of the 2000 Act, as amended) of €200,000 set by the planning authority on a permission for an extension to an existing quarry.

## 2. Site Description

Photographs of the site and environs are attached in the appendix to this report.

### **Ballybeg, Toomevara, County Tipperary**

Ballybeg townland is located on the hilly countryside of the foothills of the Devilsbit Mountains of north Tipperary about 1 km south of the Offaly border, and upland area located between the towns of Templemore and Toomevara. The hills in the area undulate generally between the 100 and 280 metre AOD contours in a landscape characterised by mid to small sized fields with areas of conifer plantations on the higher ground and boggy fields at the bases of the valleys. The Ollatrim River runs north along the base of a valley to the south-east of the townland. A bluff of fluvioglacial deposits runs parallel to the Ollatrim forming a steep valley side north-west of the river.

The wider area is sparsely populated with a scattering of farms and houses, generally on higher ground, and a few small villages. It is served by a network of third class L-roads of varying quality. Toomevara is about 4km west-north-west of the site, with Moneygall some 6 km north, while Templemore is some 10 km south-east, with the extended ridge of the Devilsbit dividing the area. There is a small crossroads village at Gortagarry, about 2 km south of Ballybeg.

### **The site and environs**

The appeal site, with a site area given as 8.19 hectares, is an area of grazing fields next to (and partially overlapping with) an existing sand and gravel quarry on the south-west facing side of a slope of mostly fluvio-gravel material on the west side of the Ollatrim River. The existing quarry is some 10.9 hectares in extent. The existing quarry extraction has apparently been most active since 2000, but older OS plans show a series of small quarries around what was a bluff overlooking the river. The quarry has a main road access to a third class road to the south, near a bridge over the Ollatrim River, where the road meets a slightly wider third class road. There are a number of private tracks on the north and east side of the site. It is abutted by conifer plantation and gorse to the east, with farmland on the other sides. There are a number of dwellings south of the quarry along the main road.

### 3. Proposal

The proposed development is described on the site notice as follows:

*The development will consist of the extension of the existing sand and gravel quarry and for continued use of the site entrance, access laneway, weighbridge, maintenance shed, settlement lagoons, site office, toilet, plant and machinery and ancillary works.*

In ancillary information it is stated that the quantity of material to be extracted is between 1.66 to 1.86 million m<sup>3</sup> over around 15-20 years. It is stated that 80% of the material is taken by road to the north-west, through the village of Toomyvara.

### 4. Technical Reports and other planning file correspondence

#### Planning application

The planning application, with supporting documentation and plans (including an EIS) was submitted to the planning authority on the 6<sup>th</sup> November 2014. Following a request for additional information, further details relating to hydrogeology and drainage were submitted on the 6<sup>th</sup> July 2015.

#### Relevant Internal and External reports and correspondence.

**Offaly County Council** (21/11/14): As the volume of traffic is not expected to increase significantly, it had 'no further comment'.

**Habitats Directive Assessment Screening Report:** Notes that Kilduff Devilsbit Mountain SAC Site no. 000934 is the closest Natura 2000 site – c.3.9 km, with no other Natura 2000 sites in the area. It is concluded that there is no potential for significant effects, therefore AA is not required.

**Roads Engineer** (email dated 26/1/2015). Notes need for Traffic management Plan, plus contribution of €200,000 to be paid towards the reconstruction of the road network in the area.

**Planners report.** The initial report did not address the issue of development contributions or impact on the road network. A request for further information related primarily to hydrogeology issues. The final planning report accepted the further information supplied, and stated that development contributions would be levied in accordance with Class 9 of the Scheme, which comes to €95,025 for recreational facilities. The Roads Engineer request for a €200,000 contribution is not discussed or assessed, but is set as a recommended condition.

## 5. Decision

The planning authority decided to grant permission subject to 15 no. conditions. Condition no. 13 states:

*Before the development commences, a special contribution shall be lodged with the Planning Authority, in the sum of €200,000 to secure the provision and satisfactory completion of road improvements including: road strengthening and surfacing of local roads (L03605-16, L-3605-0, L-3616-30, L-3216-20, L-3216-0 and L-3219-9 (2km in total) in the vicinity of the site, that facilitates the proposed development, coupled with an agreement empowering the Planning Authority to apply such aforesaid contribution, to any part of the development.*

*The form and amount of special contribution shall be agreed with the Roads Authority, or failing such agreement, shall be as determined by An Bord Pleanála.*

**Reason:** *As a contribution towards the cost of providing road infrastructure improvements along local and regional roads which facilitate Road Infrastructure in the vicinity of the proposed development site.*

## 6. Planning Context

### Planning permissions – appeal site

On the 6<sup>th</sup> of March 2014, the Board **granted** Substitute Consent for the existing quarry (**22.SU.0032**). This was subject to 5 no. conditions including a €123,557 S.48 Development Contribution.

### Planning permissions – adjoining areas

None relevant on file.

### Development Plan

The quarry is in open countryside without a specific zoning objective. The current Development Contribution Scheme was adopted in 2015.

## 7. Grounds of Appeal

- It is argued that the planning authority has failed to comply with S.48(12) of the 2000 Act, as amended, to specify the particular road improvement works, with reference to paragraph 7.12 of the Development Management Guidelines. It is submitted that the €200,000 figure is simply arbitrary.

- It is argued that as S.5.1(e) of the Scheme already provides for the improvement of substandard roads, the proposed works do not relate to ‘*specific exceptional costs not covered by a scheme*’ and so are not justified.
- It is argued that the level of lorry movements on the roads (it is suggested that this is 4 per day on the roads identified in condition 13) is so low to not justify any requirement for road improvements.
- It is stated that the applicant has already carried out road improvement works on nearby roads to a cost of €304,670 (invoices attached).
- It is argued that the proposed contribution is out of context with the size and scale of the quarry, and as such is inconsistent with the principles of fairness and natural justice.

## **8. Planning Authority’s response**

The planning authority responded stating that the special development contribution is necessary for exceptional strengthening and improvements works required to facilitate the proposed development. These works involve the strengthening with macadam of the L03605-16 towards Gortagarry, with a cost of €25 per square metre, with a total area calculated as 8,000 square metres. It is stated that the capacity of the existing road network in terms of strength and stability is not sufficient to meet the additional requirements that will be placed upon the network.

## **9. Further correspondence**

The appellant responded to the planning authorities reply as follows:

- It is restated that the planning authority has failed to comply with its obligations under Section 48(12) of the Act in that the clarification provided does not include all sections previously outlined in Condition 13, and have failed to provide a detailed rationale for the works.
- It is restated that the Development Contribution Scheme (Section 5.1(e) already provides for the improvements of substandard roads – policy INF14 (to strengthen pavements on the local road network under the Restoration Improvement Grant Scheme) is referred to in support of the argument that the proposed road improvement works are part of normal scheduled works and are not ‘exceptional’ costs.
- It is noted that the site has been operating since 1992 and the permitted development does not include an increase in traffic loads.
- It is noted that substantial contributions towards road improvements have already been made by the operator.

- It is submitted that the quarry is small in scale and the required contribution is a very onerous one and excessive and is inconsistent with the principles of fairness and natural justice.

## 10. Assessment

This appeal was made against a condition set under S.48 of the Act, so I will confine my assessment to whether the financial contribution was correctly applied.

The €200,000 euro contribution is a 'special' development contribution, set under S.48(2)(c) of the Act, as amended, which states:

*(c) A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.*

And:

*(12) Where payment of a special contribution is required in accordance with subsection (2) (c), the following provisions shall apply—*

*(a) the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates,*

*(b) where the works in question—*

*(i) are not commenced within 5 years of the date of payment to the authority of the contribution (or final instalment thereof, if paid by phased payment under subsection (15)(a)),*

*(ii) have commenced, but have not been completed within 7 years of the date of payment to the authority of the contribution (or final instalment thereof, if paid by phased payment under subsection (15)(a)), or*

*(iii) where the local authority decides not to proceed with the proposed works or part thereof. The contribution shall, subject to paragraph (c), be refunded to the applicant together with any interest that may have accrued over the period while held by the local authority,*

*(c) where under subparagraph (ii) or (iii) of paragraph (b), any local authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion to those proposed works which have not been carried out.*

The Development Management Guidelines addresses such conditions as follows (section 7.12):

*Finally 'special' contribution requirements in respect of a particular development may be imposed under section 48(2)(c) of the Planning Act where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. A condition requiring a special contribution must be amenable to implementation under the terms of section 48(12) of the Planning Act; therefore it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. Circumstances which might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it. Where the benefit deriving from the particular infrastructure or facility is more widespread (e.g. extends to other lands in the vicinity) consideration should be given to adopting a revised development contribution scheme or, as provided for in the Planning Act, adopting a separate development contribution scheme for the relevant geographical area. Conditions requiring the payment of special contributions may be the subject of appeal.*

The quarry was recently granted Substitute Consent by the Board – I note that in that decision the Board set a standard S.48 condition under the adopted Scheme. The Inspectors Report for that Substitute Consent application stated that the local road network was in generally good condition. The appellant has given evidence that substantial road improvement works were carried out prior to the application. It is claimed that the great majority of traffic from the site goes west, joining the Regional road network at Toomyvara. I observed during my site visit that this network of roads, while narrow and somewhat constrained, have a generally good quality surface. The only evidence of quarry traffic are a number of areas where informal lay-byes have occurred, presumably through quarry trucks squeezing into the side ditch to allow traffic to pass. During my short site visit I noted from debris on the road that the majority of truck traffic does appear to turn right (i.e. west) at the entrance, but a significant number would appear to go east, across the bridge over the Ollatrim River, then joining a slightly wider third class road. I observed at least one unloaded truck take this route. The logical direction for trucks taking this route would be to go south on meeting the nearest junction, towards Borrisoleigh or Templemore. This route takes traffic through the small village of Gortagarry.

The roads in the area are generally in a good condition, most of them fairly recently resurfaced, but it was notable that the section between the quarry and the small village of Gortagarry near Blakefield (this village is not indicated on any OS map, but is identified as a 'village' in the settlement hierarchy and zoned in the development plan) was somewhat substandard with an older surface which is beginning to show signs of wear and tear. This slightly substandard section runs from the quarry, past the junction, to the village, a distance of almost exactly 2 km. From the planning authority's response and the details in condition 13, this appears to be the stretch of road which is considered to require upgrading in association with the quarry works.

The proposed development was subject to a contribution of €17,500 per hectare as a Class 9 (quarries and landfill) development, which the planning report stated was for recreation and community facilities only. This came to a total of just over €95,000. The Scheme, however, states that 82% of the monies will go to road and infrastructure schemes as identified in Appendix A of the Scheme. The upgrading of this particular stretch of road is not listed under Appendix A, and the subsection (5.1(e)) referred to by the appellant is a general overview of the requirements of the Scheme, not a specific reference to upgrading works. I therefore conclude that the upgrading of this stretch of road would not be covered by the general Development Contribution Scheme.

I note that while the permitted expansion to the quarry is not anticipated to increase the overall scale of the quarry, it will very substantially extend the operating life. It therefore seems reasonable to assume continuous additional heavy vehicle traffic on relatively substandard local roads. I would consider this level of traffic to be over and above the normal design standards for such roads, so it would be reasonable for the local authority to seek a special contribution towards the maintenance and upgrade of these roads. However, as it seems the applicant has already made a substantial contribution towards the upgrade of roads to the west, it is only the road to the east and south which would require additional works.

The condition set by the planning authority was somewhat vague, listing a number of local roads and not giving any detailed explanation as to the requirement of the sum of €200,000. However, in the light of the clarification provided by the planning authority, it does seem that it is reasonably clear that it is for the necessary road strengthening and resurfacing of the road between the quarry and Gortagarry.

The planning authority state that the figure arises from a cost of €25 per square metre of tarmac for a 2 km stretch – it is not clear if this is an estimate or based on existing annual tender figures. The applicant has stated that it cost just over €300,000 to tarmac the 2.5 km stretch of road between the quarry and Toomevara, so the figure provided seems reasonable and proportionate in this regard.



I would conclude therefore that the required works – i.e. the upgrading of the third class roads between the quarry and Gortagarry village are an exceptional cost not covered by the Scheme, and which is required to facilitate the proposed development. As such it is in accordance with the requirements of S.48(2)(c) of the 2000 Act, as amended. I conclude that it is amenable to implementation under S.48(12) of the Act, and that the basis for the works have been explained in the condition. I also conclude that the projected costs are reasonable.

I therefore recommend that the Board does not use its powers under S.48 of the 2000 Act, as amended, to alter or delete condition no. 13 of the permission.

## **11. Conclusions and Recommendations**

I conclude that condition no. 13 of the permission is reasonable and is consistent with the Act and that the required special contribution be confirmed for the reasons and considerations set out below.

### **REASONS AND CONSIDERATIONS**

It is considered that the road between the quarry and Gortagarry village is substandard and requires upgrades to facilitate additional traffic over time generated by the proposed quarry extension. It is not considered that such works are covered by the Tipperary Development Contribution Scheme 2015-2019 and so represent an exceptional cost not covered by the scheme. The estimated cost of €200,000 for the upgrade of 2 km of third class road is considered reasonable. It is therefore considered that Condition no. 13 of decision reference 14/600418 is reasonable and in accordance with the requirements of the 2000 Planning Act, as amended and the Board confirms said condition.

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**Philip Davis,**  
**Inspectorate.**  
**14<sup>th</sup> January 2016**