

An Bord Pleanála



Inspector's Report

PL 03 246074

DEVELOPMENT

Permission for (a) Fill and raise in agricultural lands for agricultural purposes, with clean inert construction and demolition waste, soil and subsoil, (b) construction of a splayed entrance at existing entrance and, (c) provision of straw bale silt filter to protect existing drains and associate site works.

LOCATION

Formoyle, Eighteragh, Inagh, Co. Clare.
Co. Clare.

PLANNING APPLICATION

Planning Authority

Clare County Council

P. A. Reg. Ref. No.

P15/533

Applicant.

Francis Queally

Decision.

Grant Permission

PLANNING APPEAL

Appellant:

Francis Queally

Types of Appeal:

Section 48 (2) (c) Appeal against Condition No 3.

Inspector:

Jane Dennehy.

1. INTRODUCTION.

- 1.1 This file contains an appeal by the applicant against condition no 3 which is a special development contribution condition attached to the decision to grant of permission by Clare County Council for fill and raise of agricultural land at Formoyle, Eighteragh, Inagh, Co. Clare.

2. BACKGROUND.

2.1 Site Location:

The site is an area within an agricultural field 3.8 metres to the south west of Inagh and it has a stated area of 0.5 hectares, access from the public road to the north and a quarry, in the ownership of the applicant is to the south east. The applicant occupies a dwelling adjacent to the site for which permission was granted under P. A. Reg. Ref. 04/2624.

2.2 The Application:

Permission was sought by the applicant to fill and raise the land by an average height of 1.2 metres using clean inert construction and demolition waste, soil and subsoil, to construct a splayed entrance at existing entrance and to provide a straw bale silt filter to protect existing drains and associate site works. A maximum of 60 tons per day over short distance and it is unlikely that 20 tons per day would be reached or exceeded. Total tonnage to fill the site is estimated at 12,750 cubic metres, (8,500 cubic metres x 1.5) or 4,250 tons per year based on one trip a day with 18.5 tonnes over a 46 week working year.

The report of the Roads Engineer noted the distance of over 4 km from the Regional Route R474 and reliance on the local road network. A special contribution of €25,000 to cover the cost of restoring the road network which would be damaged in the area is recommended. It is commented that 1.4t /m spoil generating over 100 litres per day would be generated by the Slieve Callan connector.

- 2.3 Further to the issue of requests for additional information and clarification of additional information relating to technical information regarding materials, phasing and management and the entrance arrangements to which the applicant submitted responses, the planning authority granted permission subject to conditions.

Condition No 3, the appealed condition is reproduced below:

“Prior to the commencement of development a special development contribution shall be paid to Clare County Council as a special contribution towards the improvements of roads which are necessary to facilitate the development of the site. The contribution payable will be based on the contribution rate applicable at the time of payment and not the rate in existence when permission is granted. The amount of the development

contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction), and in accordance with the terms of the Council's Development Contribution Scheme. The amount is currently €25,000.

Reason: *In the interests of the proper planning and sustainable development of the area and in Accordance with Section 48 (2) (c) of the Planning and Development Act, 2000=2010”.*

Condition No 2 is an a section 48 development contribution scheme condition according to which the applicant is required to pay €3,500 in respect of public infrastructure and facilities benefitting development in the area of the Planning authority in accordance with the terms of the Development Contribution Scheme.

4.1 **DEVELOPMENT PLAN.**

4.2 According to the Clare County Development Plan, 2011-2017 the application site is within a Settled Landscape and there are no European sites within or in close proximity.

4.3 Clare County Council adopted the current Development Contributions Scheme, 2013-2017 on 16th September, 2013. (A printed copy is provided on the file.)

5.0 **THE APPEAL**

5.1 An appeal against Condition No 3 attached to the grant of permission was lodged on behalf of the applicant by Thomas Burke on behalf of the applicant on 26th January, 2016 attached to which are extracts from Clare County Council's guidance, entitled “General Development Contribution Scheme mid 2013-2017”.

5.2 According to the appeal:

- A special contribution can only be sought where there are specific exceptional costs not covered by the development contributions scheme and the planning authority must specify the particular works to be funded by the contribution. The condition is non-specific and roads improvements are covered in the amount payable under the development contributions scheme towards roads improvement works under Condition No 2.
- The refund that would be payable after five years if the works have not commenced cannot be calculated because the particular works to be funded have not been specified.

- The Roads Engineer states there would be undue stress on the road network without specifying the specific works. The basis for the special contribution is on the proposed Slieve Callan connector with the applicant receiving all the fill which would amount to 1.4 ton per metre x 20 km equals 20,000 x 1.4 = 28,000 tons. The site to be filled can only receive 4,250 tonnes in three twenty month phases which is a total of 12,750 tonnes over a five year period.
- There has been a constant stream of articulated traffic hauling forestry timber between Mount Callan and the sawmills since February 2014.
- At pre-planning consultations no references to possible special contributions were mentioned.

6.0 OBSERVATIONS OF THE PLANNING AUTHORITY.

6.1 A response to the appeal from the Planning Authority was received on 17th February, 2016. It is stated that a pavement condition survey of the relevant road network on which it is estimated that 16,000 square metres of road surfacing is required for the distance of 4 km over an average width of four metres. The current restoration rate as approved by the DTTAS is €17 per square metres which totals €272,000. The traffic volumes generated would cause wear that would bring forward the renewal date for paving surfacing by a number years. The planning authority applied a figure of 10 per cent for the overall restoration cost which is €25,000 to cover the damage.

6.2 The condition accords with section 7.3 of the Development Management Guidelines (DOEHLG, 2007) and is required to ensure that the proposed development accords with the proper planning and sustainable development of the area.

7. FURTHER SUB MISSION OF THE APPLICANT.

7.1 A further submission was received from the applicant on 10th March, 2016.

7.2 The applicant states that he fails to see what special works are proposed other than maintenance works which are covered by general contributions. In addition, road tax covers upkeep and maintenance of road surfaces.

7.3 The applicant is a private haulier and he from time to time hauls inert material to a licensed facility. It is confirmed that no fill is to be received from the Slieve Callan connector project.

7.4 The applicant would be unable to proceed with the development if the condition with the requirement for the contribution is not removed.

8. EVALUATION.

8.1 It is considered that the contribution of €25,000 required under Condition No 3 attached to the planning authority is not in accordance with the provisions of section 48 (2) (c) of the Planning and Development Act, 2000 as amended.

8.2 Section 48 (2) (c) states:

“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”.

8.3 Three essential requirements or characteristics are essential to justify attachment of a of a “special contributions” condition to a grant of permission. In granting permission with a condition attached consisting of a requirement for payment of a special contribution under this subsection of the Act, the payment must be required (a) in respect of a particular development, (b) specific exceptional costs must be incurred as a result of or in order to facilitate it and, (c) such costs cannot be covered by a Development Contribution Scheme made under Section 48 (2) of the Act.

8.4 While the planning authority has provided in the response to the appeal some road maintenance calculations, are based fill from the Slieve Callan Connector project, (which the applicant states is unrelated to the proposed development) the nature of the maintenance costs involved would come within the scope of the General Development Contributions Scheme covered under Section 48 (2) of the Act. In this regard it is noted that it is not essential for the local authority to construct a new road or to upgrade the existing four km of local road network involved to enable the applicant to proceed with the proposed development and that the works required are solely maintenance works.

8.5 It is accepted that use of the local road network by haulage vehicles contributes to wear and tear in addition to other traffic movements for which maintenance works such as resurfacing is required. However, maintenance of the local roadwork is not a specific project, incurring specific exceptional costs to the local authority that would be essential to enable the proposed development to be implemented and therefore specifically required to facilitate the development.

- 8.6 Given the foregoing, it is recommended that the Appeal should be upheld and that the planning authority should be directed to remove Condition No 3 and the Reason for it. A draft order is set out overleaf

DECISION

The Board, based on the Reasons and Considerations hereunder, directs the said Council under Section 48 (13) of the Planning and Development Act, 2000 to **REMOVE** the said condition No. 3 for the reason therefore.

REASONS AND CONSIDERATIONS

The Board considers that Condition No 3 in which payment of a special development contribution towards the maintenance costs of the existing local road network under the authority of Clare County Council that facilitates development in the area of Clare County Council does not accord with the provisions of section 48(2)(c) of the Planning and Development Act, 2000 as amended with reference to the payment of a 'special contribution' and that the said condition is not amenable to being applied in accordance with the provisions of section 48(2) (c) of the Act. Furthermore, it is considered that the maintenance costs of the local road network contribution could properly be included within a General Development Contribution Scheme made under Section 48 of the Act.

JANE DENNEHY
Senior Planning Inspector
5th April, 2016.