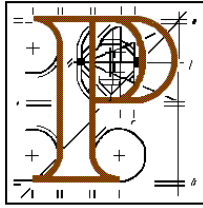


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## An Bord Pleanála



## Inspector's Report

**Development:** Alterations to existing materials recovery facility at Forge Hill, Ballycurreen Co. Cork.

### Planning Application

Planning Authority : Cork County Council

Planning Authority Register Reference : 15/6426

Type of Planning Application : Permission

Applicants : Forge Hill Recycling Ltd.

Planning Authority Decision : Grant subject to conditions

### Planning Appeal

Appellant : Forge Hill Recycling Ltd.

Type of Appeal : 1<sup>st</sup> Party against condition

Observers : None

**Inspector** : Pauline Fitzpatrick

**Date of Site Inspection** : 04/07/16

### Appendices

1. Photographs

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## 1. SITE LOCATION AND DESCRIPTION

The site, with a stated area of 1.11 ha., is located in the Forge Hill area, which is located on the southern fringe of the built up area of Cork City environs. The site fronts onto the eastern side of Forge Hill which is noted to be well trafficked connecting the Pouladuff Road/Tramore Valley area and the N28 Kinsale Road. There is a footpath on the side of the appeal site with the road surface noted to be poor in places with remedial repair works evident.

The Forge Hill area is characterised by commercial/industrial/warehousing development. Immediately to the north of the site is City Link Park and to the south is Forge Hill Business Park. On the opposite (western) side of the road are other commercial developments including a car sales outlet.

Construction on the extension to the front of the main recycling facility building subject of the application has commenced on site. An office/admin building and weighbridge are to the south of same. There is a further weighbridge to the north of the main building with a substation along the roadside boundary.

The site is served by two accesses. The main access is to the south of the building with that to the north noted to be closed on day of inspection.

## 2. PROPOSED DEVELOPMENT

The application was lodged with the Planning Authority (PA) on the **29/10/15** with unsolicited information submitted **15/12/15** following submissions received by the PA, with further information received **26/02/16** following a request for further information (FI) dated 22/12/15.

The proposal entails demolition of part of the existing materials recycling facility (MRF) building and extensions to same including two small extensions on the northern façade and a large extension to the front of the building. A partial first floor is proposed in Building 1 to provide for a 'picking cabin' at this level. Minor alterations are proposed to the façade of the building with alterations proposed to the southern boundary treatment and car parking arrangement.

The proposed works will increase the floor area from 2499 sq.m. to 4647 sq.m. and is to allow for a more efficient self-contained process on site. The throughput will be governed by the terms of the waste permit which applies to the site and will not exceed the 82,000 tonnes per annum limit of the parent permission. As a consequence there will be no increase in traffic levels over that originally anticipated.

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By way of FI it is stated that the annual intake of waste to the site will not exceed 50,000 tonnes per annum in line with the waste permit granted under ref. WFP-CK-15-0148-01 issued in December 2015.

The facility has been designed to exclusively process mixed dry recyclables from household and commercial sources. All sorting and storage of waste is to be contained within the extended building.

**Note:** Objections to the proposal received by the PA has been forwarded to the Board for its information. The issues raised relate to impact on adjoining businesses, health and safety, odour and traffic.

### 3. TECHNICAL REPORTS

**Irish Water** in a report dated **27/11/15** has no objection subject to conditions.

The **1<sup>st</sup> Area Engineer's** report dated **30/11/15** notes that the road surface at the entrance is poor and will be further damaged by HGVs. A special contribution towards repair will apply. FI is required on parking provision. The **2<sup>nd</sup> report** dated **04/03/16** following FI notes the increase in parking provision. There is no objection subject to conditions including €10,000 special contribution towards road repair works arising from damage likely to be caused in the construction and operation of the facility.

The **1<sup>st</sup> Environment** report dated **21/12/15** recommends FI on estimated quantities of waste types, risk assessment in terms of fire fighting, surface water drainage facilities, waste management plan and air monitoring plans. The **2<sup>nd</sup> report** dated **24/03/16** following FI has no objection subject to conditions.

An undated **Fire Officer's** report recommends FI on how the proposal meets the requirements for water for fire fighting purposes. The **2<sup>nd</sup> report** following FI has no objection

The **1<sup>st</sup> Executive Planner's** report dated **22/12/15** notes that the application is for alterations and extension to the building but no increase in volume of waste. Permission exists for the facility to accept 82,000 tonnes and there is no requirement to seek planning for the use. Therefore, there is no requirement for EIA. The comments made in the submission and internal reports received are noted. A request for FI is recommended as per the details outlined in the above reports. A subsequent Senior Executive Planner's report dated 22/12/15 concurs with the said assessment and recommendation for FI. The **2<sup>nd</sup> report** dated **24/03/16** following FI recommends a grant of permission subject to 35 conditions. The subsequent

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Senior Executive Planner's report dated 24/03/16 concurs with the recommendation and details 36 conditions to be attached to such a decision.

The **EPA** in a letter dated **08/12/15** notes that a waste licence was originally granted in 2003 for a waste transfer station. The thresholds for comparable development at which the need for an EIS is triggered as set out in Schedule 5 of the Planning and Development Regulations 2001 are noted.

#### **4. PLANNING AUTHORITY'S DECISION**

The PA decided to grant permission for the above described development subject to 36 conditions. Condition 15 requires a special contribution of €10,000 in respect of works to be carried out for the repair of the public road from damage likely to be caused in the construction and operation of the proposed development.

#### **5. GROUNDS OF APPEAL**

The 1<sup>st</sup> Party appeal is against condition 15 requiring the payment of €10,000 special contribution towards roads repair works. The grounds of appeal can be summarised as follows:

- The technical reports on file give no indication on how the figure of €10,000 was calculated. No details are given on the scope and extent of the works.
- The proposed extension to the facility does not increase the tonnage permitted at the site and thus will not increase permitted traffic movements.
- The site is located within an established industrial area and it is considered that the application of a special contribution to fund road maintenance is an opportunistic use of Section 48(2)(c).
- Any improvements to the existing road would benefit the wider area and would not be specific to the proposed extension.
- The contribution has been attached for 'damage likely to be caused' rather than for specific exceptional works required to facilitate the proposal.
- Condition 36 requires a development contribution of €22,619.52, the majority of which is for roads (€16,338.89). Any work, if required, can be more than adequately funded by the general contribution scheme.
- There are precedents where the Board decided to remove special contributions. A synopsis of the cases are provided in Appendix 1 (case refs. 232611, 236634, 232458, 210641, 221625, 244386)

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## 6. PLANNING AUTHORITY'S RESPONSE TO APPEAL SUBMISSION

No response received to the Section 132 notice requesting details of the works and costings of the public infrastructure concerned.

## 7. OBSERVATIONS

None

## 8. RELEVANT PLANNING HISTORY

**PL04.202198 (02/4286)** – permission granted on appeal for materials recovery facility. Condition 9 set a limit of not more than 82,000 tonnes per annum to be received at the site and precluded the use of the facility by members of the public.

## 9. DEVELOPMENT PLAN PROVISIONS

The site is within the 'existing built up area' zoning in the *Carrigaline Electoral Area LAP 2014*.

*Cork County Development Plan 2014*

*Objective ZU 3-7* - to promote the development of industrial areas as the primary location for uses that include manufacturing, repairs, medium to large scale warehousing and distribution, bio-energy plants, open storage, waste materials treatment and recovery and transport operating centres.

## 10. ISSUES AND ASSESSMENT

As the appeal is solely against condition 15 pertaining to the application of a special financial contribution Section 48 (13)(a) the Planning and Development Act 2000, as amended, pertains which requires that the Board shall not determine the relevant application as if it had been made in the first instance but shall determine only the matters under appeal.

I note that Condition 36 attached to the PA's notification of decision requires a development contribution of €22,619.52 in accordance with the development contribution scheme made under Section 48 (2)(a) of the Act. This condition is not subject to appeal.

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Condition 15 requires the payment of €10,000 as a contribution *in respect of works to be carried out for the repair of the public road from damage likely to be caused in the construction and operation of the proposed development.* I submit that the onus is on the council to establish the justification for such a condition. However no details were provided during the assessment of the application as to how this figure was calculated nor has the PA submitted the necessary details in response to the Section 132 notice issued by the Board on receipt of the appeal.

As to when a planning authority may require the payment of a Special Contribution is covered in Section 48(2)(c) of the Planning and Development Act 2000, as amended, with Section 7.12 of the Development Management Guidelines, 2007, providing guidance with respect to same. It is clear that such a request should only be made in respect of a particular development, which is likely to incur specific exceptional costs not covered by the General Development Contribution Scheme of the Council. Such a contribution is in addition to the terms of the general scheme and might cover specific developments whereby the scale of the development and the demand the proposed development is likely to place on public services and facilities is deemed to be exceptional.

The question in this appeal is whether these works can be taken to fall within the category of works for which a special contribution might be sought.

The site is located within an area characterised by industrial and commercial development on the outskirts of Cork City and is accessed from Forge Hill which is noted to be well trafficked connecting the Pouladuff Road/Tramore Valley area, and the N28 Kinsale Road.

Whilst I note that the road in the vicinity of the site is in a poor condition in parts this cannot be solely attributed to the movements arising from the subject site. The proposed development, whilst providing for a physical extension to the premises on the site, is so as to allow for a more efficient operation with no increase in materials to be accepted at the site. As such the traffic that would be generated by the development when complete will be no greater than previously experienced.

Although the construction period may bring about additional vehicular movement for a temporary period both the size and scale of the works proposed could not be characterised as exceptional and it is not envisaged that such activity would be considered to give rise to specific unique considerations. I submit that it would be expected that such road repair works, were they to arise, would be reasonably considered as being covered by the adopted section 48 development contribution scheme and could not be considered to be specific exceptional costs. Any repair works would be of general benefit to the wider community.

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In conclusion I consider that no particular justification for the reasoning/benefit of the road repair works and how they *constitute specific exceptional costs* nor basis for determining the contribution has been provided in accordance with the relevant legislative requirements.

Therefore I do not consider that condition 15 as applied by the planning authority accords with the terms of a Special Contribution Scheme Section 48 (12) and recommend that the PA be directed to omit same.

## **11. RECOMMENDATION**

In conclusion having regard to the documentation on file, the submissions received, and the assessment above I recommend that Planning Authority be directed to remove condition 15 in accordance with the following **Draft Order**:

### **DECISION**

The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended by section 30 of the Planning and Development Act, 2010, based on the reasons and considerations under, directs the said Council, under section 48 (13) of the 2000 Act, to **REMOVE** condition number 15 and the reason therefor.

### **REASONS AND CONSIDERATIONS**

The Board considered that condition number 15 does not accord with the provisions of section 48 (2)(c) of the Planning and Development Act, 2000 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(12) of the said Act. Furthermore, it is considered that an appropriate requirement to pay such a contribution could properly be included within a Development Contribution Scheme made under this section.

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**Pauline Fitzpatrick**  
Inspectorate

**July, 2016**