



An  
Bord  
Pleanála

## Inspector's Report PL04.248671

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<b>Development</b>	Importation of soil, stones, bricks, tiles, tarmac and concrete for the raising of an agricultural field and construction of road.
<b>Location</b>	Ballinphellic, Inishannon, Co. Cork.
<b>Planning Authority</b>	Cork County Council.
<b>Planning Authority Reg. Ref.</b>	16/07010
<b>Applicant(s)</b>	Kevin McCarthy T/a Machen
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Kevin McCarthy T/a Machen
<b>Observer(s)</b>	None
<b>Inspector</b>	Fiona Fair.

## 1.0 Site Location and Description

The appeal site, with a stated area of 5.89ha, is located within the townland of Ballinphellic, a rural area c. 5Km north of Crossbarry, south west of Cork City. The site is accessed off a local cul de sac road (L-62771) to its west, and via a c. 300m long track through agricultural lands.

The site comprises two green fields, in use for agricultural / grazing purposes, ground levels on the site fall from west to east. There is an unnamed watercourse along the eastern boundary and open drain to the north and west. The site is delineated by mature field boundaries to its north, south, east and west. There is also a field boundary in a west – east direction through the center of the site.

The surrounding land use is predominantly agricultural with some one-off houses to the south on the adjoining local road.

## 2.0 Proposed Development

2.1. The proposal comprises permission for:

- The importation of soil and stone, bricks, tiles, ceramics, tarmac, concrete for the raising of an agricultural field in order to improve the agricultural output of the field
  - Total volume of material 34,998m<sup>3</sup>
  - Maximum depth of fill, for the raising of ground levels, are of less than 3m
  - Maximum number of loads to be accepted at the site is 15 loads per day
- Construction of a new temporary 6m wide haul road

The application is accompanied with the following reports:

- Screening Statement for AA, Nov 2016
- Site Assessment Report, Nov 2016
- Flood Assessment, Feb 2017

- Letter of consent from Jim O'Reilly
- Emergency Response Procedure
- Risk Assessment

## 3.0 Planning Authority Decision

### 3.1. Decision

Following a request for Additional Information and Clarification of additional information, planning permission was granted subject to 31 number conditions.

This is a First Party Appeal against Condition 31 (a special contribution under section 48 (2) (c) of the Planning and Development Act 2000, as amended) of the draft grant of planning permission, only.

Condition 31 states:

'At least one month before commencing development or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the developer shall pay a special contribution of €70870.95. It is considered appropriate that the developer should contribute towards these specific exceptional costs, for works which will benefit the proposed development to Cork County Council, updated monthly in accordance with the Consumer Price Index from the date of grant of permission to the date of payment, in respect of specific exceptional costs not covered in the Council's General Contributions Scheme, in respect of works proposed to be carried out, for the provision of future road improvement works of the local roads. The payment of the said contribution shall be subject to the following: : - (a) where the works in question— (i) are not commenced within 5 years of the date of payment of the contribution (or final instalment if paid by phased payment), (ii) have commenced but have not been completed within 7 years of the date of payment of the contribution (or final instalment if paid by phased payment), or (iii) where the Council has decided not to proceed with the proposed works or part thereof, the contribution shall, subject to paragraph (b) below, be refunded to the

applicant together with any interest which may have accrued over the period while held by the Council. (b) Where under sub-paragraphs (ii) or (iii) of paragraph (a) above, 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. (c) payment of interest at the prevailing interest rate payable by the Council's Treasurer on the Council's General Account on the contribution or any instalments thereof that have been paid, so long and in so far as it is or they are retained unexpended by the Council.'

**Reason:** It is considered appropriate that the developer should contribute towards these specific exceptional costs, for works which will benefit the proposed development.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The Planners Report sets out that having regard to the development plan objectives for the area and the pattern of development in this rural area, it is considered that subject to compliance with conditions, the proposed development would not seriously injure the amenities of the area and would not be prejudicial to public health and, therefore, would be in accordance with the proper planning and sustainable development of the area.

With respect to the special contribution attached to the decision to grant permission the planning report states: 'The total volume of fill is c. 35,000m<sup>3</sup> and the proposed maximum loads per day is 15, giving rise to traffic movements along the road network. A special contribution is to be levied for future road improvement works, as per the recommendation of the Senior Executive Engineer in his report.'

Area Engineer: Subsequent to Further information and clarification of further information having been sought and submitted the engineering report indicates no

objection subject to condition. Report recommends a special contribution to be levied of €70,870.95 to road maintenance resulting from the development.

Environment: Subsequent to Further information and clarification of further information have been sought and submitted the environment report indicates no objection subject to condition.

### 3.2.2. Other reports:

Inland Fisheries Ireland (IFI): Have requested that the 100-year flood level contour is established and any culverting of the river will require approval from the IFI.

Recommends an assessment of infilling of flood plains in light of the frequency of applications for infilling of low lying sites and flood plains.

### 3.3. **Third Party Observations**

None.

## 4.0 **Planning History**

None relevant

## 5.0 **Policy Context**

### 5.1. Section 48 Development Contributions.

The Cork County Council Development Contribution Scheme, 2004 was adopted on 23<sup>rd</sup> February, 2004 and is intended to operate for a period of twenty years in line with the time periods of the Cork Area Strategic Plan and the North and West Cork Strategic Plan. The Scheme sets out the basis for the determination of the relevant development contributions whereas Tables G4, G5 & G6 detail the initial rates of contribution applicable in respect of the various classes of infrastructure for specified categories of development within the Cork Area Strategic Plan (CASP) and the North and West Cork Strategic Plan (N&WCSP) areas. It also states that development contributions for windfarms, golf courses, quarries, gravel pits and other non-agricultural developments, which are not specifically allowed for in the General

Scheme, will be levied as special contributions. Appendix 1 of the Scheme then sets out some particular types of developments where special contributions are to be levied whilst the amounts of the contributions in such cases are to be calculated on the basis of the criteria set down.

## 5.2. Development Plan

The site is governed by the policies and provisions contained in the Cork County Development Plan 2014-2020. The appeal site is located in a Rural Area under strong Urban Influence. The area is defined as 'County Metropolitan Cork Strategic Planning Area' and the Landscape Character Type as: 'Broad Fertile Lowland Valleys' (type 6a).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The issues raised within the first party appeal have been collated under the following headings:

#### **Appeal against Condition 31, Financial - Special Contribution, Only**

- Condition 31 fails to identify (nature extent and level of works) the specific public infrastructure and facilities which will benefit the proposed development
- Condition 31 fails to identify the specific exceptional costs which the LA will incur in respect of those public infrastructure and facilities benefiting the proposed development.
- Condition 31 fails to demonstrate that the specific exceptional costs which have given rise to the €70,870.95 special development contribution currently sought are not already covered by another scheme (i.e. General contribution or supplementary contribution scheme).
- The Development Contribution Schemes Cork County Council does not facilitate levying of a contribution on the importation of materials to raise the land level of an agricultural field in order to improve its agricultural output of the field, and it is our opinion that a LA cannot use the provisions of section

48(2)(c) of the Planning and Development Act 2000 – 2016, to ‘plug a hole’ in a Development Contribution scheme where e.g. the scheme does not envisage a particular type of development.

- Apportionment of Costs and Benefits to surrounding developments have not been established by the LA in determining the amount presented in Condition number 31
- Cork County Council’s Area Engineer, calculated the €70,870.95 special development contribution amount likely having regard to rates derived from Quarries and Gravel Pits under Appendix 1, Special Contributions of the DCSCCC adopted by Cork County Council on 23<sup>rd</sup> Feb 2004. This method of calculating does not relate to ‘site specific’ circumstances, neither to the identification of the public infrastructure and facilities ‘benefiting’ the proposed development.
- The nature extent and level of works are not described in Condition number 31, neither in the supportive internal Planning Authority documentation from the Area Engineer dated 16<sup>th</sup> January 2017.
- The Area Engineers report makes reference to the Local Tertiary Route L-62771 as having recently been improved under a CIS scheme, this further questions the requirement of condition number 31
- The works mentioned in Condition number 31 do not relate directly to the proposed development, the extent and location of the works required has not been detailed, costs incurred or proposed to be incurred has not been presented with relevant calculations, or the apportionment of costs and benefits to the proposed development has not been outlined.
- Request that ABP remove Condition number 31
- The item imposed under condition number 31 as a special development contribution towards the cost of the upgrade and repair of roads does not accord with the provisions of section 48(2)(c) of the Planning and Development Act 2000 – 2016 as it has not been established that this

constitutes a special exceptional cost in relation to this particular development.

### **Review of Financial Contribution Appeal Legislative / Policy Context**

- ABP have limited scope under Sections 48 and 49 of the Planning and Development Act 2000 – 2016.
- Board is precluded from assessing the application in the first instance or de novo
- A Special Contribution would only be justifiable if it complies with Section 48(2)(c) and Section 48(12)(a) of the Planning and Development Act 2000 – 2016 in the following respects:
  - The development should give rise to specific exceptional costs
  - The public infrastructure and facilities should benefit the proposed development
  - The costs should be incurred by the LA
  - Such costs should not already be covered by a DCS and
  - Particular infrastructural works and facilities must be specified in the condition requiring the payment of a special contribution.
- Inadequate justification for a Special Contribution of €70,870.95
- There is an absence of clear identification of the works required and the costing of same, the apportionment of said costs to the subject proposal cannot be determined.
- In the absence of clear identification of works and costing it would be impossible for the appellant to calculate, in the future, if a refund would be payable should the works not commence or be partially completed within the specified time frames.
- Reference case PL04.243568 is of relevance, whereby ABP directed the PA to remove a special development contribution
- The development is temporary in nature.



- If 15 loads are delivered every day, 35,000 cubic meters of material will be reached in approx. 156 days or 5.5 months.
- Deterioration of the road as a result of traffic associated with existing uses in the area is not a material consideration in adjudicating on the current application.
- There are a number of agricultural operations and residences within close proximity to the subject lands which would contribute significantly to the deterioration of the surrounding road network and would also benefit from the upgrading and repair of road infrastructure.
- This method of calculating does not relate to 'site specific' circumstances
- The works do not relate directly to the proposed development, the extent and location of works required has not been detailed, costs incurred or proposed to be incurred has not been presented with relevant calculations, or the apportionment of costs and benefits to the proposed development has not been outlined.

**Appeal Accompanied with:**

- Notification of Decision to Grant planning permission
- A copy of Cork County Council Development Contribution Scheme (CCCDCS) 2004
- CCCDCS – rates for 2015
- A copy of planners report assessment of FI, 18<sup>th</sup> May 2017
- A Copy of Area Engineers Report, 16<sup>th</sup> January 2017
- A Copy of Engineering Report Further Information dated 12<sup>th</sup> May 2017

**6.2. Planning Authority Response**

- No Response received.

## 7.0 Assessment

- 7.1. This is an appeal made under the provisions of Section 48(13)(a) of the Planning and Development Act 2000, as amended, and therefore the Board is restricted to considering Condition No. 31 alone and cannot consider the proposed development *de novo*. I have therefore confined my assessment to the condition that has been appealed.
- 7.2. Condition No. 31 requires the payment of a special development contribution in the sum of €70870.95 'in respect of works proposed to be carried out, for the provision of future road improvement works of the local roads'. From a review of the Planner's Report it would appear that this special contribution was imposed on the basis of a recommendation made in a report compiled by the Area Engineer (12/05/2017) The Planners Report (18/05/2017) states:
- 'The total volume of fill is c. 35,000m<sup>3</sup> and the proposed maximum loads per day is 15 loads per day, giving rise to traffic movements along the road network. A special contribution is to be levied for future road improvements works, as per the recommendation of the Senior Executive Engineer in his report.'
- 7.3. I note the Area Engineers report, dated 12/05/2017, states:
- 'A special contribution will be levied. This is based on the Development Contribution Scheme (DCS). The rate is based at €0.45 per cubic metre per Kilometre to or from Regional or National Road. 34,998 cubic meters. Distance from site to R603 is 4.5Km therefore Cost = 34,998 x 4.5 x €0.45 = €70,870.95'
- 'Reason: 'Contribution to road maintenance resulting from the development.'
- 7.4. The Area Engineers Report, dated 05/01/2017, states:
- 'The application accesses Local Tertiary Route L-62771. This is a cul de sac which has recently been improved under a CIS scheme.'
- 7.5. The first party in their appeal against the imposition of Condition 31 submit that the condition fails to identify / detail the extent and location of the works required, costs incurred or proposed to be incurred has not been presented with relevant

calculations, or the apportionment of costs and benefits to the proposed development has not been outlined.

7.6. It is argued that the Planning Authority has failed to comply with its obligations under Section 48(12) of the Planning and Development Act, 2000 in that it has not demonstrated that the particular road improvement works to which the special development contribution will be attributed are either 'specific' or 'exceptional' to the proposed development in that they would benefit the proposed works rather than the general area.

7.7. The methodology used in the calculation of the special development contribution has also been questioned. It is submitted that the special development contribution amount was calculated, 'likely', having regard to rates derived from Quarries and Gravel Pits under Appendix 1, Special Contributions of the DCSCCC adopted by Cork County Council on 23<sup>rd</sup> Feb 2004. A copy of which is attached to the appeal. It is contended that this method of calculating does not relate to 'site specific' circumstances, neither to the identification of the public infrastructure and facilities 'benefiting' the proposed development.

7.8. It is necessary to consider whether or not the special development contribution as imposed complies with the requirements of Section 48(2)(c) of the Act which 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.

7.9. Subsection 12 (a) of Section 48 states:

'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...'

7.10. And subsection 12 (b) of Section 48 further states:

‘Where the works in question (i) are not commenced within 5 years of the date of payment to the authority of the contribution, (ii) have commenced, but have not been completed within 7 years of the date of payment to the authority of the contribution, 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.’

7.11. . By way of further clarification in this respect I note that Paragraph 7.12 of the ‘Development Management, Guidelines for Planning Authorities, 2007’ states the following:

“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 of the calculation, including how it is apportioned to the particular development”.

7.12. I highlight the wording of condition 31 and I consider that there is an absence of clear identification of the works required, how such works are directly related to the subject development and the costing of same. I do not consider the wording, ‘for the provision of future road improvement works of the local roads’, is sufficiently specific. I agree with the appellant that in the absence of clear identification of works and costing, the requirement for a ‘special contribution would not be in accordance with section 48 (2) (c) of the Planning and Development Act 2000. It would also be impossible for the appellant to calculate, in the future, if a refund would be payable

should the works not commence or be partially completed within the specified time frames.

- 7.13. It is notable that the initial report prepared by the Area Engineer sets out that the Local Tertiary Route L-62771 which accesses the application site has recently been improved under a CIS scheme. Regard being had that the proposal would result in a significant increase in the number of vehicles accessing the Local Secondary Route from the cul de sac, it must be questioned if there is actually a need to upgrade 4.5Km of road network from the site to the R603 and in the absence of further details in this regard I am not satisfied that the Planning Authority has adequately identified either the need for any road upgrading / repair works or the precise extent, scope and location of same.
- 7.14. It is regrettable that a greater level of detail has not been provided by the Planning Authority in respect of the calculation of the costs associated with the future road repair works. While the appellant is of the opinion that the rate used (€0.45 per cubic meter per kilometre to or from Regional Road or National Road) is derived from a standard special contribution rate applied to 'Quarries and Gravel Pits' under Appendix 1, Special Contributions of the DCSCCC adopted by Cork County Council on 23<sup>rd</sup> Feb 2004. Regard being had to the Cork County Council's DSCS – rates for 2015 and until further notice. The most up to date DCS on the Cork County Council website, copy attached as appendix to this report, I am somewhat unclear as to the origin of the figure used.
- 7.15. In the absence of clear identification of the works required and the costing of same, the apportionment of said costs to the subject proposal cannot be determined. The identification of the works is necessary in order to determine the expenditure involved and to provide the basis for the calculation, including how the monies would be apportioned to particular development. In the absence of these details it would be impossible for the appellant to calculate, in the future, if a refund would be payable should the works not commence or be partially completed within the specified timeframes.

- 7.16. Accordingly, on the basis of the foregoing, it is my opinion that the attachment of Condition No. 31 as a special development contribution fails to meet the requirements of Section 48 of the Act.
- 7.17. The information provided by the Planning Authority to date is insufficient to justify the imposition of a special development contribution of €70,870.95 on the proposed development.
- 7.18. I would also draw the Boards attention to the decision made under PL04.243568 whereby a special contribution of €30,000, by way of condition two, was removed by the Board from a permission granted for importation of soil and stones for the raising of an agricultural field in order to improve the agricultural output of the field at Ballyvodock East, Midleton, County Cork.
- 7.19. In reaching this decision the Board stated in the reasons and considerations 'The Board considered that the item imposed under condition number 2 (€30,000 (thirty thousand euro)) as a special development contribution towards the cost of the upgrade and repair of roads does not accord with the provisions of section 48(2)(c) of the Planning and Development Act, 2000 as it has not been established that this constitutes a specific exceptional cost in relation to this particular development'.

## 8.0 Recommendation

- 8.1. On the basis of the foregoing I consider that the Planning Authority has erred in disposition of a special development contribution and, therefore, it is my recommendation that the Planning Authority should be directed accordingly to **REMOVE** Condition No.31 for the reasons and considerations set out hereunder:

## 9.0 Reasons and Considerations

The Board considered that the item imposed under condition number 31 [€70,870.95 (seventy thousand eight hundred and seventy euro ninety-five cents)] as a special development contribution towards the cost of the provision of future road improvement works of local roads does not accord with the provisions of section 48(2)(c) of the Planning and Development Act, 2000 as it has not been established that this constitutes a specific exceptional cost in relation to this particular development.

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Fiona Fair  
Planning Inspector  
07/09/2017