



An
Bord
Pleanála

Inspector's Report PL.27.248894.

Development	Reclamation of land, site access and all associated site works.
Location	Bonabrocka, Wicklow, Co. Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	17/284.
Applicant	Daphne Delahunt.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	First Party V. financial contribution condition.
Appellant	Daphne Delahunt.
Observers	None.
Inspector	Dáire McDevitt

1.0 Site Location and Description

- 1.1. The appeal site is located in Bonabrocka, a rural townland, c. 3.5km south of Wicklow town, c. 3km east of the N11 and c. 2.5km west of the R750.
- 1.2. The site, stated to be taken from a landholding associated with Bonabrocka Farm, contains two parcels of land taken from two agricultural fields which are separated by a line of trees. The Three Mile River is c.100m from the eastern boundary of the site and runs along the eastern boundary of the fields from which the site is taken. Recorded Monument (WI031-056) 'enclosure' is c. 100 metres to the south east of the site within the same field. ESB overhead lines traverse the southern portion of the site.
- 1.3 Access to the site is via a private access road/lane off the L5606 which also serves as access Bonabrocka Farm and farm buildings.

2.0 Proposed Development

- 2.1. Permission was sought for the reclamation of c. 2.64 hectares of land through the filling of material comprising clay, silt, sand, gravel and stone for the purposes of improving land together with site access and associated works.
- Importation of c. 4,500 tonnes of material.
 - 15 trucks per day and two months for completion.

The application outlines that proposal relates to an activity which requires a **waste licence**. I note that these relate to landfill developments and the current application is for the infilling of land through filling of material comprising clay, silt, sand, gravel and stone which would not fall under the remit of a waste licence but may require Local Authority authorisation in the form of a certification of registration or a Waste permit.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to 7 conditions.

Condition 1 refers to a) a **3 year** permission and b) the depositing of inert soils shall be limited to a period of 2 months from the date of commencement.

Condition 7 refers to a financial contribution of ~~€~~**8,712** in accordance with the Wicklow County Council's General Development Contribution Scheme and Section 48 (1) of the Planning and Development Act 2000 as amended towards the provision of public Infrastructure and facilities

3.2. Planning Authority Reports

3.2.1 Planning Report

A grant of permission was recommended following further information that dealt with outstanding issues pertaining to traffic.

3.3. Other Technical Reports

3.3.1 Environment Section: No objection, subject to conditions.

3.3.2 Area Engineer, Initial Concerns were addressed in the further information submission and the Area Engineer was satisfied that any outstanding issues could be addressed by condition and the requirement for a financial bond to be put in place.

3.4. Prescribed Bodies

Inland Fisheries Ireland. No objection subject to compliance with a waste licence.

3.5. Third Party Observations

One third party observation was received by the Planning Authority and can be summarised as follows:

- Traffic impact on the road network which is characterised by narrow country roads and access via a single lane old bridge.
- Site Notice for the Waste Licence was not displayed for 5 weeks.

4.0 Planning History

4.1. There are no planning applications relating to the site as per the Councils Planning Register. No details have been submitted of the landholding from which the site is taken.

4.2. The applicant has referred to the following Planning Applications for Land reclamation, on behalf of TP & S Delahunt, in correspondence to the Planning Authority. The development contributions were calculated as 'extractive/disposal' type development as per Table 4.4 of the Wicklow Development Contribution Scheme 2015.

Planning Authority Reference No. 17221 refers to a 2017 grant of permission at Corballis Upper, Rathdrum, Co. Wicklow. Site Area of c.6.583 hectares, 23,868 tonnes of material. A development contribution of €21,724 was attached.

Planning Authority Reference No. 16571 refers to a 2016 grant of permission at Cunniamstown Big, Rathdrum, Co. Wicklow. Site Area of c. 1.7 hectares, 48,260 tonnes of material. A development contribution of €5,610 was attached.

Planning Authority Reference No. 16163 refers to a 2016 grant of permission at Ballinaclogh, Rathnew, Co. Wicklow. Site Area of c.1.4 hectares, 22,000 tonnes of material. A development contribution of €3,300 was attached.

5.0 Policy Context

5.1. Wicklow County Council General Development Contributions Scheme 2015

5.1.1. Table 4.4 sets out the development contributions which apply to miscellaneous development. This includes Extractive/Disposal development at a rate of €3,300 per hectare per 10 metre depth.

5.1.2. Section 4.7 defines the area for the purposes of the Extractive /Disposal development type referred to in Table 4.4, as the area from which it is proposed materials will be extracted from or deposited on. Buffer zones will not be included.

Extractive/Disposal development will incur a special contribution for upgrading of the local road network facilitating the particular development, where required.

5.1.3. Section 4.9 refers to a reduced rate for temporary permissions to be calculated at:

- 33% of normal rate of permissions up to 3 years.
- 50% of normal rate of permissions up to 5 years.
- 66% of normal rate of permissions up to 10 years.

5.2.4 Section 5 sets out the Exemptions/reduction in accordance with Section 48 (3) (c) of the Planning and Development Act 2000 as amended. Table 5.1 refers to 100% exemption from all development contribution charges in relation to agricultural developments.

5.2. Wicklow County Development Plan 2016-2022

The site is governed by the policies and provisions contained in the County Development Plan

Appendix 1 includes general development standards for facilities for the disposal of inert materials.

5.4 Definitions

5.4.1 There is no definition of 'agricultural' provided in the Development Contribution Scheme.

5.4.2 In order to assess whether or not the works proposed to be carried out constitute agricultural development, regard should be had to the following items of legislation:

Planning and Development Act, 2000 as amended.

Section 2(1) defines among other things “**agriculture**” – includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins, or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds and “agricultural” shall be construed accordingly.

5.5 Natural Heritage Designations

Maherbeg Dunne SAC (Site Code 001766)-is located c. 2.2 km to the southeast of the site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The appeal is a first party appeal, seeking the removal of Condition 7 of the Planning Authority's decision which requires the payment of a development contribution and can be summarised as follows:

- The proposal relates to agricultural development and Table 5.1 of the Wicklow County Council Development Contribution Scheme states that Agricultural Development is 100 % exempt from development contributions.
- The area to be infilled is 2.64 hectares, the depth of fill is 1.335 metres (minimal) to reclaim land for farming purposes.

6.2. Planning Authority Response

6.2.1 The response is set out as follows:

- The Planning Authority does not consider that the proposed development is 'Agricultural'. The proposed development consists of the disposal of inert soils to allow for the raising/levelling of existing agricultural lands.
- Such developments are common place in rural Wicklow, where the landowner imports inert materials to be placed in their land, with a consequential benefit to the farming of the land in the future.
- The proposed development falls into the category of development type contained in Table 4.4 of the Scheme 'Extractive/Disposal. For this reason, the 100% exemption/reduction contained in Table 5.1 of the Scheme does not apply. Furthermore, this exemption only applies to agricultural buildings.

6.3. Observations

None received.

7.0 Assessment

7.1. Nature of Appeal

7.1.1. As this appeal is under Section 48(10)(b) of the Planning and Development Act 2000, as amended only, where the applicant considers that the terms of the relevant development contribution scheme have not been properly applied, the Board will not determine the application as if it was made to it in the first instance and will only determine the matters under appeal.

7.2. Application of Development Contribution Scheme

7.2.1 The issue in this appeal relates to whether the terms of the current Wicklow County Development Contribution Scheme 2015, adopted on the 5th October 2015 have been properly applied.

7.2.2 The proposed development relates to the reclamation of c. 2.64 hectares of land through the filling of material comprising clay, silt, sand, gravel and stone for the purposes of improving land. The Planning Authority attached condition No. 7 which requires the developer to pay €8,712 to Wicklow County Council in accordance with the General Development Contribution Scheme 2015. The applicant is seeking the removal of this condition as the proposal relates to agricultural development which they consider to be exempt from development contributions under the terms of the adopted Development Contribution Scheme

7.2.3 The Planning Authority in their response to the appeal do not accept the applicant's assertion that the proposed development should be considered as agricultural development. In addition, the Planning Authority note that the exemptions relating to agricultural development relate to only to agricultural buildings.

7.2.4 Having examined the Councils adopted Development Contribution Scheme I note that there is no definition for agricultural development and I cannot find a reference to indicate that the exemption for agricultural development applies to agricultural buildings only. I, therefore, refer to the definition of agriculture as

set out in the Planning and Development Act 2000 as referenced in section 5.4 of this report. The current application is for the reclamation of land using imported materials from outside the landholding to be disposed of/deposited on the site. Therefore, the proposed development is considered a 'disposal' type of development and not an agricultural development and I consider that the Planning Authority was correct in applying a financial contribution in accordance with the rate set out in section 4.4 for 'disposal type' of developments.

7.2.5 Having reviewed the planning applications for land reclamation developments cited in the applicant's correspondence to the Planning Authority (date stamped by Wicklow County Council 29th June 2017), I note that the general contribution scheme was applied in the same manner to these land reclamation applications as the current application before the Board and that the Planning Authority has been consistent in the application of the scheme.

7.2.6 I am satisfied that the Planning Authority is correct in seeking to apply a development contribution in accordance with the terms of their Development Contribution Scheme which clearly and unambiguously states that disposal developments consisting of the deposition of materials on land shall be subject to a development contribution.

7.2.7 Section 4.9 of the Wicklow County Council Development Contribution Scheme refers to a reduced rate for temporary permissions to be calculated at 33% of normal rate of permissions up to 3 years. Therefore, in this instance where the Planning Authority has restricted the duration of the permission to 3 years under condition No. 1, the amount stated by the Planning Authority of €8,712 should be reduced by €2,875 and the development contribution due amended to €5,837.

7.2.9 In conclusion, I consider that the Board should direct the Planning Authority to amend the wording of Condition 7 to reduce the amount payable from €8,712 to

€5,837 since the original sum charged by the Planning Authority did not include a reduction which applies to temporary permissions.

8.0 Recommendation

- 8.1.** I recommend that the Board directs the Planning Authority under subsection (1) of section 139 of the Planning and Development Act, 2000, as amended, to amend Condition 7 so that the amount payable is reduced from €8,712 to €5,837. Amended condition should read as follows:

The developer shall pay to the planning authority a financial contribution of €5,837 (Five thousand, eight hundred and thirty-seven euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be 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, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. 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 An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

9.0 REASONS AND CONSIDERATIONS

- 9.1.** Having regard to:

- (a) The nature of the development which relates to the reclamation of c. 2.64 hectares of land through the filling of material comprising clay, silt,

sand, gravel and stone for the purposes of improving land together with site access and associated works.

- (b) The provisions of the Wicklow County Council General Development Contributions Scheme 2015.

the Board considers that the terms of the Development Contribution Scheme have been properly applied by the Planning Authority. The Board considered that the proposal development falls within the remit of extraction/disposal type of development for the purposes of Table 4.4 of the Development Contributions Scheme and therefore would be subject to a development contribution in accordance with the terms of the Development Contribution Scheme.

Dáire McDevitt
Planning Inspector

19th October 2017