



An  
Bord  
Pleanála

## Inspector's Report PL.04.249218

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<b>Development</b>	To construct new playing pitch with associated site works which include the importation of waste material (soil and stone only) with ancillary works. An Environmental Impact Statement (EIS) is submitted.
<b>Location</b>	Garraha, Kinsale, Co. Cork.
<b>Planning Authority</b>	Cork County Council.
<b>Planning Authority Reg. Ref.</b>	16/06220.
<b>Applicant(s)</b>	Kinsale Rugby Club.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant subject to conditions.
<b>Type of Appeal</b>	First Party v Special Development Contribution Condition.
<b>Appellant(s)</b>	Kinsale Rugby Club.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	09/11/2017.
<b>Inspector</b>	A. Considine.

## 1.0 Site Location and Description

1.1. The subject site is located approximately 3km to the east of the town of Kinsale in the townland of Snugmore, and immediately to the west of the existing grounds of the Kinsale Rugby Football Club and Kinsale Tennis Club. The Sports Ground complex site includes four full size rugby pitches and five all weather tennis courts, all with floodlights. There are two clubhouses, one for the Rugby Club and one for the Tennis Club and car parking to the south of the wider site. There is also a gym building within the complex. There are two vehicular access points to the overall site. Access to the site is over the R600 Regional road and local road network, including the L3228-36 from the Pewterhole Cross for approximately 1km.

## 2.0 Proposed Development

2.1. Planning permission is sought to construct a new playing pitch with associated site works which include the importation of waste material (soil and stone only) with ancillary works. An Environmental Impact Statement (EIS) is submitted with the application, all at Garraha, Kinsale, Co. Cork.

2.2. The application included the following documents:

- Plans and particulars
- Landscaping Master Plan
- Emergency Response Procedure
- Environmental Risk Management
- Stage 1 Screening Assessment for Appropriate Assessment
- Environmental Impact Statement
- Closure Plan
- Waste Acceptance Procedure.

2.2.1. Following the request for further information, the applicant confirmed acceptance of a supplementary development contribution to cover the necessary repair of any potential road damage. The following documents were also submitted:

- Proposed Site Layout with Contours & Levels

- Photomontage Report
- Felling Licence
- Tree Survey and Plan
- Landscaping Plan
- Archaeological Assessment
- Traffic Management Plan

### 3.0 Planning Authority Decision

#### 3.1. Decision

The Planning Authority decided to grant planning permission for the proposed development subject to 24 no. conditions including condition 3 which states as follows:

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 €75000.00 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 repairs to, and replacement of, road surface / junctions / entrance between the site and Pewterhole Cross 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 Planning 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 report notes the further information responses as well as the comments from internal departments in relation to the proposed development. The development will require 56,000m<sup>3</sup> of fill over the 2.08ha site in order to construct the new playing pitch. The initial planning report noted the unauthorised developments which have occurred at the site. The report notes that a waste licence will be required for the development and the conclusions of the Planning Officer formed the basis of the planning authority's decision.

### 3.2.2. Other Technical Reports:

Environment Section: Further information required.

Following receipt of the response to the FI request, no objections raised subject to compliance with conditions.

Archaeologist:

Further information required.

Following receipt of the response to the FI request, no objections raised subject to compliance with condition.

Area Engineer:

Notes inaccuracies in the site layout plan and the fact that a large volume of fill has already been brought onto the site and a substantial haul road has already been created along the site boundary with the tennis courts. Concerns are raised in terms of the cost of maintenance and repair of the public roads, damaged by the haulage operations, out of Council funds while there are commercial opportunities arising from the filling of the site. A supplementary development contribution is required.

Following receipt of the response to the FI request, a robust volumetric calculation for the number of cubic meters of material that once in situ will form the development is required. In the absence of the information a full assessment cannot be made in terms of estimated traffic movements or a reasonable estimate of the monetary value of the fill, thereby applying a reasonable planning contribution.

Following receipt of the response to the further information request, the Area Engineer calculated a development contribution of €75,000 should be applied (which is circa 15% of the Engineers

estimated earning potential of the site). Total cost of works is estimated at €150,000.

### 3.2.3. Prescribed Bodies:

Irish Water:	No objection.
Inland Fisheries Ireland:	Raises a number of concerns in terms of the protection of waters as well as the principle of granting permits to raise land levels in what are predominantly low lying sites and flood plains.
An Taisce:	It is unclear from the application the amount of fill to be used. The EIS states that 'it should be noted that this is a disused quarry that is being returned to agricultural use'. The site however, is a 'conifer plantation, consisting predominantly of sitka spruce and Japanese larch'.

## 4.0 Planning History

The following is the relevant planning history associated with the site:

**PA Ref 94/78:** Permission granted for the construction of clubhouse (Rugby Club) including function room and demolition of existing club premises.

**PA ref 03/978:** Permission granted to Kinsale RFC for the construction of entrance subject to conditions.

**PA ref 08/5172:** Permission granted for the retention and completion of 2 no. store rooms for the storage of training and playing equipment and associated works, subject to conditions.

**PA ref 14/4326:** Permission granted to Kinsale RFC for the replacement of floodlights, erection of new floodlights and retention of floodlights, subject to conditions.

PA Ref 16/5932 and PA Ref 16/6022 were deemed invalid.

**PA ref 96/1031:** Permission granted to the Kinsale Tennis Club for the erection of outdoor lights over tennis courts subject to conditions.

**PA ref 97/1321:** Permission granted to the Kinsale Tennis Club for the reconstruction of clubhouse and new entrance.

**PA ref 01/6019:** Permission granted to the Kinsale Tennis Club for the erection of 4 no. floodlights to Court no. 3 subject to conditions.

**PA ref 06/12498:** Permission sought by the Kinsale Tennis Club for the construction of double all-weather, floodlit court and associated perimeter fence and light standards. No decision issued.

**PA ref 07/8133:** Permission granted to the Kinsale Tennis Club for the construction of 2 no. all-weather floodlit tennis courts and associated perimeter fence and 9 no. 8m high light standards, 1 no. small practice court with perimeter wall / fencing subject to conditions.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The Cork County Development Plan, 2014 is the relevant policy document pertaining to the subject site. The site is located within a high value landscaping and in proximity to a designated scenic route, the R600.

### 5.2. Cork County Development Contribution Scheme 2009:

5.2.1. The General Development Contribution Scheme was prepared in order to comply with the requirements of the Planning & Development Act, 2000 (as amended). Cork County Council, by resolution, made a scheme in 2004. The Scheme does not provide for landfill within the General Contribution Scheme. The Board will note that the Contribution Scheme was updated in 2013

5.2.2. The General Development Contribution Scheme provides for the following exemptions or percentage reductions, in respect of a number of categories, including the following:

Categories	<i>Reduction</i>
Provision of facilities by organisations which are considered to be exempt from planning fees as outlined in Part 12 Article 157 (1a-c) of the Planning & Development Regulations 2001 *	100%
Voluntary organisations / voluntary or co-operative housing bodies as outlined in Part 12 Article 157 (2) of the Planning & Development Regulations 2001 **	100%

\* *“Where a planning application consists of ..... (a) is designed or intended to be used for social, recreational educational or religious purposes by the inhabitants of a locality, or by people of a particular group or religious denomination, and is not to be used mainly for profit or gain, (b) is designed or intended to be used as a workshop, training facility, hostel or other accommodation for persons with disabilities and is not to be used mainly for profit or gain, or (c) is ancillary to development referred to in paragraph (a) or (b) a fee shall not be payable when making any such application.”*

\*\* *“Where a planning application consists of or comprises the provision of houses, or development ancillary to such provision, which is proposed to be carried out by or on behalf of a body approved for the purposes of Section 6 of the Housing (Miscellaneous Provisions) Act, 1992 (No. 18 of 1992) and is not to be used mainly for profit or gain, a fee shall not be payable in respect of any such development.”*

5.2.3. The Scheme also provides for the levying of a Special Development Contribution in respect of **any** development where specific exceptional costs, not covered by the General Scheme are incurred by any Local Authority in respect of public infrastructure and facilities which benefit the proposed development.

### 5.3. **Planning & Development Act, 2000, as amended**

The following Sections of the Act are relevant:

*Section 48*

(1) A planning authority may, when granting a permission under section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided,



by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).

(2) (a) Subject to paragraph (c), the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section, and a planning authority may make one or more schemes in respect of different parts of its functional area.

(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.

(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.

- (13)(a) Notwithstanding sections 37 and 139, where an appeal received by the Board after the commencement of this section relates solely to a condition dealing with a special contribution, and no appeal is brought by any other person under section 37 of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance, but shall determine only the matters under appeal.
- (b) Notwithstanding section 34(11), where an appeal referred to in paragraph (a) is received by the Board, and no appeal is brought by any other person under section 37, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal, provided that the person who takes the appeal furnishes to the planning authority, pending the decision of the Board, security for payment of the full amount of the special contribution as specified in the condition referred to in paragraph (a).

#### **5.4. Planning & Development Regulations, 2001**

Article 157 of the Planning and Development Regulations specifies the circumstances under which the applicant is exempt from the payment of a fee for a making a planning application as follows:

*Article 157*

1. Where a planning application consists of or comprises development which, in the opinion of the planning authority, is development proposed to be carried out by or on behalf of a voluntary organisation, and which in the opinion of the planning authority—
  - (a) is designed or intended to be used for social, recreational, educational or religious purposes by the inhabitants of a locality, or by people of a particular group or religious denomination, and is not to be used mainly for profit or gain,

(b) is designed or intended to be used as a workshop, training facility, hostel or other accommodation for persons with disabilities and is not to be used mainly for profit or gain, or

(c) is ancillary to development referred to in paragraph (a) or (b), a fee shall not a fee shall not be payable when making any such application.

## **6.0 The Appeal**

This is a first party appeal against the inclusion of a Special Development Contribution Condition in the decision to grant permission for the proposed development.

### **6.1. Grounds of Appeal**

The following is a summary of the appeal:

- The works are being undertaken by a voluntary organisation, intended for use for social and recreational purposes by the inhabitants of the locality and as such are entitled to an exemption from planning contributions.
- The contribution sought is for works which are levied under the General Development Contribution Scheme.
- The works do not constitute 'specific exceptional costs not covered by a scheme' in that the works specified comprise maintenance and upgrading related works levied under General Development Contributions.
- The works represent public infrastructure works not only benefiting the proposed development of new playing pitch development, but also surrounding development in the area.
- The levy has not been applied proportionally having regard to existing and permitted development in the area.
- The levy has been derived as a % calculated based on the 'earning potential' of the site in response to the importation of waste material to raise the ground level for the purposes of recreation / playing pitch.

- It is submitted that the Special Development Contribution amounts to double and treble charging.
- Condition 3 fails to identify the specific exceptional costs which the local authority will incur.
- The Cork County Council Development Contribution Scheme does not facilitate levying of a contribution on development of playing pitches.

It is requested that the condition be removed.

## 6.2. Planning Authority Response

The Planning Authority did not respond to this appeal.

## 6.3. Observations

None.

## 7.0 Assessment

- 7.1. This assessment relates to a first party appeal under S48(13) of the Planning & Development Act, 2000 as amended. The development comprises the construction of a new playing pitch with associated site works which include the importation of waste material, soil and stone only at Kinsale Rugby Club. The information available to the Board indicates that a total of 95,377 tonnes of fill will be imported to the site.
- 7.2. The first party has appealed condition no. 3 of the decision of Cork City Council to grant permission for the proposed development. Condition 3 requires the payment of a Special Development Contribution of €75,000.00 *for the provision of repairs to, and replacement of, road surface / junctions / entrance between the site and Pewterhole Cross Roads*. No other appeal has been brought against that decision.
- 7.3. Section 48(10)(c) provides that where no other appeal of the decision is brought, the planning authority shall make the grant of permission provided security for the full amount of the contribution is furnished by the appellant. In the absence of any other appeal under S.37, and having regard to the above provisions of the Act, this report is restricted to the consideration of Condition no. 3 of the Planning Authority's grant

of planning permission only. In considering the appeal, I note that the Board is bound by the terms of the adopted Development Contribution Scheme and Supplementary Development Contribution Scheme and cannot deviate from same. The merits or appropriateness of any adopted Development Contribution Scheme is not open for interpretation by the Board as referenced in *Cork City Council –v- An Bord Pleanala* (2006). Rather, the Board is required to assess whether the terms of the scheme, as written, have been correctly applied.

- 7.4. The first party appeal in the first instance, submits that the proposed development works are being undertaken by a voluntary organisation with the intended use of the pitch for social and recreational purposes by the inhabitants of the locality. In this regard, it is submitted that the applicant is entitled to an exemption from planning contributions. I am satisfied that this is the case and the Board will note that no condition was included in the Planning Authority's decision to grant permission which required the payment of a development contribution in terms of the General Development Contribution Scheme.
- 7.5. In terms of the Special Development Contribution request, the Board will note that the applicant was advised during the further information stage of the planning assessment with Cork County Council, that a contribution to cover the necessary repair of any potential road damage would be required. I also note the confirmation from the applicant at that time, that such a contribution is acceptable.
- 7.6. The first party, in this appeal, has essentially submitted that the Planning Authority has failed to comply with the requirements of Section 48(12) of the Planning and Development Act, 2000, as amended, in that it has not clearly identified the 'specific' or 'exceptional' costs which the Local Authority will incur in respect of public infrastructure and facilities benefitting the proposed development.
- 7.7. The calculation of the contribution has been based on the Area Engineer's assessment of possible earnings potential for the site. The Area Engineer considers that the local road from the R600 is strategic in providing access to the cemetery, hotel, Soccer Club and schools. The relevant report identifies that the existing road does not currently support a high level of HGV traffic, and notes that it is HGVs that damage the road structure. An assessment of the application indicates that the development will result in approximately 3,700 trips, using a figure of 57,000m<sup>3</sup> of

waste to be imported. The distance from the Cross Road to the site is 1km and it has been calculated that the cost of the road improvement works will be €150,000. It is the recommendation of the Area Engineer that the applicants contribute €75,000 of this figure, which amounts to circa 15% of his estimated earning potential for the site.

7.8. I would refer the Board to Section 48(2)(c) of the Act which states that Planning Authorities may require the payment of a special development contribution in respect of a particular development where specified exceptional costs not covered by the General Contribution Scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development. In addition, Paragraph 7.12 of the 'Development Management, Guidelines for Planning Authorities, 2007' is relevant and states as follows:

“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”.

7.9. Therefore, on the basis of the foregoing, 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. In this instance, I would consider that the works described in the condition under appeal would generally come under the provisions of the General Development Contribution Scheme. However, given the nature of the primary development proposed at the site, being the development of a playing pitch, I am satisfied that the applicant is exempt from the requirements of the General Development Contribution Scheme.

7.10. The main area of concern for the Planning Authority is the necessary filling of the site to facilitate the pitch development and the associated traffic during this period of the

development. I acknowledge the logic of the Area Engineer in terms of the earning potential of the site from the importation of fill, but there is no indication that this element of the development will be operated as a commercial operation, separate from the recreational nature of this sports complex. If it has been determined that the development of a further rugby pitch, which is exempt from the payment of a development contribution, is acceptable at this location, then the works required to develop same are also acceptable.

7.11. The Cork County Council General Development Contribution Scheme also provides for the levying of a Special Development Contribution in respect of **any** development where specific exceptional costs, not covered by the General Scheme are incurred by any Local Authority in respect of public infrastructure and facilities which benefit the proposed development. While any road improvements and repairs would benefit the proposed development, I consider that the level of information provided, including the detail of the works to be undertaken, is inadequate to consider that a Special Development Contribution is payable in this instance.

## 8.0 CONCLUSION & RECOMMENDATION

Conclusion:

8.1. Having regard to the nature of this appeal and the proposed development, and in accordance with section 48 of the Planning and Development Act, 2000, as amended by section 30 of the Planning and Development Act, 2010, I consider that condition 3 of the grant of planning permission fails to meet the requirements of Section 48 of the Act.

Recommendation:

8.2. In the light of the above, I therefore recommend that the Planning Authority be directed under subsection 13 of section 48 of the Planning and Development Act, 2000, as amended by section 30 of the Planning and Development Act, 2010 to REMOVE condition no. 3 and the reasons therefore, for the Reasons and Considerations set out below.

## **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 3 and the reason therefore.

## **REASONS AND CONSIDERATIONS**

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, considered, based on the reasons and considerations set out below, that the item imposed under condition 3 (€75,000.00 (seventy five thousand euro)) as a special development contribution towards the cost of repairs to, and replacement of, road surface / junctions / entrance between the site Pewterhole Cross 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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A. Considine  
Planning Inspector

4<sup>th</sup> December, 2017