



An  
Bord  
Pleanála

## Inspector's Report ABP.300890-18

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<b>Development</b>	Sand and gravel quarry with an extraction area of approx. 1.7ha and associated site works
<b>Location</b>	Ballyroe, Ballyhea, Charleville, Co. Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	15/4659
<b>Applicant(s)</b>	Ballyhea Asset Holdings Ltd.
<b>Type of Application</b>	Planning permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Ballyhea Asset Holdings Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	9 <sup>th</sup> June 2018
<b>Inspector</b>	Mary Kennelly

## **1.0 Site Location and Description**

- 1.1.** The site is located off the N20 Cork to Limerick road, approx.. 6km to the south of Charleville, Co. Cork. It is situated in the townland of Ballyroe, which is approx. 2km to the south west of Ballyhea. The site is accessed from the N20 by means of a local road which runs westwards to AGLISH Crossroads and from there by a further local road which runs southwards toward Longford Bridge. The appeal site is located on private road which leads westwards from the AGLISH Cross-Longford Bridge road, approx. halfway along this road.
- 1.2.** The site is stated as being c. 3ha in area, with a proposed extraction area of 1.7ha. It forms part of an agricultural field, which is part of the applicant's overall landholding. The closest dwellings are stated to be 370m south, 275m west, 540m north and 680m east of the proposed development. The Awbeg River is located approx. 200m to the south and the Ballyhoura Mountains are located to the east of the N20.

## **2.0 Proposed Development**

- 2.1.** The proposed development involves the extraction of limestone sand and gravel from a proposed extraction area of 1.7ha. It is anticipated that there would be approx. 100,000 tonnes of sand and gravel extracted per annum. It is stated that all of the sand and gravel extracted will be brought to the batching plant permitted on the landholding under 99/3947. Quarry works will largely be confined to daylight hours. It is stated that there will be a need to remove approx. 600mm of overburden, which will be used for berm/landscaping or sold to customers and/or stored until decommissioning stage.
- 2.2.** The sand and gravel will be extracted by an excavator machine and loaded into a tipper truck by means of a loading shovel. It will then be taken to a nearby existing concrete batching plant, approx. 1.5km away by road, with occasional deliveries elsewhere. The extracted sand and gravel will not be stored on site, but will be stored at the site of the batching plant, where it will be screened and washed. The batching plant is located to the east of AGLISH Cross at Ballinadridden. It is proposed to extract c. 20,000 tonnes of stone per annum over a 5 to 10 year period, the

majority of which will be used to supply the nearby concrete batching plant. The remaining aggregate will be sold directly. It is stated that approx. 15-20 lorry loads of aggregate will leave the site every week, carrying 20 tonnes per lorry.

- 2.3.** An Environmental and Planning Report, prepared by McCutcheon Halley Walshe, and an Appropriate Assessment Screening Report were submitted with the application which was received by the P.A. on 2<sup>nd</sup> April 2015. Further information was submitted on 7 March 2016 which included a revised AA Screening Report, and Archaeology report, a Flood Risk Assessment and revised drawings relating to traffic management. Following further requests for clarification, further information was again submitted on 30 January 2017 and on 24<sup>th</sup> November 2017, which included a Natura Impact Statement (Stage 2) and a revised Landscape and Restoration Plan.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to grant permission for a ten year period subject to 36 no. conditions.

Condition 11 – No dust, mud or debris to be carried onto public road.

Condition 12 – Wheel washes to be installed.

Condition 26 – Sight distances of 80 metres in both directions.

Condition 32 – A road conditioning survey to be undertaken and submitted to P.A. for assessment prior to commencement of development.

Condition 33 – The developer shall create passing bays on the approach road L5529 from the site north to Aglish Cross. Details to be agreed and costs to be borne by developer.

Condition 34 – Access to the site shall be via L5529 to the south of Aglish Cross and east to access the N20 only. No traffic movements for heavy vehicles are to turn right from the site to access the N20 due to condition of road and presence of stone masonry bridge along route (Longford Bridge).

Condition 35 – A Special Development Contribution of €14,000.00 shall be paid to Cork Co. Co. in respect of specific exceptional costs not covered in the Council's

General Development Contribution Scheme in respect of works proposed to be carried out, for the provision of road upgrade works.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The main issues highlighted in the first Planner's report (26/5/15) included the appropriateness of the site, the planning history of the site and existing quarry, the accuracy of drawings and information regarding operations and identified a need for additional information such as Access to the site; Landscaping and Restoration plan; Flood risk Management Plan; An assessment of archaeological and cultural heritage (due to presence of archaeological sites and recorded monuments); and appropriate assessment screening (due to proximity to Blackwater River SAC). The following comments were also made in respect of traffic and transport/access issues:-

- The site is accessed from the N20 by means of the L5530 and then from the L5529. The submissions indicate that there would be 3-4 HGV trips per day, based on 15-20 lorry loads a week carrying 20 tonnes per lorry. Given the ambiguity regarding annual extraction rates and number of employees, further clarification would be required.
- Applicant proposed to reduce vegetation to south of entrance to achieve appropriate sightlines. However, the Roads Dept. considers that significant levels of trees/hedgerows would have to be removed. This would be problematic in terms of other policy objectives relating to landscape and ecology as the Blackwater River SAC lies immediately to the south of the entrance. Further information would be required.
- The L5529 would have to be widened. The width stated in original drawings of 5m is disputed, and is more like 3.5-4m this road would have to be widened to 5.5m between the entrance and Aglish Cross roads to the north (approx. 130m), which would have to be carried out at the applicant's costs.

It was concluded that the proposed development should be deferred pending the receipt of further information. A FI request was issued on 26/5/15 and the response was received on 7/3/16.

### 3.2.2. Other Technical Reports

**Roads** -22/5/15. It was noted that L5529 is moderately trafficked but that site is located close to a series of bends, one of which is directly adjacent to the entrance. It was considered that forward visibility in a southerly direction was inadequate and would require the removal and setting back of hedging/ditches on both sides of the road, which will include need for landowner consent across road). To north of entrance, road was considered to be inadequate for additional truck movements without being widened to a minimum of 5.5m as far as Aglish Cross, and costs to be borne by applicant. This will require landowner consent. Condition will be required to prevent traffic movements from site to travel south towards Longford Bridge. It was noted that a **Special Contribution** of €14,000 would be required for the resurfacing of the entrance both to this site and Aglish Cross junction north of the development due to turning movements of trucks using this development (100\*4m\*€35/m<sup>2</sup>). FI was requested in respect of the foregoing.

**Environment** – 22/5/15. Issues raised related to noise, dust, vibration, ground water, surface water and waste. FI was requested in respect of whether dewatering would be required, pollution control and the method of construction of the 300m access track within the site/landholding.

**Ecologist** – 25/5/15. Inadequate information had been provided regarding issues relating to soil management, dewatering, flood risk and drainage, particularly in respect of potential impacts on the SAC. A comprehensive Landscape Restoration Plan and a Revised AA Screening report were also requested.

**Archaeologist** – 19/5/15 it was noted that the proposed development was large in scale and that there were several archaeological monuments and some Recorded Monuments in the vicinity. The information provided with the application was considered inadequate and further information was requested.

### 3.2.3. Further Information March 2016

Further information was submitted on 7<sup>th</sup> March 2016. This consisted of Revised AA Screening Report, an Archaeological Report and a Flood Risk Assessment report. In addition, revised drawings were submitted in respect of the public road providing access to the site.

The revised access proposals included provision for improved sightlines to the south of the entrance (Drawings 2712-04/04A) and the provision of three passing bays to the north of the entrance (Drawing 2712-08). It was stated that the existing vegetation to the south of the entrance would be reduced to 900mm to facilitate the required sightlines and that this could be accommodated within the applicant's lands. It was also pointed out that sightlines of 80m in both directions had already been permitted under 12/5271 (permission of industrial use). The proposed passing bays are stated to be at locations where there are already existing informal passing points, which means that interference with existing hedgerows will be minimised as the space to facilitate the passing bays is stated to be available within the existing roadside verges. As there will be no impacts on third party lands, no consents are required. The drawings also demonstrated that the entrance is capable of accommodating HGVs turning at this location.

The Roads Department was satisfied with the FI response subject to conditions (31/3/16). The Environment Dept. and the Archaeology Section were satisfied with the FI subject to conditions. However, the Ecologist considered that the proposed development could have the potential to give rise to serious negative effects on the Blackwater river SAC and required the submission of a NIS. It was further considered that the Landscape and Restoration Plan did not provide for meaningful biodiversity enhancement and further information was required in this respect also.

#### **3.2.4. Further Information January 2017**

The FI submitted on 30/1/17 comprised a Natura Impact Statement and a Revised Landscape/Restoration Plan These submissions were readvertised. The Archaeologist and the Environmental Officer submitted updated reports and raised no objection subject to conditions. However, the Area Engineer was not satisfied with the revised proposals in respect of loss of flood plain storage and the potential impacts on the capacity of the Awbeg River. The Ecologist was also concerned about flood plain capacity issues and remained concerned regarding the proposals for landscape restoration. It was recommended that further information be required in respect of cumulative impacts assessment on flood risk and that a revised landscape restoration plan be submitted.

### 3.2.5. Further Information 24<sup>th</sup> November 2017

All departments were satisfied with the response subject to conditions. The Area Planner recommended permission be granted subject to conditions.

### 3.3. Prescribed Bodies

**Irish Water** 30/4/15– No objection subject to conditions.

**An Taisce** 28/4/15 – any consideration of this proposal needs to be integrated with the long term management of the excavation and lagoon to the east.

**Geological Survey of Ireland** 7/5/15 – no objections

### 3.4. Third Party Observations

None.

## 4.0 Planning History

Full details of the planning history of the site and on adjacent sites is provided in the First Area Planner's report (26/5/15), the most relevant of which are as follows:

**86/3172** – planning permission granted for retention of sand and gravel pit to Denis and Thomas Mc Namara-it was subsequently confirmed by the applicant's agent that this quarry has ceased operations.

**99/3947** – planning permission granted for retention of concrete batching plant, storage shed and 3 no. oil tanks at Ballynadridden, Ballyhea.

**05/2386** – planning permission granted for construction of portal frame building consisting of offices, steel fabrication workshop and electropolishing plant.

**12/5271** – planning permission granted for retention of extensions to existing light industrial engineering workshop.

## **5.0 Policy Context**

### **5.1. Quarries and Ancillary Activities Guidelines for P.A. s 2004**

### **5.2. Development Plan**

#### **Cork County Development Plan 2014**

**EE 12-1 Safeguarding Mineral Resources** – protect County’s natural mineral resources.

**EE 12-3 Impacts of Mineral Extraction** – minimise environmental and other impacts of mineral extraction.

**GI 6-1 Landscape** – preserve and enhance visual and scenic amenities including discouraging developments which would require the removal of extensive amounts of trees.

**HE 2-1** – protect those features of natural, built and cultural heritage importance.

**HE 3-1 Protection of Archaeological Sites** –

### **5.3. Natural Heritage Designations**

There are three European sites within 10km of the site as follows –

Blackwater River SAC (002170) which is adjacent to site;

Ballyhoura Mountains SPA which is 6km to the east

Kilcolman Bog SPA which is approx. 7km from the site.

## **6.0 The Appeal**

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

The first party appeal was submitted by McCutcheon Halley Planning Consultancy on behalf of the applicant. The appeal is against Condition No. 35 only, which requires the payment of a Special Contribution of €14,000. The main points raised may be summarised as follows:



- **Not ‘Specific’ or ‘Exceptional’** - The Council has not demonstrated that the costs incurred are either specific or exceptional as stated in the reason for the condition, and as required by Section 48(2)(c) of the Planning and Development Act 2000. There is an onus on the P.A. to demonstrate that the works are ‘exceptional’ in the sense that they could not have been envisaged at the time that the Development Contribution Scheme was approved. It is also required that the P.A. demonstrate that the works are ‘specific’ to this development and would benefit the permitted scheme rather than the general area, and would not be incurred at all if the proposed scheme did not go ahead.
- The onus is on the P.A. to specify the particular works carried out or which are proposed to be carried out or which are proposed to be carried out in accordance with Section 48(12)(a) of the P & D Act.. In this instance the condition merely states that it is in respect of “the provision of road upgrade works”. The condition should therefore be omitted.
- **Insufficient justification for cost of works** - The Council has not provided sufficient justification to warrant the costs of the works sought by the special contribution. There is an onus on the P.A. to clearly demonstrate the basis on which the special contribution is calculated and to ensure that it is in accordance with both Section 48 and with its own Development Contribution Scheme. The works identified are general upgrade/maintenance works and are not generated by or specific to the development and should not therefore be levied as a special contribution charge.
- **Double charging** - The Council is incorrectly seeking that the applicant pay a special development contribution in conjunction with undertaking road improvement works. The applicant has contributed to the provision of road improvements through the provision of passing bays on approach road L5529 from the site north to Aglish Cross, as required by Condition No. 33 of the planning permission. Given the significant contribution towards road improvement works, the applicant should not be charged for resurfacing/general improvement road improvement works as this would amount to double charging.

- It is requested that the appeal be dealt with under Section 139 of the 2000 Act and that condition 35 be omitted.

## 6.2. Planning Authority Response

The P.A. has not responded to the grounds of appeal.

## 7.0 Assessment

### 7.1 Legislation and Guidance

7.1.1. As the appeal is solely against Condition 35 of the planning permission, relating to a Special Financial Contribution, Section 48(13)(a) of the Planning and Development Act 2000, as amended, applies. This 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.

7.1.2. Condition 35 requires the payment of a special contribution of **€14,000**

“in respect of specific exceptional costs not covered in the Council’s General Development Contribution Scheme, in respect of works proposed to be carried out for the provision of road upgrade works.”

I note, however, that there is no condition attached to the permission requiring the payment of a financial contribution in respect of public infrastructure and facilities benefitting development in the area under the adopted Cork County General Development Contribution Scheme, made under Section 48(2)(a) of the Act. There is, however, a further condition attached to the permission (No. 33) which requires the applicant to carry out road works at his own expense in the vicinity of the development, namely in respect of providing passing bays north of the entrance.

7.1.3. Section 48(2)(c) of the P&D Act 2000 as amended provides for the payment of a Special Contribution and further guidance on the matter is provided in the Development Management Guidelines, 2007 (Section 7.12). It is clear from the legislation and the guidance that such a requirement should only be made in respect of a particular development whereby demands likely to be placed on the public services and facilities are deemed to be exceptional, thereby incurring costs not covered by the General Development Contribution Scheme. It is further clear that

such a condition must be amenable to implementation under the terms of S 48(12) of the Act. This means that the basis for the calculation should be clear from the planning decision. The Guidelines state that “this means that it will be necessary to identify the nature/scope of the works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.”

## **7.2. Specific or exceptional costs**

7.2.1. The wording of Condition 35 states that the contribution is required in respect of “specific exceptional costs not covered in the Council’s General Development Contribution Scheme”. However, the only other information relating to the nature of the works contained in the wording of the condition is that it is the term “for the provision of road upgrade works”. I would accept that this term is somewhat vague when taken in isolation from the planning and technical reports, which are very detailed and contain further clarification on the justification for the conditions attached. The planning authority identified serious concerns regarding the adequacy of the road network to cater for the proposed development from the outset, which is clearly set out in the first Road Engineer’s report dated 22<sup>nd</sup> May 2015, and repeated in the Area Planner’s reports. These concerns related to a number of issues arising from increased traffic movements of trucks as follows:

- **Sightlines to south of the entrance** - The P.A. Engineer considered that the vegetation to the south of the entrance would need to be cutback/reduced to enable trucks approaching from the north to safely enter the site with adequate forward visibility. The applicant proposed to lower the vegetation to 900mm, which was considered acceptable and conditions were attached accordingly.
- **Adequacy of road at site entrance** - issues were identified in the roads report relating to the location of the site entrance on the outside of a bend and the Roads Engineer considered that the boundary ditch across from the entrance would be required to be cutback/setback to provide forward site distance. He further stated that “it would appear that a number of rigid trucks and farm machinery use this entrance and works required to bring it up to standard.” The applicant considered that this was not necessary and indicated

that planning permission had previously been granted for a light industrial use here which had been based on the achievement of 80m sightlines.

- **Width of road to north of entrance** - The width of the road between the site entrance and the junction of the L5529 and the L5530 (from which the batching plant is accessed) was considered to be wholly inadequate at 3.5-4m. The P.A. wanted the road to be widened to 5.5m for this stretch. However, the applicant instead proposed the provision of 3 no. passing bays at points in the road where there was existing informal passing areas and/or wider verges. The P.A. appears to have accepted this point and conditions 26 and 27 address the sight triangle.
- **Road to south of entrance** – it was considered that the width, alignment and structure of the road to the south of the entrance was inadequate to cater for the additional traffic generated by the proposed development. Condition 34 prohibits right turning movements here and the applicant has not objected to this condition.
- **Contributions** – the Roads report (22/5/15) included the following statement on page 3 of the report:

“A Special Contribution of €14,000 for the resurfacing of the entrance both to this site and Aglish Cross junction north of development due to turning movement of trucks utilising this development. ( $100*4m*€35/m^2$ )”.

The matter was repeated in each of the Engineer’s reports (31/3/16 and 24/3/17), including the final report of 28/1/18 and was also referred to in the final Executive Planner’s Report (28/1/18) and the Senior Executive Planner’s report dated 29 January 2018.

7.2.2. The Guidelines require that the nature/scope of the works and the expenditure involve be specified. Although the wording of the condition does not specifically state resurfacing of the entrance and the junction at Aglish Cross, it is considered that the intention of the condition is clear from the planning and technical reports and that the proposed upgrade works are specific exceptional costs that would be incurred by the planning authority arising from the proposed development and which are not covered by the General Development Contribution Scheme. Should the Board agree with this

reasoning, it is considered that the wording of the condition should be amended to specify the nature of the works as set out in the P.A. reports as outlined above.

### **7.3. Justification for costs – basis of calculation**

- 7.3.1. The Guidelines also state that it should be clear from the decision how the contribution was calculated and apportioned to the particular development. As stated above, Area Engineer's report indicated that the contribution of €14,000 was based on the following:

$$100\text{m} \times 4\text{m} \times \text{€}35/\text{m}^2$$

The Area Engineer did not, however, indicate on what basis the dimensions of the area to be resurfaced was arrived at or why the rate the €35 was used.

Given that there are two separate areas involved, namely Aglish Junction and the road in the vicinity of the entrance to the site, where the additional turning movements were expected to give rise to the need for resurfacing, it is considered that a 4m width and a length of 50m at each junction seems reasonable. However, I can find no relatable rate in the Council's Development Contribution Scheme which would justify €35.

- 7.3.2. The Current General Development Contribution Scheme (applicable from 1<sup>st</sup> January 2015) provides a breakdown of rates. For Non-Residential development (Other), the rate for roads is €14.29 per sq.m. It is considered that in the absence of any other evidence, this is the rate that should be used to calculate the contribution. Thus the Special Contribution should be €5,716.00.

### **7.4. Double charging**

- 7.4.1. The applicant considered that the requirement to provide passing bays effectively resulted in duplication of the requirement to provide for road upgrade works. However, in light of the foregoing, it is considered that the requirements of Condition 33 relate to the substandard width of the stretch of road between the site entrance and Aglish Cross, whereas the Special Contribution condition relates to the resurfacing of the two specific junctions at either end of this stretch of road only, the need for which arises from increased truck turning movements at these two locations. I do not agree therefore that the required contribution would amount to double charging. It is further noted that a condition requiring a payment in respect of

the General Development Contribution Scheme has not been attached to the planning permission.

## 8.0 Recommendation

8.1. Having regard to the information on the file, the grounds of appeal, the planning and technical reports of the planning authority in relation to the development, and to the assessment above, I recommend that the Board directs the planning authority to **AMEND** Condition 35 and the reason therefor as follows for the reasons and considerations set out below.

35. The developer shall pay the sum of €5,716.00 (five thousand, seven hundred and sixteen euro) (updated at the time of payment in accordance with changes in the Wholesale Price – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48(2)(c) of the Planning and Development Act 2000 in respect of the resurfacing of the public road at the junction of the L5529 and the L5530 (Aglish Cross) and at the junction of the L5529 and the entrance to the site. This contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority might facilitate. The application of 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 considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which benefit the proposed development.

## 9.0 Reasons and Considerations

It is considered that the planning authority has demonstrated that the road improvement works comprising the resurfacing of the public road at the junctions of the site entrance and the L5529 and the at Aglish Cross would amount to specific exceptional costs in terms of the traffic turning movements arising from the proposed development that would benefit the proposed

development in this instance. However, it is considered that the planning authority has not clearly justified the method by which the contribution was calculated in terms of the rate used. Therefore, it is considered that the special financial contribution as proposed by the planning authority should be amended in terms of the rate of contribution to accord with the rate contained in the adopted General Development Contribution Scheme for Other Non-Residential Development in respect of roads, i.e. €14.29 per sq. m. in order to comply with section 48(2)(c) of the Planning and Development Act 2000, as amended.

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Mary Kennelly  
Senior Planning Inspector

17<sup>th</sup> July 2018