



An
Bord
Pleanála

Inspector's Report ABP-301285-18

Development	Land reclamation works
Location	Knockenagh North, Listowel, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	17/1152
Applicant(s)	Gerard McElliott
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	Gerard McElliott
Observer(s)	None
Date of Site Inspection	12 th July, 2018
Inspector	Kevin Moore

1.0 Site Location and Description

1.1. The site of the proposed development consists of a small disused quarry in a remote rural location approximately 5km north of the town of Listowel in County Kerry. It is bounded by farmland and an internal access road which has an entrance onto a local road to the east.

2.0 Proposed Development

2.1. The proposed development would comprise land reclamation works consisting of the re-contouring of land by imported material for the purpose of the improvement of farm land. The proposed material to be imported would include soil, subsoil, stone, and other inert waste material. The total area of land relating to the development is 0.56 hectares.

3.0 Planning Authority Decision

3.1. Decision

On 26th February, 2018, Kerry County Council decided to grant permission for the development subject to 6 conditions.

Condition 2 was as follows:

*"2. Prior to the commencement of development, the developer shall pay a contribution of **€3,625** to Kerry County Council (Planning Authority) in respect of Roads & Transport and Community & Amenity infrastructure benefiting the development.*

This contribution is broken down as follows:

Roads & Transport - €2,375

Community & Amenity - €1,250

The amount of this contribution is calculated in accordance with the Council's prevailing Development Contribution Scheme and may be increased from

January 1st 2019 and annually thereafter (unless previously discharged) in line with the Wholesale Price Indices – Building and Construction (Capital Goods) as published by the Central Statistics Office unless the Scheme is superseded by a further Development Contribution Scheme adopted by the Council.

Reason: It is considered appropriate that the Developer should contribute towards the cost of public infrastructure and facilities benefiting the development, as provided for in the Councils prevailing Development Contribution Scheme, made in accordance with Section 48 of the 2000 Planning and Development Act (as amended) and that the level of contribution payable should increase at a rate in ten manner specified in that Scheme.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner recommended that further information be sought in relation to drawing details, lands affected, contouring, volume of materials, length of time of the works, and measures to protect the public road.

3.2.2. Other Technical Reports

The County Archaeologist stated that no mitigation is required.

The Biodiversity Officer recommended that a buffer be maintained between any watercourse and infill material and graded to prevent slippage. It was noted that the fill material would have to be in compliance with a waste permit from the Environment Section.

The Environment Section had no problem in principle with the proposal. It was recommended that the applicant should have a traffic management plan approved before commencement, that amelioration measures be sought for dust, noise and watercourse pollution, and that stockpiling of imported material be limited to 300 tonnes prior to levelling and grading.

3.3. Prescribed Bodies

An Taisce submitted that it is important that the imported material is inspected for the presence of any deleterious matter and that all loads are inspected when they arrive and during spreading to remove unsuitable material.

3.4 A request for further information was issued by the planning authority on 18th January, 2018 and a response was received from the applicant on 22nd January, 2018. The applicant was requested to publish new public notices and these were submitted on 31st January, 2018. The applicant submitted new drawings and stated that it was hoped to import less than 25,000 tonnes of material onto the site.

3.5 Following receipt of this information, the Planner noted development plan provisions and reports received. It was considered that the proposal would not have a significant negative visual impact or be seriously injurious to the residential amenity of the area. A grant of permission was recommended subject to conditions.

4.0 Planning History

I have no record of any planning application or appeal relating to this site.

5.0 Policy Context

5.1. Kerry County Development Plan 2015-2021

The site is located in an area zoned 'Rural General', the least sensitive landscape designation in the County.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal relates solely to Condition 2 of the planning authority's decision applying to the development contribution. The grounds of the appeal may be synthesised as follows:

- The proposed works will reclaim the land for the purposes of the improvement of land for agricultural purposes only and the removal of the exclusion status from the Department of Agriculture Single Payment Scheme, Disadvantaged Areas Scheme and other Area-Based Scheme due to its status as 'scrub'.
- The Council's Planner acknowledged the importing of material to improve farm land.
- A Certificate of Registration from the Council's Environment Section has been obtained to import the material, allowing a maximum of 25,000 tonnes of earth and stone, with the Certificate stating that it is for the purposes of improvement or development of land. There is no permit for Disposal Activity D1 (Deposit into nor on land, e.g. landfill, etc.).
- The proposal is a waste recovery activity and not a disposal activity.
- The planning application was made under Class 13 (development not coming under any other class) but the appellant was charged for a Class 6 (use of land for the disposal of refuse or waste).
- With regard to the Development Contribution Scheme stating that new development impacts on the capacity of existing infrastructure networks, the proposal is a not development in these terms as it is only a field used for farming.
- Condition 5(b) of the planning authority's decision requires any damage or soiling of the public road to be made good. The appellant considers that he is being charged twice for the same thing, i.e. a development fee and a requirement for upkeep of the road.
- The Development Contribution Scheme's section on agriculture for different types of charges makes no reference to land reclamation.
- The Scheme has a section on landfill but the proposal is not landfill as the works are being done as part of a normal farming activity.
- €1,100 has been paid to the Environment Section for the Certificate of Registration and because that Section required planning reference another €4,125 was paid for essentially the same permission. At the least, any

development contribution should be reduced by the amount paid for the Certificate of Registration (€1,100).

- Under Planning Permission 15/394, for land reclamation works on another part of the farm, the appellant was not charged any development contribution even though this was for importation of material to re-contour land for agricultural purposes.
- The development contribution is not meant to apply to an everyday farming activity of land reclamation by re-contouring and this would be clearer if other land reclamation activities, such as land drainage, were also charged development contributions.

6.2. **Planning Authority Response**

I have no record of any response to the appeal from the planning authority.

7.0 **Assessment**

- 7.1. The appeal relates to the proper application by the planning authority of the terms of its development contribution scheme adopted under section 48 of the Planning and Development Act with regard to Condition 2 of the planning authority's decision. It is considered appropriate that the Board determines the appeal in relation to the disputed condition only. The provisions of section 48(10)(b) and (c) apply in this instance.
- 7.2. I first note that the applicant previously sought and was granted permission for land reclamation works under Planning Authority Ref. 15/394 on another part of his landholding in Knockenagh North. This permission was subject to conditions but did not include a condition requiring the making of a development contribution. While I acknowledge the existence of Kerry County Council's Development Contribution Scheme dating from 2017 (after the date of this previous decision), I must also note that there appears to be a degree of inconsistency when a similar type development was not subject to a financial contribution being required to be paid, while in the current instance it is so required.

- 7.3. The Council's 2017 Development Contribution Scheme in Section 4 sets out the Development Contribution Charges and refers to what they shall apply to. Under the section headed 'Agriculture', reference is made to farm buildings, horticultural polytunnels, glasshouses and mushroom tunnels, garden centres and nurseries, stables/kennels, and intensive agricultural use. There is no reference to the requirement for a development contribution to be made for reclamation of land for the purposes of the improvement of that land for agricultural purposes. As a development distinctly related to agriculture, the proposed development would not be subject to a development contribution under the Council's Scheme.
- 7.4. I acknowledge that under the section headed 'Quarries & Landfill', reference is made to development contribution rates that would be applicable for quarry development and the development of a landfill. It is apparent from the nature and extent of development proposed at this location that the land reclamation works, consisting of the re-contouring of land by imported material for the purpose of the improvement of farm land, would not constitute either a quarry or a landfill. The materials to be imported would consist of soil, subsoil, stone and other inert materials. Based upon the description of the development, I consider that it is reasonable to determine that the development may be viewed as waste recovery and not a disposal activity, with the intent being returning the land to viable farm land.
- 7.5. In conclusion, I do not consider that the Kerry County Council Development Contribution Scheme 2017 provides for the requirement to make a development contribution for the reclamation of land for the purposes of the improvement of land for agricultural purposes. Thus, I consider that Condition 2 of the planning authority's decision should be omitted.

8.0 Recommendation

- 8.1. I recommend the removal of Condition No. 2 of the planning authority's decision in accordance with the following.

9.0 Decision

The Board considered, based upon the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had not been properly applied in respect of condition number 2 and directs the said Council under subsection 10(b) of section 48 of the Planning and Development Act, 2000 to REMOVE the said condition and reason therefor.

10.0 Reasons and Considerations

Having regard to the nature and extent of the proposed development, which is a development that is not subject to the provisions of Kerry County Council Development Contribution Scheme 2017, it is considered that the terms of the development contribution scheme have not been properly applied and a development contribution condition should not be included in this instance.

Kevin Moore
Senior Planning Inspector

2nd August 2018