



An
Bord
Pleanála

Inspector's Report ABP-301513-18

Development	The re-contouring of agricultural land and associated site works using imported clean inert soil and stones within a farm holding on 7.112 hectares for the consequential benefit to agriculture.
Location	Micknanstown, Stamullen, Co. Meath
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	AA/171118
Applicant	Patrick Arnold
Type of Application	Permission
Planning Authority Decision	Grant permission subject to conditions
Type of Appeal	First party vs. financial contribution
Appellant	Patrick Arnold
Observers	None
Date of Site Inspection	1 st December 2018
Inspector	Stephen O'Sullivan

1.0 Site Location and Description

1.1. The site has a stated area of 7.112ha. It lies c 5km west of Stamullin in Meath. It comprises most of a field under pasture which has c140m of frontage onto a county road. The land slopes down from the road to a stream to the north of the site. There are also drains along south-western and eastern field boundaries and another through its centre. The landuse in the area is predominantly pasture with numerous one-off houses, although there are none on the land immediately around the site. The road in front of the site has a surfaced carriageway that is c3.6m wide. The other local roads in the area are generally c4.5m wide. The regional road R108 is c2.4km to the east of the site and the R152 is c8km to the west. These roads have carriageways c6m in width, as does the local road L1618 that runs between them.

2.0 Proposed Development

2.1. The proposed development involves the import of inert soils and stone onto the site for the benefit of its agricultural use. 91,200 tonnes of such material would be imported over 4 years. The application seeks a permisison with a period of 5 years to allow time to apply for a waste permit. The recontouring of the site would raise existing ground levels by an average of 0.82m and a maximum of 1.67m. Based on an average load of 16 tonnes, the works would require 5,726 lorry loads to be brought to the site. Haul routes to the site from the R108 and the R152 were shown on a map submitted as further information to the planing authority.

3.0 Planning Authority Decision

3.1. **Decision**

The planning authorith decided to grant permission subject to 21 conditions.

Condition no. 1 referred to the further information submitted to the planning authority on 9th March 2018.

Condition no. 2 limited the quantity of material to be imported to 91,620 tonnes.

Condition no. 3 limited deliveries to 12 truckloads per day.

Comment [SO1]:

Comment [SO2R1]:

Condition no. 5 required the applicant to carry out a survey of the condition of specified roads before and after the carrying out of the development and that he would be responsible for the restoration costs of the local road.

Condition no. 6 restricted the haul route to the R108, R152, L1618-13, L16151-9 and the L16151-0.

Condition no. 7 stated that construction and demolition waste should not be imported onto the site.

Condition no. 21 required the payment of a special contribution of €50,000 to rehabilitation works on the roads R152, L1618-13, L16151-9 and the L16151-0 to facilitate the proposed development. The reason for the condition stated that the ~~planning~~planning authority considered ~~is~~it reasonable that the developer would contribute towards specific exceptional costs incurred by the planning authority which are not covered by the adopted contribution scheme.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report on the initial application is dated 15th November 2017. It recommended that further information be requested on 5 matters, including the haul routes to the site. The applicant submitted further information to the planning authority on 3rd March 2018. The subsequent planner's report stated that development contributions are not required for this type of development but that Transportation *sic* had stated in their report that the applicant should be conditioned to pay a special contribution of €50,000 to cover the rehabilitation costs of the existing roads to facilitate the proposed development. The report recommended that permission should be granted with a condition~~s~~ requiring such a special contribution.

3.2.2. Other Technical Reports

A report was made by the Road Design Office of the council dated 21st November 2017 which recommended that further information should be sought including a traffic and transport assessment report, a roads survey, details of sightlines at the entrance, and details of how 2 way traffic would be managed. It also stated that the applicant should be conditioned to pay a special contribution of €50,000 to cover the

rehabilitation costs of the existing roads to facilitate the proposed development, that traffic entering the site should be restricted to using the R108, the L1618-13, the L16151-9 and the L16151-0 roads with a maximum of 12 loads per day entering the site.

4.0 Planning History

Reg. Ref. 244-99 – In 1999 the planning authority refused outline permission for 4 houses ~~in 1999~~ for 5 reasons, one of which stated that the adjoining road network was generally substandard and suitable for local agricultural traffic only.

5.0 Policy Context

5.1. Development Plan

The Meath County Development Plan 2013-2019 applies. None of its provisions were cited in the submissions from the parties on the appeal.

5.2. Natural Heritage Designations

None

6.0 The Appeal

6.1. Grounds of Appeal

- The appeal is against the special contribution required by condition 21 of the planning authority's decision. The figure of €50,000 is excessive and has not been applied correctly or in fair or reasonable manner in accordance with the requirements of the legislation by the planning authority.
- The adopted scheme does not make provision for contributions in respect of land reclamation works. The figure of €50,000 appears to have been plucked from nowhere without justification. It appears on a report from the council's road design office that was made before the applicant submitted details of the proposed haul routes in response to a request for further information. The

applicant therefore contends that the amount of the special contribution was arrived at in a random fashion without reference to specific roadworks which is contrary to the legislation which allows for special contributions only where the works to be carried out are specified, costed and carried out. The condition is therefore void for vagueness, as it does not allow the developer to contest the need or costing of the proposed works.

- The board is asked to consider that the works would be likely to be completed within 4 years and therefore there will be no on-going or long term impact on the local road network. The land is low lying and wet and the works will restore it to productive agricultural use. The development is conditioned to 12 loads per day and this will form a very low percentage of the existing heavy traffic using the local road infrastructure. If the board considers a special contribution to be warranted a contribution of €10,000 to works to roads in the immediate vicinity of the site. This would be appropriate and in keeping with the precedents established by other decisions of the planning authority for similar developments in the area.
- The rate of contribution sought by the planning authority in this case is €0.55 per tonne. A special contribution at a rate of €0.08 per tonne was levied on land reclamation works authorised under LB/171285. A rate of €0.14 per tonne was used for land reclamation works authorised under AA/161014. The board is requested to consider this appeal in a manner that ensures the applicant can carry out improvements to his agricultural lands without being unfairly charged a special contribution that is between 400% and 700% higher than that applied to similar developments recently authorised by Meath County Council.

6.2. Planning Authority Response

- 6.2.1. A response was received from the planning authority on 24th May 2018. It stated that the contribution required under condition no. 21 was appropriate to ensure a contribution was made to the rehabilitation works on the roads designated as R152, L1618-13, L16151-9 and L16151-9 which are proposed as a result of the development.

6.2.2. The board made a request on 8th June 2018 that the planning authority provide a breakdown of the special development contribution. The planning authority made a response on 3rd July 2018 which stated that the special contribution of €50,000 was applied to cover the rehabilitation costs of existing roads which are deemed to be affected by the proposed development which are the L1004-10, L1004-19, L1004-34, L1618-0, L1618-13, L16151-0, L1615-9 R108 and R152. A table was provided showing the extent of the rehabilitation works on each local road, their cost based on a rate of €50 per square metre and an attribution of 7.5% of the costs to the proposed development on the relevant part of the L1004 and the on the L1618-0, 10% on the L1618-13 and 50% of the L16151. The costs of works to junctions on the R108 and the R152 was given as €5,000 and €2,500 respectively. The total costs of works attributed to the proposed development is stated to be €65,928.13. The submissions states that there is no record of an application for state or European funding for the works on those roads and they part of any infrastructure, facility, project or service to which the adopted contribution scheme or any supplementary scheme refers. The planning authority considers that the proposed development would have an impact on existing infrastructure to which the developer should make a contribution.

The planning authority's submission of 8th June 2018 was circulated for comment.

6.3. Further Responses

6.3.1. The applicant responded to the planning authority's second submission. The response can be summarised as follows –

- The table of costings from the Transportation Section was not on the original planning file during the appeal period. The document is unsigned and undated and does not reflect the amount of the special contribution required under the planning authority's decision. It is a breach of fair procedures for the council to introduce an undated report at this stage or to retrospectively create a report to justify a randomly high figure of €50,000 after the decision to grant permission had been made. The submission does not follow the law and is ultra vires. There are too many flaws in the process for this

'report' to be considered further by the board, so the board should significantly amend or remove condition no. 21.

- The planning authority was not made aware of the haul routes that the applicant intended to use before he submitted further information to the planning authority on the 9th March 2018, but the road design office had already applied a special contribution figure of €50,000 before the relevant information had been submitted. The figure was not, therefore, justified by any facts which is totally contrary to the requirements of the legislation. The calculations submitted by the council were not carried out at planning application stage nor were they available to inspect at application stage. There has been an object failure by the council to follow the law, and the submission of a report at this stage is ultra vires and contrary to planning law and fair procedures.
- The contribution required by the planning authority does not arise under the adopted contribution scheme. Nevertheless the breakdown of the charge submitted to the board indicates percentages from different works (road projects) which the council admits are not on its radar currently and does not offer any breakdown as to the make up of the €50 per square metre charge. Such a proposition does not meet the requirements of special contributions which are for specific infrastructure benefitting the development. This is because details are absent that would otherwise allow for an appropriate appeal of the make up of the charges. There is no guarantee that the works will be accommodated during the lifetime of the project which is only for a temporary period of 5 years as there is clearly not other funding for these overall works. It appears that the council is seeking a sinking fund for use sometime in the future. This is not the function of a special contribution.

7.0 Assessment

- 7.1. The manner in which the planning authority recorded its determination that a special contribution of €50,000 was due in respect of the proposed development was far from ideal. It was based on a report from its Road Design Office, which recommended that further information be sought, that was submitted after the planning authority had made its request for further information and which was not updated after the applicant had responded to the request. This departure from best practice was not so egregious as to vitiate any subsequent requirement for a special contribution in respect of this permission, however, as a professional officer of a planning authority could reasonably be expected to have an understanding of the impact which a development of this nature would have on the roads infrastructure in the council's charge and of the works required to mitigate this impact and their likely costs, even if the estimate of the latter was provided in a report that recommends that more detailed information is sought in respect of the proposed development prior to a decision on the application.
- 7.2. Furthermore the planning authority's submission to the board on 3rd July 2018 included a breakdown of the works on which the contribution would be spent and the costs of those works. The information submitted at that time is adequate to specify the works involved, and to show that they would be works to public infrastructure, that they would benefit the proposed development, and that they would be exceptional costs not covered by the adopted contribution scheme. The submission also provides a reasonable basis for the estimate of the overall costs of the works and the attribution of a part of them to the proposed development, having regard to the fact that the predominant land use and generator of traffic in the area is agriculture with scattered residential use, and that the proposed development would generate a significantly more heavy traffic compared to that arising from agricultural use with a consequent impact on roads infrastructure. Therefore ~~that~~ the submission was adequate to show that the special contribution would be in accordance with the relevant legislation which is set out at section 48(2)(c) of the Planning and Development Act 2000, as amended. That legislation does not allow a planning authority to collect money for any kind of 'sinking fund' to be used at its own discretion as it includes a safeguard by which any money not spent on the stated purpose of the contribution has to be repaid with interest after a period of 7 years in

accordance with section 48(12) of the act. The submission was circulated to the applicant who was given the opportunity to comment upon it, which gave affect to the principle of *audi alterem partem* and so addressed issues of fairness and natural justice.

7.3. Nonetheless there remains an inconsistency between the breakdown submitted by the planning authority on the 3rd July 2018 and condition no. 21 of its permisison. The condition only refers to works to the R152, the L1618-13, the L16151-9 and the L16151-0. The breakdown refers to works to these roads but also works to the R108, the L1618-0 and various parts of the L1004. As the board's jurisdiction in this case is limited by section 48(13) of the act only to the conditions under appeal, it would not be reasonable for any condition that ~~it the board might~~would impose to include a contribution to works that were not specified in the planning authority's condition. The costs which are set out in the breakdown that relate to works to roads that were specified in the condition amounts to €30,150 based on the ~~addition-sum~~ of the following elements (which have already taken account of the share of the costs of the works that should be attributed to the proposed development)–

- €2,500 for junction improvement works to the R152
- €5,150 for rehabilitation works to the L1618-13
- €13,500 for rehabilitation works to the L16151-0
- €9,000 for rehabilitation works to the L16151-9

7.4. A condition requiring a special contribution of €30,150 should therefore be applied to the permisison.

8.0 Recommendation

8.1. I recommend that condition no. 21 of the planning authority's decision be replaced with this condition –

The developer shall pay the sum of €30,150 of ~~€□□□□□□□□~~ (thirty thousand and one hundred and fifty euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index - 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

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rehabilitation works to the roads designated L1618-13, L16151-0 and L16151-9 and junction improvement works at the road designated R152. This contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may 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 the Board 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 will benefit the proposed development.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development and the traffic which it is likely to generate and to the nature and condition of the local road network, it is considered reasonable that the developer would make a special contribution to specific exceptional costs which are not covered by the adopted contribution scheme that the planning authority would incur in carrying out works to public infrastructure that would benefit the permitted development, and that the submission from the planning authority received by the board on the 3rd day of July 2018 provides an acceptable basis for the calculation of the costs of those works, except that a special contribution should only be imposed in respect of works to those roads that were specified in condition 21 of the planning authority's decision, which are the R152, the L1618-13, the L16151-0 and the L16151-9.

Stephen J. O'Sullivan
Planning Inspector

2nd December 2018