



An
Bord
Pleanála

Inspector's Report ABP-303019-18

Development	The importation of soil & stone for the raising of an agricultural field
Location	Belvelly, Cobh, Co. Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	185857
Applicant(s)	Sorensen Civil Engineering Ltd
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	First Party
Appellant(s)	Sorensen Civil Engineering Ltd
Observer(s)	None
Date of Site Inspection	16 th April 2019
Inspector	Mary Crowley

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	5
3.3. Prescribed Bodies	7
3.4. Third Party Observations	7
4.0 Planning History.....	7
5.0 Policy and Context.....	7
5.1. Development Plan.....	7
5.3. Natural Heritage Designations	7
6.0 The Appeal	8
6.1. Grounds of Appeal	8
6.4. Planning Authority Response	9
6.5. Observations.....	10
6.6. Further Responses.....	10
7.0 Assessment.....	10
8.0 Recommendation.....	14
9.0 Reasons and Considerations.....	14

1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 3.14 ha is located in the townland of Belvelly to the north of Great Island and approx. 2.2km north of Cobh Urban Area. The surrounding area is predominantly rural in character and agricultural in land use. The site itself is positioned within a larger agricultural landholding and although it is bounded to the east by a public road (L2989) there is no direct access to this public road. This local road is one of the main access routes to the Cobh area.
- 1.2. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

2.0 Proposed Development

- 2.1. This is an application for the importation of soil & stone for the raising of an agricultural field in order to improve the agricultural output of the field and the construction of a new temporary entrance onto the adjoining public road. It is proposed to raise the level of the land using 65,520m³ of soil and stone. The site will be filled at a rate less than 25,000 tonnes per annum. It is stated that a gas main traverses under the site.
- 2.2. The application was accompanied by the following:
 - Environmental Risk Assessment
 - Letter of Consent
 - Emergency Response Procedure
 - Waste Acceptance Procedure
 - Closure Plan
 - Drawings & Maps
- 2.3. In response to a request for further information the applicant submitted the following as summarised:
 - Updated drawings stating the minimum, the maximum and average depths of fill material required
 - Submitted that the Appropriate Assessment Stage 1 Screening Report was correct. The drawings have been amended to correspond.

- The total fill for the site is 98,280 tonnes (65,520m³). At a rate of less than 25,000 tonnes per annum the site will be filled over approx. 5 years in line with the waste facility permit that will be required. The amount of fill recovered per annum will be below the threshold set for a mandatory EIA.

2.4. The following unsolicited information was submitted on the 10th August 2018 and 14th August 2018:

- Stage 1 Screening Statement for Appropriate Assessment
- Site Assessment Report
- Code of Practise for working in the vicinity of the Transmission Network

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Cork County Council issued a notification of decision to grant permission subject to 35 generally standard conditions. Condition No 14, the subject of this first party appeal stated as follows:

At least one month before commencing development 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 €45,500.00 to Cork County Council, updated monthly in accordance with the Consumer Price Index form the date of payment, in respect if specific exceptional costs not covered in the Council General Contributions Scheme, in respect of works proposed to be carried out, for the provision of repairs to the public road as a result of heavy vehicles travelling to and from the site. 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 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.*
- c) Payment of interest at the prevailing interest rate payable by the Councils Treasury on the Councils 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.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Case Planner** in their **first report** requested further information as recommended in the Environment Report (see below) and details of annual proposed tonnage per year and overall tonnage required to fill the site as per the section drawings. On the matter of contributions the report states that no general contribution is applicable. The following addendum for the attention of the “decision maker is attached to the report:

“The area engineer has included a “special contribution” for public roads works associated with the proposed development. While the terms of the condition includes a part rationale for the contribution, the main body of the A/E report does not provide a detailed breakdown for this contribution. I contacted the A/E and SE/E to clarify this rationale. The SE/E has provided the following information:

For Calculation of Special Contribution (see attached Planning Charges (€) for Landfilling Sites Documents). Contribution is calculated as follows:

Application for a volume of 65,520m³ of infill material. Land infill material will travel a minimum distance of 1km off local roads (i.e. from charges doc: Site Col of 65,520m³ / 5000m³ = 13.104)

Distance from Landfill site on poor local road 1km. S, 700/2 = 3500

Special Contribution: 3500 x 13.104 = €45,864 (45,500)

- The **Senior Executive Planners** Report agrees with the Case Planners recommendation as set out above.
- The **Case Planner** in their **second report** and having considered the further information recommended that permission be granted subject to 35 conditions. On the matter of contributions an addendum similar to that set out in the Case Planners first report is provided. Additional comments are set out as follows:

I contacted the A/E to clarify this rationale however same is currently on annual leave. The full rationale could likely be provided post decision if required (or if subject to an ABP appeal). For this reason I recommend retaining the contribution.”

3.2.2. Other Technical Reports

- **Environment Report** – In their first report requested further information in relation to revised drawings clearly stating the minimum, the maximum and average depths of fill material required and clarification between the Appropriate Assessment Stage 1 Screening Report and drawings submitted. In their second report and having considered the further information recommended that permission be granted subject to conditions outlined in their report.
- **Area Engineer** – No objection subject to conditions as set out in their report. Condition No 13 of the report recommended that €45,000 Special Contribution be applied for road damage caused by the proposed development.

3.3. Prescribed Bodies

- **Inland Fisheries Board** – No stated objection to the scheme with recommended conditions provided. Noted that IFI raise concern in relation to the principle of granting permits to raise land levels in what are predominantly low lying sites and flood plains in a haphazard fashion.

3.4. Third Party Observations

- 3.4.1. There are no third party observations recorded on the planning file.

4.0 Planning History

- 4.1. There is no evidence of any previous appeal on this site.

5.0 Policy and Context

5.1. Development Plan

- 5.2. The operative plan for the area is the **Cork County Development Plan 2014** and the **Cobh Municipal District Local Area Plan 2017** (as amended). It is stated that the surrounding area is predominantly rural in character and agricultural in land use, designated *Prominent and Strategic Metropolitan Greenbelt Area* and *High Value Landscape*, significantly under pressure from *Urban Generated Housing Need*. The Development Contribution Scheme relevant to this appeal is the **Cork County Council Development Contribution Scheme (2004)** and the Cork County Council Development Contribution Schemes Rates for 2015.

5.3. Natural Heritage Designations

- 5.3.1. The site is not located within a designated Natura 2000 site. There are two European Site within a radius of 15km of the appeal site; Cork Harbour SPA and Great Island Channel SAC (640m).

6.0 The Appeal

6.1. Grounds of Appeal

6.2. The first party appeal has been prepared and submitted by The Planning Partnership on behalf of the applicant, Sorensen Engineering Ltd against Condition No 14 (Special Financial Contribution) only. The Board is requested to remove Condition No 14. The appeal may be summarised as follows:

- There will be no material increase in trip generation (estimated at maximum 5 vehicle deliveries per day) as a result of the proposed works.
- The Planning Authority did not have regard to Section 48(2)(c) and Section 48(12)(a) of the Planning and Development Act 2000-2018 and to the requirements set out in there regarding “special contributions”.
- Condition No 14 provides an inadequate justification for a special contribution as it fails to state in a transparent manner the information required under Section 48(2)(c) and Section 48(12)(a).
- Condition No 14 levies works under the General Development Contributions as per the Cork County Council Development Contribution Schemes which was adopted by Cork County council on 23rd February 2004
- Condition No 14 fails to identify (nature, extent and level of works) the specific public infrastructure and facilities which will benefit the proposed development.
- Condition No 14 fails to identify the specific exceptional costs which the Local Authority will incur, in respect of those public infrastructure and facilities benefitting the proposed development.
- Condition No 14 fails to demonstrate that the specific exceptional costs which have given rise to the €45,000 on special development contribution currently sought, as not already covered by another scheme (i.e. General Contribution or Supplementary Contribution Schemes)
- The Development Contribution Schemes for Cork County Council does not facilitate levying of a contribution on the importation of materials, to raise the land level of an agricultural field, in order to improve its agricultural output of the field, and therefore the Local Authority cannot use the provisions of Section

48(2)(c) of the Planning and Development Act 2000-2018 to “plug a hole” in a Development Contribution Scheme where e.g the scheme does not envisage a particular type of development

- The works mentioned in Condition No 14 do not relate directly to the proposed agricultural development, the extent and location of road upkeep works required has not been detailed, costs incurred or proposed to be incurred has not been presented with relevant calculations, to the apportionment of cost and benefits to the proposed development has not been outlined.

6.3. The appeal was accompanied by the notification of decision to grant permission, Cork County Council Development Contribution Scheme (2004), Cork County Council Development Contribution Schemes Rates for 2015 and until further notice, Planners Report Further Information Assessment (23rd October 2018) and Areas Engineers Report (16th August 2018).

6.4. **Planning Authority Response**

6.4.1. An Bord Pleanála wrote to Cork County Council on the 9th January 2019 requesting:

- details of the calculations involved;
- details of the public infrastructure and / or facilities concerned,
- details of costs incurred in relation to the public infrastructure and / or and the calculations involved,
- how the public infrastructure and / or facilities benefit the proposed development,
- what other developments derived benefit from the public infrastructure and / or facilities concerned and how costs incurred are apportioned,
- the amount of funding (if any) received or to be received form the State and / or other European Union in respect of the public infrastructure and / or facilities concerned and
- whether the public infrastructure and / or facility concerned constitute a part of any infrastructure, facility, project or service under a Development Contribution Scheme under Section 48 or Supplementary Development Contribution Scheme under Section 49 of the Act.

6.4.2. No response has been received from Cork County Council to date.

6.5. Observations

6.5.1. There are no observations recorded on the appeal file.

6.6. Further Responses

6.6.1. There are no further responses recorded on the appeal file.

7.0 Assessment

7.1. A first party appeal has been lodged against a Special Development Contribution condition. They are appealing Condition No 14 only. Condition No 14 is set out in full in section 3.1 above. This condition requires the payment of *€45,500.00 to Cork County Council, in respect of specific exceptional costs not covered in the Council General Contributions Scheme, in respect of works proposed to be carried out, for the provision of repairs to the public road as a result of heavy vehicles travelling to and from the site.* The appellant argues that the development does not meet the requirement under the legislation. The requirement for a special development contribution is based on the recommendation of the Area Engineer; Section 3.2 above refers. It is further noted that the Case Planner in their second report advised that the full rationale for the contribution could be provided post decision if required. However to date no rationale or any other pertinent details have been provided by Cork County Council; Section 6.4 above also refers.

7.2. I would draw the Boards attention to the fact that neither a condition requiring the payment of a Section 48 Development Contribution in accordance with the Cork County Council Development Contribution Scheme nor the requirement for the payment of a Bond by way of condition was attached to the notification of decision to grant permission in this instance.

7.3. Section 48 (13) of the Planning and Development Act 2000 (as amended) states that an appeal that 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 the appeal. I consider therefore that it is appropriate that the appeal should therefore be confined to the consideration of the specific exceptional costs as set out in Condition No 14 only.

7.4. The Board will be aware that a special development contribution may be imposed under section 48(2)(c) where specific exceptional costs, which are not covered by the general contribution scheme, are incurred by a local authority in the provision of public infrastructure or facilities which benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services. The particular works should be specified in the condition. Only developments that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution.

7.5. A Special Development Contribution is only justifiable if it complies with the following as required by Section 48(2)(c) and Section 48(12)(a) of the Planning and Development Act 2000-2018. Section 48(12)(a) states that 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.*

- 7.6. Overall I am satisfied that this Special Contribution condition is precise and clearly outlines the particular works to be carried out by the local authority to facilitate the development i.e. *the provision of repairs to the public road as a result of heavy vehicles travelling to and from the site.* Furthermore the description of specific works in Condition No 14 mean that a clear determination can be made as to whether the Planning Authority has spent any of the money collected under this condition for the work described in this condition and whether or not the specific works have commenced within five years of the date of payment or if the works have been completed within 7 years of the payment to the authority of the contribution.
- 7.7. However the foregoing notwithstanding the fundamental question to be answered in this instance is whether or not the specific exceptional cost set out in Condition No 14 is over and above those, which were envisaged in the Cork County Council Development Contribution Scheme.
- 7.8. The aim of any general Development Contribution Scheme is to ensure that developments benefiting from infrastructural investment pay a contribution towards the provision of infrastructure that is essential to enabling that development in the first place. Accordingly contributions collected under the Cork County Council Development Contribution Scheme (2004), are used in respect of infrastructure and facilities benefitting development in the area of the Planning Authority. The stated services are water; sewerage including storm water drainage; roads; and facilities for recreation and amenity. The scheme further states that *only that part of the capital expenditure, which will benefit new development, is used in the calculation of the amounts to be met by the levies on new development.*
- 7.9. All planning permissions granted are subject to the conditions of the development contribution scheme in operation in the area of the planning authority unless specifically exempted or subject to a reduced rate. It is interesting to note that importation of soil & stone for the raising of an agricultural field (or similar) is not referenced or identified in the “Reduced Contributions” section of the scheme. I also refer to Appendix A of the scheme where it states that development contributions for

windfarms, golf courses, quarries, gravel pits and other non-agricultural development, which are not specifically allowed for in the General Scheme, will be levied as *special contributions*. The importation of soil & stone for the raising of an agricultural field (or similar) is not referenced or identified in Appendix A of the scheme.

7.10. While *quarries and gravel pits* may be perceived as commensurate with the proposed scheme in terms of the movement of materials and may be useful in calculating the financial calculation of a contribution it remains that importation of soil & stone for the raising of an agricultural field (or similar) is not exempted under the current scheme. Therefore, in my view the provision of repairs to the public road falls under the General Development Contribution Scheme.

7.11. However as previously noted Cork County Council did not attach a Section 48 General Development Contribution condition instead opting for a Section 48(2)(c) Special Development Contribution. This approach was based on the stated repairs being necessitated as *a result of heavy vehicles travelling to and from the site* which it would appear was considered to have been over and above the general scheme. Therefore further consideration of the nature and scale of the development proposed is required to determine if these are specific exceptional costs are / area not covered by the general contribution scheme.

7.12. It is stated that the total fill for the site is 98,280 tonnes (656,520m³). At a rate of less than 25,000 tonnes per annum the site will be filled over approx. 5 years in line with the waste facility permit that will be required. This will result in an estimated at 5 vehicle deliveries per day as a result of the proposed works. Having regard to the scale and nature of the proposed scheme together with my site visit I consider that the traffic movements generated by the development relative to the busy local road network serving the site and the adjoining local road that is one of the main access routes to Cobh would not have a significant material impact on the overall strength and quality of the road network in the immediate area of the site in either relative terms or absolute terms.

7.13. I have had regard to the Cork County Council Development Contribution Scheme and I consider repairing the local road in this instance is not a specific exceptional cost over and above that already covered by the General Development Contribution Scheme. Accordingly I do not consider it appropriate to impose a condition requiring

the payment of special contribution in this instance. Accordingly it is recommended that Condition No 14 is omitted.

8.0 Recommendation

- 8.1. Having regard to the nature of the condition the subject of the appeal and based on the reasons and considerations set out below, I am satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and recommend that the Board directs the Council under subsection (13) (a) of Section 48 of the Planning and Development Act, 2000 to **OMIT** Condition No 14.

9.0 Reasons and Considerations

- 9.1. Having regard to:

- 1) The nature and scale of the development works proposed where there will be no significant material increase in trip generation (estimated at maximum 5 vehicle deliveries per day) as a result of the proposed works relative to the busy local road network and adjoining public road that is one of the main access routes to Cobh
- 2) The provisions of the Cork County Council Development Contribution Scheme (2004) where contributions collected under this scheme will be used in respect of infrastructure and facilities benefitting development in the area of the Planning Authority and where the *importation of soil and stone for the raising of an agricultural field* is not exempted from payment or subject to a reduced rate and is therefore liable to full payment under the general scheme.

It is considered that it would be inappropriate to attach a Section 48(2)(c) Special Development Contribution in this instance in lieu of costs incurred by Cork County Council in respect of repairs to the public road as a result of heavy vehicles travelling to and from the site as:

- a) The works proposed, namely the provision of repairs to the public road as a result of heavy vehicles travelling to and from the site are not over and above those, which were envisaged in the Cork County Council Development Contribution Scheme and

- b) General repairs and maintenance of public roads within the remit of Cork County Council is already covered by the Cork County Council Development Contribution Scheme 2004 and is therefore not a specific exceptional cost over and above that already covered by the General Development Contribution Scheme

Mary Crowley,
Senior Planning Inspector,
14th May 2019