



An  
Bord  
Pleanála

## Inspector's Report

**ABP-303407-19**

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<b>Development</b>	Permission for the importation of soil and stone and concrete for the raising of an agricultural field in order to improve the agricultural output of the field and the construction of a new temporary haul road.
<b>Location</b>	Killydonoghoe, Glanmire, Co. Cork.
<b>Planning Authority</b>	Cork County Council.
<b>Planning Authority Reg. Ref.</b>	18/05507.
<b>Applicant(s)</b>	Martin O'Callaghan Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	To Grant Permission subject to conditions.
<b>Type of Appeal</b>	First Party v. Condition.
<b>Appellant(s)</b>	Martin O' Callaghan Ltd.
<b>Observer(s)</b>	None.
<b>Inspector</b>	Dáire McDevitt.
<b>Site Inspection</b>	26 <sup>th</sup> March 2019.

## 1.0 Site Location and Description

- 1.1. The subject site is located to the west of the M8 off junction 18 (Glanmire), accessed directly off the R639 c. 3km north of Glanmire. The site at present is agricultural land with a stated area of c.7.03 hectares.
- 1.2. The site is bound by a farmhouse and associated farm buildings to the north and by a small stream to the west and a band of trees. The site is exposed vis a vis the adjoining regional road.

## 2.0 Proposed Development

- 2.1. The development as applied for comprised of:
- Permission for the importation of soil and stone and concrete for the raising of an agricultural field in order to improve the agricultural output of the field and the construction of a new temporary haul road. Total volume of material to be accepted stated to be c.51,367m<sup>3</sup>.

## 3.0 Planning Authority Decision

### 3.1 Decision

To Grant Permission subject to 23 no. conditions. The condition pertinent to this appeal is:

#### **Condition 23:**

*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 €20000.00 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 the public road network. The payment of said contribution shall be subject to the following: -(a) where the works in question – (i) are not commenced within 5 years of the contribution (or final instalment if paid by phased payment), (ii) have commenced but have not been completed within 7 years or the date of payment of*

*the contribution (or final payment if paid by phased instalment), 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 which have not been 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 (31.07.18 (endorsed by the A/SEP 31.07.18) and 07.12.18 (endorsed by the A/SEP 07.12.18))**

The planner's reports are extensive. A detailed further information request issued in relation to the volume of materials, details relating to the haul road, topographical surveys, cross sections, soil water containment measures, levels of top soil, access details and sightlines. These were addressed by the applicant to the satisfaction of the area planner and a recommendation to grant permission was made. This was endorsed by the A/Senior Planner.

Condition 23 was included on the recommendation of the Area Engineer. The A/SP noted in the report dated 07.12.18 that *'the area engineer has recommended a "special contribution" of 20,000e to cover the cost of repairs to the road networks that will arise as a result of this proposal. A detailed breakdown of this figure has not been provided by the area engineer however it is stated that it is based on a 'minimum distance to cover the cost of damage to the public road as a result of heavy vehicles travelling to and from the site'. A proper breakdown of this figure may need to be provided by the area engineer if queried by the applicant/or on potential appeal.'*

Appropriate Assessment Screening Report dated 05.12.18 concluded that the proposed development would not impact on the nearest European site (Great Island Channel SAC site code 1058).

### **3.2.2 Other Technical Reports**

**Area Engineer (05.07.18 & 19.11.18):** No objection following the submission of further information that addressed outstanding engineering concerns

**Environment Section (23.07.18 & 10.12.18).** No objection following the submission of further information that addressed outstanding environmental concerns.

**Area Engineer (traffic) (not dated).** No objection but should note the route of the preferred design of the Cork North Ring Road Scheme.

### **3.3 Prescribed Bodies**

**Inland Fisheries Ireland (IFI) (05.07.18).** Issues pertaining to the proximity to the stream highlighted.

### **3.4 Third Party Observations**

None.

## **4.0 Planning History**

**Planning Authority Reference No. 06/134123** refers to a grant of permission for the infilling and raising levels of land with subsoil and top soil. This included a special contribution for €16,000 (this was not appealed).

## **5.0 Policy & Context**

### **5.1. Cork County Development Plan 2014-2020**

The site is located within the Prominent and Strategic Metropolitan Greenbelt.

Policies of relevance are:

**RCI 5-3** Land Uses within the Metropolitan Greenbelt.

**RCI 5-6** Long Established Uses.

**GI 6-1** Landscape.

**GI 8-1** Prominent and Strategic Metropolitan Greenbelt.

**TM 3-2** Regional and Local Roads.

**TM 3-3** Traffic Management.

## **5.2 Cork County Council Development Contribution Scheme 2004 and 2015 updated rates.**

**A special contribution** under section 48 (2) (c) in respect of a particular development where specific exceptional costs are not covered by the General Scheme are incurred.

A special contribution may be required in respect of any development where specific exceptional costs not covered by the Cork County Council Development Contribution Scheme are incurred by an Local Authority in respect of public infrastructure and facilities which benefit the proposed development.

**Appendix 1** sets out the types of developments special contributions shall be levied and the amounts of the contributions shall be calculated on the basis of the criteria set out in appendix 1. Developments listed include Quarries and Gravel Pits, Windfarms, Golf courses and other leisure facilities which incorporate premises.

*Land Reclamation is not listed.*

## **5.3 Guidelines**

**Development Management Guidelines for Planning Authorities,**  
Department of the Environment, Heritage and Local Government 2007.

Paragraph 7.12 Conditions requiring development contributions (sections 48 and 49 of the Planning Act)

Finally '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 for the calculation, including how it is apportioned to the particular development. Circumstances which might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it. Where the benefit deriving from the particular infrastructure or facility is more widespread (e.g. extends to other lands in the vicinity) consideration should be given to adopting a revised development contribution scheme or, as provided for in the Planning Act, adopting a separate development contribution scheme for the relevant geographical area. Conditions requiring the payment of special contributions may be the subject of appeal.

#### **5.4 Natural Heritage Designations**

The nearest Natura sites are the Great Island Channel SAC (site code 001058) and Cork Harbour SPA (site code 004030).

### **6.0 The Appeal**

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

- States that the Planning Authority did not have regard to Section 48(2) (c) and section 48 (12)(a) of the Planning and Development Acts 2000-2017 in the application of a Special Development Contribution (condition no. 23). The criteria and requirements set out therein regarding 'special contributions' is not adhered to.
- In the absence of the aforementioned statutory criteria by the Planning Authority, the Board is unable to endorse the attachment of a special contribution in this instance and therefore request that the Board remove condition no. 23 in its entirety.
- The special development contribution of €20,000 towards the maintenance of roads does not correspond with the provisions of section 48(2)(c) of the

Planning and Development Act 2000 – 2017 as it has not been established that this constitutes a specific exceptional cost to this particular development.

- The raising of agricultural land is exempt from financial contributions set out in the General Development Contribution Scheme.

## **6.2 Planning Authority Response**

None.

## **6.3 Observations**

None.

## **7.0 Assessment**

### **7.1 Nature of Appeal**

7.1.1 The issues in this appeal relate to whether the terms of the current Section 48 Development Contribution Scheme 2004 and the application of a special development contribution under Section 48(2)(c) has been properly applied. In this regard, the following conditions have been appealed:

Condition 23

*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 €20000.00 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 the public road network. The payment of said contribution shall be subject to the following: -(a) where the works in question – (i) are not commenced within 5 years of the contribution (or final instalment if paid by phased payment), (ii) have commenced but have not been completed within 7 years or the date of payment of the contribution (or final payment if paid by phased instalment), 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 which have not been 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.*

7.1.2 As the appeal against this condition is under Section 48(10)(b) of the Planning and Development Act 2000, as amended, where the applicant considers that the terms of the relevant development contribution scheme have not been properly applied, the Board will not determine the application as if it was made to it in the first instance and will only determine the matters under appeal.

## **7.2 Condition No. 23**

7.2.1 Condition no. 23 requires the payment of €20,000 for the repair of the road network as a special contribution as per section 48.2 (c) of the Planning and Development Act, 2000. It is stated that the contribution will be used to fund repairs to the public road network.

7.2.2 It is understood from the Planner's Report that this condition was imposed on foot a recommendation by the Area Engineer to impose a special contribution towards the repair of the road network and that the figure of €20,000 was based on a 'minimum distance to cover the cost of damage to the public road as a result of heavy vehicles travelling to and from the site'. The A/SEP Report dated 07.12.18) noted that a proper breakdown of this figure may be needed to be provided by the area engineer if queried by the applicant or on potential appeal. I note that no breakdown is on file.

7.2.3 An Bord Pleanála requested a detailed breakdown of the financial contribution figure conditioned in the granting of permission to the applicant. I have



examined the information available and I draw the Boards attention to the fact that there is no response on file from the Planning Authority. Based on the available information I have no detail of the breakdown of how the financial contribution figure was calculated.

7.2.4 I have inspected the site and I note that access is proposed off the R639 northwest of junction 18 off the M8. The general development contribution scheme would normally include contributions for the repair and maintenance of the public road network. I have examined Cork County Council General Contribution Scheme and I note that 'Land Reclamation' is not referred to directly within the scheme.

7.2.5 Appendix 1 attached to the 2004 Development Contribution Scheme has a caveat attached which states *'The appendix attached hereto does not form part of the scheme(s) and is for reference purposes only'*.

7.2.6 In the first instance, it is relevant to test if the drafting of the condition is in accordance with the requirements of the Act, specifically section 48 (12) (a) which states:

*(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,*

7.2.7 In this regard, the local authority has stated that the contribution would be in respect of works proposed to be carried out for the provision of repair to the public road network. The local authority has not complied with the requirement of the Act to specify the particular works. The condition has not specified the specific location and scope of works actually required. The condition is in accordance with the provisions of section 48(12)(a) of the Act.

7.2.8 The next question arises as to the need for a special contribution condition at all. Under section 48(2)(c) of the Act, which states:

*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.*

- 7.2.9 Contained within Appendix 1 are types of development which may be the subject of special contributions where exceptional costs that are not covered by the General Scheme are incurred. Land reclamation is not included in this list. Furthermore, the rationale for the imposition of a special contribution in this instance was to provide for the 'repair of the public road network'. I have not seen a detailed breakdown of the exceptional cost that arises from the proposed development that would require the imposition of a special contribution of €20.000. I consider that the works mentioned in condition no. 23 cannot be viewed as specific exceptional costs not covered by a scheme.
- 7.2.10 Secondly, with reference to section 48 (2) (c) of the Act, and with respect to public infrastructure and facilities which would benefit the proposed development.
- 7.2.11 The Development Management Guidelines state that circumstances which might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it. I consider that the benefit deriving from the repair of the 'public road network' is more widespread and would not in its own right represent public infrastructure and facilities which would solely benefit the proposed development.
- 7.2.12 Given the foregoing, I consider that the works mentioned in condition 23 cannot be considered as specific exceptional costs not covered in the scheme and the works would not solely benefit the proposed development. Therefore, condition 23 is not in accordance with section 48 (2) (c) of the Act, the condition is neither necessary nor warranted.

## **8.0 Recommendation**

Having reviewed the application documents, the grounds of appeal and the planning authority's development contribution scheme and having regard to Section 48 of the Planning and Development Act, 2000 (as amended) and,

based on the reasons and considerations set out below, the Board directs Cork County Council to OMIT condition number 23 and the reason therefor:

## **9.0 Reasons and Considerations**

The Board considered that condition number 23 does not accord with the provisions of section 48 (2) (c) of the Planning and Development Act, 2000 (as amended), with reference to the payment of a 'special contribution'.

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Dáire McDevitt  
Planning Inspector  
15<sup>th</sup> April 2019