



An
Bord
Pleanála

Inspector's Report ABP-303733-19

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| Development | Sand and gravel quarry |
| Location | Warren High & Belville, Athlone, Co Westmeath |
| Planning Authority | Westmeath County Council |
| Planning Authority Reg. Ref. | 187110 |
| Applicant(s) | Connaughton Sand and Gravel Ltd. |
| Type of Application | Permission. |
| Planning Authority Decision | To grant, with conditions. |
| Type of Appeal | First Party |
| Appellant(s) | Connaughton Sand and Gravel Ltd. |
| Observer(s) | None |
| Date of Site Inspection | 7 th May 2019. |
| Inspector | Deirdre MacGabhann |

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1.0 Site Location and Description

- 1.1. The appeal site lies in a rural area c.9km to the north east of Athlone Town, in the townlands of Warren High and Belville. It lies approximately midway between the villages of Baylin and Mount Temple and is situated to the north of the county road (L1427). An existing quarry lies to the east of the appeal site with access from the county road. It is not visible from the public road.
- 1.2. The county road is generally elevated (c. 1 to 1.5m) above surrounding agricultural land in the vicinity of the access to the existing quarry. The road is c.5m in width and generally maintained in good condition. However, it is undulating with some signs of local subsidence.

2.0 Proposed Development

- 2.1. The proposed development, as revised by way of further information, comprises:
 - A sand and gravel quarry on a site of 2.75ha, to the west of an existing quarry,
 - Creation of a new entrance and access road to service quarry traffic (with the entrance to the public road c.25m to the east of the existing site entrance),
 - Use of existing plant and machinery, and
 - Erection of stock proof fence.
- 2.2. Annually, it is proposed to extract between 50,000 and 100,000 tonnes of sand and gravel from the quarry. HGV traffic is stated to be between 10 and 20 HGVs out per day (i.e. 20 to 40 HGV movements).
- 2.3. The application is accompanied by planning report, AA Screening Report and an EIA Screening Report (with RFI, dated December 2018)

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 22nd January 2019 the planning authority decided to grant permission for the development subject to 17 conditions. Condition no. 10 requires the payment of a

special contribution of €19,800 per annum towards the costs of maintenance of the L-1427 necessitated by traffic generated by the development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 1st August 2018 – The report refers to pre-planning meetings/discussions. One of the matters raised is '*Traffic Impact Assessment. Question of tonnage give the bog nature of surrounding road network*'. Recommends further information in respect of a number of matters. These are not associated with the effect of the development on the condition of the public road.
- 18th January 2019 – Recommends permission subject to condition, including payment of a special development contribution in respect of maintenance of the L-1427.

3.2.2. Other Technical Reports

- SEE (Roads) – First report, undated, recommends further information in respect of land ownership, provision of a wheel wash facility and permanent closure of the existing access road to the site with completion of proposed access (with inadequate sightlines). Second report, January 2019, raises no objections subject to conditions. Recommended condition no. 13 requires payment of an annual levy in respect of the cost to be incurred in the upkeep of the L-1427 necessitated by traffic arising from the development. The basis of the calculation is set out (see file).
- SEE (Environment) – No objections subject to conditions.

3.3. Prescribed Bodies

- An Taisce – Legal and compliance status of all the existing extracted area needs to be addressed. Need for remedial EIA needs to be addressed before any new extension considered.

3.4. **Third Party Observations**

- 3.4.1. There is one third party observation on file. It states that the development is an Annex II development and requires screening for EIA and AA.

4.0 **Planning History**

- 4.1. The following planning applications have been determined on land to the east of the appeal site, comprising the existing quarry:

- PA ref. 00/479 – Permission refused for a concrete plant.
- PA ref. 02/163 and PL25.130388 – Permission refused for a concrete plant.
- PL25SU0052 – Substitute consent granted by the Board in 2014 for the quarry to the east of the appeal site. Condition no. 1 of the consent stated that it pertained to the development undertaken. Condition nos. 4 and 5 required the payment of a bond and a general development contribution under section 48 of the Planning and Development Act 2000 (as amended), respectively

5.0 **Policy and Context**

5.1. **Westmeath County Development Plan 2014 to 2020**

- 5.1.1. Section 3.42 of the current County Development Plan deals with extractive industry. It acknowledges that the industry provides an essential input to the construction industry but that it is necessary to ensure that aggregates can be sourced without significantly damaging the road network (amongst other things). Development proposals are, consequently, required to be framed such as to address transportation impacts in a satisfactory manner. Policy P-EI4 states '*To ensure that the Extractive Industry and associated development minimises adverse impacts on the road network in the area and that the full cost of road improvements, including during operations and at time of closure, which are necessary to facilitate those industries are borne by the industry itself*'.
- 5.1.2. With regard to the general management of roads and traffic, Policy P-RT1 seeks to improve the standards and safety of public roads and to protect the investment of

public resources in the provision, improvement and maintenance of the public road network.

5.2. Natural Heritage Designations

- N/A.

5.3. EIA Screening

- N/A.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The first party appeals condition no. 10 of the permission only under section 48(13)(a) of the Planning and Development Act 2000 (as amended). Grounds of appeal are:

- The amount is excessive and unwarranted. Quarry traffic has been exiting the site since before the Act of 1963 without creating any significant issues over and above everyday normal wear and tear. €19,800 represents an effective local tax on the site rather than a justifiable fee.
- No case has been made to justify the amount set out in the condition. No reference to condition in Planner's Report or Area Engineer's Report. The planning authority's Development Contribution Scheme states that where specific exceptional costs not covered by a scheme are incurred in respect of public infrastructure and facilities which benefit the proposed development, conditions will specify the particular works to be carried out by the Council. Given the historical and recent use of these roads by quarry traffic, there is no '*specific exceptional costs*' that will be incurred in respect of the local road for quarry related traffic arising from the extension to the existing pit. The only exceptional costs that arise will be to the applicant (improvement of entrance, wheel wash and surface at new entrance). No reference to exceptional works to the L-1427 mentioned in the course of the planning application.

- The quarry has been working at the site prior to the introduction of the Local Government (Planning and Development) Act 1963 and the traffic generated by the quarry will not increase above those identified in the substitute consent application or add significantly to the established traffic levels on the L-1427.
- The Board, in their decision under SU25.SU0052 did not impose a special development contribution pertaining to the upkeep of roads. The proposed development is an extension of an existing sand and gravel quarry (despite McTigue Court Case ruling referred to in the Planning Report). The applicant has spent substantial sums of money justifying the operation of a pre-1964 quarry resulting from the failure of government to adequately legislate for its use in the first place. There are development contributions to the Substitute Consent process which the applicant attempted to negotiate over 5 years ago and which were rejected in the course of the planning application. There is no justification for the imposition of €19,800 as an ‘*exceptional*’ cost associated with the continuing operation of the quarry.

6.2. Planning Authority Response

6.2.1. The planning authority makes the following comments on the appeal:

- Context: The impact of the proposed development on the local road was raised in pre-planning meetings/discussions. The planning report referred to the proposed on-site activity and expected traffic movements (expected tonnage, life, excavation, extraction rate, development works, estimated traffic volumes).
- Excessive and unwarranted levy: Policies of the County Development Plan in respect of protection of the road network apply (P-EI4, P-EI7 and P-RT1). The District Engineer Report (on the planning application) sets out the basis of the calculation of the special levy.
- Inadequate justification – As above. Also, notwithstanding the historical operation of the site, the proposed development relates to a greenfield site. The fee generated is based solely on the extraction volume proposed per annum from this site, and not the processing area of the existing and largely exhausted pit that was included in the red line. This will clearly and

significantly add to the current traffic levels. The Board has taken a similar approach elsewhere (QD17.QD0002 and substitute consent file SU17.SU0078).

- No special development contribution in Substitute Consent – This consent only referred to works undertaken. The current application provides for extraction from a new greenfield site. The proposed works will inevitably have an impact on a weakened road network that is subject to ongoing maintenance. It is reasonable that the quarry operator contribute towards its upkeep and maintenance.
- Background to the need for the levy – Large sections of the local road serving the site are constructed on bog ramparts. Only 2000m of this road has been considered in respect of the proposed development, even though it could be applied on the full length of the road until HGV movements disperse (i.e. to 5.1km). Most roads are not designed for HGVs. HGVs cause more damage to foundations and structures of roads than cars, with damage rising exponentially as weight increases (Generalised Fourth Power Law). Type, mass and volume of HGV traffic has changed significantly since 1963 (including maximum permissible axle weight limits). The application has been treated as a new application and consequently policies in the current CDP have been applied. Levy is based on the quarry being responsible for 50% of road damage. This is a conservative estimate. Based on traffic count data from March 2018, this would indicate that the quarry account for over 90% of HGV movements on the road. In 2016, the Council incurred costs of €121,937 carrying out improvements on 1km section of the road serving the development, with a further €70,200 allocated for this year to carry out improvements on the same stretch due to the current condition of typical sections.

6.3. Observations/Further Responses

6.3.1. None.

7.0 Assessment

- 7.1. Having regard to the nature of this appeal, this assessment is confined to condition no. 10 of the permission and the special development charge levied.

Legal/Policy Context

- 7.2. Section 48 of the Planning and Development Act 2000 (as amended) enables a planning authority to include conditions requiring the payment of development contributions in respect of public infrastructure and facilities benefiting development in the area of the planning authority. The Act requires the basis of the determination to be set out in a scheme (under section 48(2)(a) or the payment of a special contribution (under section 48(1)(c), '*in respect of a particular development where specified exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities benefiting the proposed development*'). Where a special development contribution is required, under section 48(12) the Act requires:

- i. That the condition specifies the particular works carried out or proposed to be carried out, to which the contribution relates,
- ii. That where works are not commenced within 5 years of the date of payment, have commenced but not been completed within 7 years of the date of payment, or where the local authority decides not to proceed with the proposed works, the contribution shall be refunded (in whole or part, depending on the extent of works carried out).

- 7.3. The Westmeath Development Contribution Scheme 2013 to 2020 refers to special development contributions in section 12.0. It states that in addition to the General Development Contribution Scheme the Council may require payment of a special development contribution in respect of a particular development where specific exceptional costs not covered by the scheme are incurred in respect of public infrastructure and facilities which benefit the proposed development.

- 7.4. Policies of the County Development Plan, referred to above (section 5.1) seek to (a) improve the standards and safety of the public road network in the county and to safeguard investment in it for provision, improvement and maintenance, and (b) ensure that the extractive industry minimises adverse impacts on the road network

and that the full cost of road improvements which are necessary to facilitate those industries are borne by the industry itself.

Principle

- 7.5. The proposed development comprises a sand and gravel quarry in a greenfield site, which adjoins an established quarry. The proposed development will generate between 20 and 40 HGV movements/day. These will be concentrated on the public roads in the immediate vicinity of the site before movements disperse into the wider road network. HGVs, by virtue of their size and weight, have the potential to damage the public road.
- 7.6. Having regard to the policies of the County Development Plan and the risk of damage to roads from HGVs, in principle, therefore I consider it is reasonable that the applicant contribute to the additional costs of maintaining the public road in the immediate vicinity of the site. I do accept that there was no levy in respect of damage to the public road in the Board's previous determination of SU25.SU0052. However, this substitute consent dealt with historic quarrying on the adjoining site from a time where environmental controls were in their infancy. The Board's decision also included a financial contribution in respect of public infrastructure and facilities facilitating the then development. It is not strictly relevant to the proposed greenfield site development which comes forward alongside the existing quarry, within a contemporary policy context where special development contributions are the norm to address project specific impacts on public roads. I accept the applicant's argument that there may be no increase in HGV traffic over historic levels. However, the proposed levy is for damage arising from the HGV traffic associated with the future operation of the greenfield site (and therefore future damage to the public road), regardless of continuation in traffic levels.
- 7.7. Amount Levied
- 7.8. The L1427 between the villages of Baylin and Mount Temple is constructed in part on bog ramparts. It is inherently therefore more susceptible to damage from HGVS. The planning authority set out their rationale for the proposed levy in District Engineer's report of the 18th January 2019 and in response to the appeal. (I would accept that it was not raised in the District Engineer's first report, but the matter was

also raised in pre-application meetings/discussions). The rationale for the special development contribution is based on the following:

- Quarry traffic is concentrated within 2km of the site (although it is argued that this could be reasonably extended to up to 5.1km).
- 50% of damage to the road is caused by traffic originating from the development (this is stated to be reasonable as most damage to the road is caused by HGVs, 90% of which are travelling to and from the development)
- Lifetime of the road after restoration with normal traffic is c.10 years. This would be reduced to 5 years with quarry traffic.
- Total cost of restoration is €198,000 (breakdown in PA reports).
- Therefore, over a period of 10 years, the additional cost of works on the road will be €198,000.

7.9. Having regard to the above, I would accept that the planning authority has specified the particular works to be carried out to which the contribution relates and the basis for the calculation. Furthermore, I consider the planning authority's basis to be reasonable. Works are confined to the stretch of road nearest the quarry and are consistent with the cost of works carried out to improve 2km of this section of the road in 2016 (see report by District Engineer). The Planning and Development Act 2000 (as amended) also provides for the repayment of development contributions in whole or in part if proposed works are not carried out.

8.0 Recommendation

8.1. Having regard to the above, I consider that condition no. 10 of the planning authority's grant of permission is consistent with the Planning and Development Act 2000 (as amended), relates to exceptional costs not covered that will be incurred by the planning authority in respect of public infrastructure and facilities (in this case maintenance of the public road network) benefiting the proposed development. Further, the rationale for the contribution has been clearly set out and is reasonable, based on the additional cost of maintaining the public road with HGV traffic from the quarry. I recommend therefore that the Board directs the planning authority to attach the said condition.

9.0 Reasons and Considerations

Having regard to:

- (i) the policies of the Westmeath County Development Plan 2014 to 2020 in respect of the maintenance of the public road and for the extractive industry, and
- (ii) the nature of the proposed development on a greenfield site and the predicted volume of HGV movements on the county road,

It is considered that the application of a charge under condition no. 10 of a special contribution towards the additional, specified costs towards the maintenance and repair of the public road, which benefits the proposed development, was justified.

Deirdre MacGabhann

Planning Inspector

13th May 2019