



An
Bord
Pleanála

Inspector's Report ABP-303901-19

Development

A ten-year permission for the continued use of an existing sand and gravel quarry with 2 no. new extraction areas measuring c. 3.12 hectares combined and all ancillary development works including the implementation of a phased restoration programme.

Location

Tullig More (Townland), Dripsey, Co. Cork.

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

18/7273

Applicant(s)

Tulligmore Quarry Solutions Ltd

Type of Application

Permission

Planning Authority Decision

Grant subject to 12 conditions

Type of Appeal

First Party -v- Condition 12

Appellant(s)

Tulligmore Quarry Solutions Ltd

Observer(s)

None

Date of Site Inspection

31st May 2019

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located 3.3 km to the north of Dripsey. This site lies off that portion of the R619 which runs between Coachford in the south to Crean's Cross Roads in the north. It is situated in an area of rolling countryside.
- 1.2. The site itself comprises an operational sand and gravel quarry, which extends over an area of 4.52 hectares. This quarry has been in existence since the 1950s.

2.0 Proposed Development

- 2.1. The proposal is for a 10-year permission for the continued use of a sand and gravel quarry. Two new extraction areas are proposed, which would have a combined area of 3.32 hectares.
- 2.2. Operations generated by this proposal would lead to the excavation of c. 7000 tonnes per month. Sand and gravel would be transported in 25-tonne trucks and so on average 14 trips would occur daily.
- 2.3. The proposal is also for ancillary works, including the implementation of a phased restoration programme.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 12 conditions, the twelfth of which states the following:

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 €68,716 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 roadworks...

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

The case planner cites the Area Engineer's levy request and he refers to it as a "special contribution levy".

3.2.2. Other Technical Reports

- IFI: Conditions requested.
- Area Engineer: Conditions requested + Levy of €8,380 per acre, as site is 3.32 hectares or 8.2 acres, €68,716 sought.
- Heritage: Condition requested.
- Environment: No objection, subject to conditions.

4.0 Planning History

- 86/2854: Concrete production facility: Permitted.
- 06/11310: Continuation of use of a 32.2-hectare quarry and the development of 2.5-hectare area for construction and demolition waste recycling and green waste composting, provision of hardstanding areas, internal roadways, settlement pond and phasing restoration programme: Permitted
- 12/5630: Foregoing permission extended.
- 17/6490: Continued use of existing plant within the quarry, demolition of existing shed, and the construction of a new shed for vehicle maintenance and storage: Permitted.

5.0 Policy and Context

5.1. Development Plan

Under Section 6.12 of the Cork County Development Plan 2014 – 2020 (CDP), Mineral Extraction is discussed. Objectives 12-1, 2 & 3 are set out therein. The latter Objective states the following:

With new quarries and mines and extensions to existing quarries and mines regard should be had to visual impacts, methods of extraction, noise levels, dust prevention, protection of rivers, lakes, European sites and other water sources, impacts on residential and other amenities, impacts on the road network (particularly with regard to making good any damage to roads), road safety, phasing, re-instatement and landscaping of worked sites.

5.2. **Natural Heritage Designations**

None

5.3. **EIA Screening**

Under Item 2(a) of Part 2 of Schedule 5 of Article 93 to the Planning and Development Regulations, 2001 – 2019, sand and gravel quarries with an extraction area of more than 5 hectares are required to be the subject of a mandatory EIA.

Under the proposal, the extraction area of the subject sand and gravel quarry would be 3.32 hectares and so below the above cited threshold.

The question as to whether the proposal should be the subject of a sub-threshold EIA was addressed by the applicant by means of an EIA Screening Exercise. I have reviewed this Exercise and I concur with its conclusion that the preparation of an EIAR is not required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The applicant has, under Section 139 of the Planning and Development Act, 2000 – 2018, (hereafter referred to as the Act) appealed condition 12 attached to the draft permission. This condition relates to a special contribution levy (hereafter referred to as the levy), which the applicant seeks to have omitted from the said permission.

The applicant has appealed it on the following grounds:

- Contrary to Section 48(2)(c) of the Act, the Planning Authority has not demonstrated that the costs incurred under the levy would benefit the

proposal and it has not demonstrated that they would be either specific or exceptional.

Condition 12 refers to the “provision of roadworks” only. As stated under PL04.229412, the Board is under an onus to justify the said levy by means of reference to specific and exceptional works that would be of benefit to the proposal. This it has not done.

- The Planning Authority has provided no justification for the magnitude of the levy, which would be €68,716. This levy, which would relate to an area of only 4.52 hectares, would be twice as much as was paid under 06/11310 in conjunction with the overall site of 32.2 hectares.
- The Planning Authority is seeking to double charge the applicant insofar as the current site formed part of the site that was previously levied under 06/11310. This application comprised two elements, one of which proceeded, i.e. the continuation of use of the 32.2-hectare quarry, and one of which did not, i.e. a construction and waste recycling and green waste composting facility on a 2.5-hectare site. The applicant paid the levy on the element that did proceed in full. As the current proposal is for part of the area thus levied, it should not now be levied again.
- Attention is drawn to Board decisions on PL28.216755 and PL28.233159, which entailed the removal of levies that amounted to double charging. In the former case, this entailed a reduction in the levy concerned.

6.2. **Planning Authority Response**

Notwithstanding a Section 132 request, the Planning Authority has not responded to the applicant’s grounds of appeal.

6.3. **Observations**

None

6.4. **Further Responses**

None

7.0 Assessment

- 7.1. The applicant has appealed condition 12 attached to the Planning Authority's permission granted to the proposal. This condition refers to the payment of a special contribution with respect to the provision of roadworks not covered by the Planning Authority's General Development Contributions Scheme. The applicant requests that the Board consider this appeal in accordance with Section 48(13)(a) of the Planning and Development Act, 2000 – 2019, i.e. the condition should be assessed in isolation from the remainder of the proposal and so no *de nova* assessment is called for. I have reviewed this request, accordingly, in the light of the proposal and I consider that it should be acceded to.
- 7.2. The gestation of condition 12 began with the advice of the Area Engineer who understood the proposed extraction area as an extension to the existing quarry. He requested that a levy of €8380 per acre be applied to the area in question, i.e. €8380 x 8.2 acres = €68,716. He did not explain the basis for his use of the figure of €8380. The case planner understood the resulting levy to be a special contribution and it was conditioned as such. Notwithstanding being requested to do so, under Section 132 of the Planning and Development Act, 2000 – 2019, the Planning Authority has not elucidated any of these matters for the Board.
- 7.3. The applicant's case against condition 12 is effectively two-pronged, i.e. the test of specific exceptional costs for special contributions has not been met and the levy amounts to double charging. I will consider these two points in reverse order.
- 7.4. Firstly, the applicant cites permitted application 06/11310. This permission was the subject of third and first party appeals PL04.226546. The third party appeal was withdrawn. The first party appeal was against several aspects of the permission granted, including the attachment of condition 41 for a special contribution of €30,000 "for the provision of road improvement works required in the area as a result of damage to the road structure due to traffic movements associated with the development." This appeal was subsequently withdrawn, too. Thus, condition 41 was retained in the final grant of permission and the applicant complied with it.
- 7.5. The applicant draws attention to the fact that the previous application site encompassed the current one and it was far larger, i.e. 32.2 hectares compared to 4.52 hectares. Insofar as the previous condition 41 and the current condition 12 both

require the payment of special contributions with respect to roadworks, the applicant questions the need for the latter, i.e. it constitutes double charging, and its magnitude, at over twice the amount for a much smaller site.

- 7.6. As noted above the Planning Authority has not responded to the applicant's appeal. Nevertheless, it could be contended that condition 41 addressed the likely damage to public roads that would have arisen from traffic movements generated by that proposal. The current proposal is a discrete one, which would entail the opening of two new extraction areas, and so traffic generated by it would be additional to that previously generated and conditioned for. Accordingly, double charging would not arise just because the current site is a sub-set of the previous one.
- 7.7. Secondly, the applicant critiques condition 12 on the basis that it does not meet the test set out in Section 48(2)(c) of the Planning and Development Act, 2000 – 2019, for a special contribution, i.e. that there needs to be "specific exceptional costs" that are incurred by the local authority in respect of public infrastructure and facilities, which are not covered by a General Development Contribution Scheme and which would benefit the proposal. The works cited in condition 12 are simply described as "the provision of roadworks" without any further elaboration.
- 7.8. The applicant cites appeal PL04.229412, under which the Board upheld the need to apply the aforementioned test. I consider that the description of works cited in condition 12 is too nebulous to justify the special contribution required. Consequently, the connection between this contribution and the benefit to the proposal is unclear and it is not at all self-evident that the costs involved are ones that would not be met under the Planning Authority's General Development Contribution Scheme.
- 7.9. I, therefore, conclude that condition 12 fails to meet the test set out in Section 48(2)(c) of the Planning and Development Act, 2000 – 2019, for a valid special contribution.

8.0 Recommendation

- 8.1. That condition 12 be omitted.

9.0 Reasons and Considerations

It is considered that condition 12 attached to the planning permission granted to application 18/7273 fails to comply with the provisions of Section 48(2)(c) of the Planning and Development Act, 2000 – 2019, insofar as the Planning Authority has not demonstrated that the proposal would result in it incurring specific exceptional infrastructural costs, which would not be covered by its General Development Contribution Scheme and which would benefit the proposal. Accordingly, the retention of condition 12 would be contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

29th August 2019