



An
Bord
Pleanála

Inspector's Report

ABP-305020-19

Development	A continuation / resumption of use and the operation of an existing quarry
Location	Culliaghmore &, Culliaghbeg, Ballinasloe, Co. Roscommon.
Planning Authority	Roscommon County Council
Planning Authority Reg. Ref.	18436
Applicant(s)	McKeons Sand and Gravel Ltd
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party v Contribution
Appellant(s)	McKeons Sand and Gravel Ltd
Observer(s)	None.
Date of Site Inspection	22 nd October 2019
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The site is located in the townlands of Culliaghmore and Culliaghbeg on the south side of the R357 about 6km south east of Ballinasloe. It has a stated area of 13.89 hectares within a holding of 15.53 hectares.
- 1.2. A sand, gravel and limestone quarry currently exists on site. Facilities for processing sand and gravel are on site.

2.0 Proposed Development

- 2.1. It is proposed to continue/resume use and operation of an existing quarry. The development is described as:

A continuation / resumption of use and the operation of an existing quarry including use of all existing buildings and plant and machinery. Existing buildings consist of a workshop, office/weighbridge and prefabricated canteen / stores. Machinery includes various items of mobile / semi mobile crushing and screening plant. The application and proposed development also provide for the operation of a construction and demolition (C & D) waste recycling facility within the quarry and the provision of new toilets, new wastewater treatment unit and associated percolation area. The operation of the construction and demolition (C & D) waste recycling facility will require the granting of a waste permit or waste licence. Permission was previously granted for quarrying at this site under permission ref no. PD/07/571. Permission is sought for a period of twenty years plus two years for final restoration. (The application is accompanied by an Environmental Impact Assessment Report (EIAR) and a Natura Impact Statement (NIS))

- 2.2. The schedule of areas is set out for the purpose of fees for planning application in schedule 2 of the documentation.
- 2.3. The application area is stated at 13.89 ha and is described as the use of land for winning and working materials/deposit of waste. This area includes the C and D recycling facility. Other details are noteworthy:
 - The new toilet building has an area of 20 sq.m.
 - The existing workshops/stores and weighbridge and store have areas of 380 sq.m., 46.5sq.m. and 14.5sq.m. and are subject of repeat fees previously paid.

- The existing fuel tank area is unstated
- The EIAR provides detailed project description.
- The C and D waste recycling facility imports waste material such as concrete and bricks from construction sites and crushes and screens them in to usable products. It will take place using existing quarry plant and machinery. It is also planned to use fleet exporting loads for the quarry to carry C and D waste on return trip to quarry site.
- The life of the permission was not sufficient to provide for the full extraction of the resource. The reserves are estimated to be in the order of 2000000 and depending on the demand this could take up to 44 years to extract.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. By order dated 8th July 2029 the planning authority decided to grant permission.

- Condition 21 states that: Prior to continuation/resumption of the development permitted through this consent or within such other timeframe as may be agreed with the planning authority a development contribution in the sum of **€300,910** updated at the time of payment in accordance with the changes in the Wholesale Price Index – Building and Construction (Capital Goods) published by the CSO shall be paid to Roscommon County Council as a contribution towards the expenditure that was incurred or is proposed by the local authority in respect of providing public infrastructure and services. Payment of this contribution is subject to the provision of the adopted Contribution Scheme 2014.

Reason: It is considered reasonable that the developer should contribute towards the expenditure that is proposed to be incurred by the Council in respect of the provision of public infrastructure and services.

3.1.2. Other conditions of note:

- Condition 2 states that: Permission is for a maximum period of 20 years from the date of the final grant of planning permission. Full restoration shall be carried out before that date unless permission is granted prior.
- Condition 19 requires submission of proposal for reinstatement prior to such works and that the agreed programme shall be completed in its entirety by the expiry of the 20-year period.
- Condition 22 requires a bond/security of €100000

3.2. Planning Authority Reports

3.2.1. Planning Reports

- In the initial report the planning authority acknowledges the acceptability of the proposal in principle by reference to section 3.4.4 of the development plan and policies therein which support mineral extraction and quarrying subject to appropriate development control. The C and D waste recycling facility is accepted as a logical extension within this industrial complex. This is acknowledged as requiring a waste licence.
- The EIS (lodged August 2018) is considered to meet with the PDR 2000 Regulations and provisions of the EIA Directive. It is appraised in detail and significant direct and indirect effects are identified and considered to be adequately assessed in the EIAR.
- Further information was requested in respect of Appropriate Assessment. A Natura Impact Statement was sought from the applicant as the screening report was deemed to be insufficient.
- A NIS was submitted as Further Information on 15th May 2019. This statement identified 8 sites within 15km of the site – the closest being the River Shannon Callows SAC, the Middle Shannon Callows SPA and the River Suck Callows SPA. It was concluded by the applicant that the proposed development will have no significant impact on the nearby Natura 2000 sites.
- In the report dated 21st June 2019 (countersigned 8th July) it was concluded that the proposed development would have no significant impact on natura sites.

- In the report of 21st June 2019 the AA is accepted and the proposed development is considered to consistent with proper planning and development of the area . A development contrition of €291,690 (€2.10 x 138,900) is recommended for the extraction activity and €9,220 (€20 x 461) for the commercial development. €300,910 in total.
- An addendum report of 8th July provides an overview of the planning appraisals and clarifies the approach by the planning authority in reaching its decision. Conditions of permission are modified in accordance with the senior planner's final appraisal.

3.2.2. Other Technical Reports

Environment : No objection subject to conditions.

Road Design: No objection subject to conditions.

3.3. Prescribed Bodies

The planning authority in reference to previous correspondence, notified both the EPA and the Shannon Fisheries Board . However there are no reports from either of these bodies on file. In view of the nature of the appeal, reports in this regard are not pertinent to consideration of the appeal.

3.4. Third Party Observations

None

4.0 Planning History

- 4.1. An Bord Pleanala Reference PL20.227577: Permission for following development which consists of: (1) The retention and continued use of the existing settlement lagoon system. (2) The retention and continued use of the existing workshop, stores and WC (floor area 380m²). (3) Retention of the existing screening berm located along the southern boundary of site. (4) Retention permission is also sought for the continued importation and processing of aggregates from the applicant's existing extraction operation (P.Ref. PD/05/990) on the opposite side of the public road. (5) And all ancillary site works all and PLANNING PERMISSION is also sought for (a)

the continued operation of the existing quarry development and all ancillary activities under Section 261 (Registration of quarries) of the Planning and Development Act 2000 and consists of the following: The continued use of the existing quarry and adjoining lands for the extraction and processing of rock, sand and gravel within an overall application area of c.16 hectares. Activities to be carried out include the extraction of aggregate using blasting and hydraulic excavators. Processing of the extracted material is carried out using semi-mobile plant and mobile plant and involves screening, washing and crushing prior to stockpiling for sale off site. Restoration of the site will take place to amenity/wildlife use comprising both wet and dry restoration. Permission is also sought for the continued use of the existing entrances (2no.) access roads, internal haul roads, ancillary weighbridge office, weighbridge and weighbridge store, stockpiles and all other ancillary site works. The planning application and accompanying Environmental Impact Statement (EIS) are being submitted pursuant to a request for same by Roscommon County Council under the Planning & Development Act 2000 (Section 261- Registration of Quarries).

(B) Permission is also sought for development within the existing quarry which will consist of: (1) Replacement of the existing septic tank with a proprietary effluent treatment system and percolation area to service the existing WC on site. (2) Relocation of the existing bunded fuel tank within the quarry

- Condition 8. This permission shall be for a period of 10 years from the date of this order. Full restoration of the site according to the broad principles indicated in the Environmental Impact Statement shall be carried out before that date unless, prior to the end of that period, planning permission shall have been granted for the continuance of use. Final details of the restoration shall be agreed in writing with the planning authority within one year of the date of this order.

Reason: To limit the impact of the development on the amenities of the area, to monitor the effects of the development on the hydrology and hydrogeology of the area and to ensure the appropriate restoration of the site.

- Condition 6 was appealed and was amended **from**

Prior to the commencement of the development, the developer shall pay the sum of **€321,087** 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 Roscommon County Council as a contribution towards the expenditure that was incurred or is proposed by the Planning Authority in respect of development.

Payment of this contribution is subject to the provisions of the development contribution scheme.

Reason: It is considered reasonable that the developer should contribute towards the expenditure that is proposed to be incurred by the Council in respect of the provision of public infrastructure and services.

To

- The developer shall pay to the planning authority a financial contribution of **€109,764.5** (one hundred and nine thousand, seven hundred and sixty four euro and fifty cent) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any 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 a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

For the stated reasons and considerations:

It is considered that the terms of the County Roscommon Development Contribution Scheme have not been properly applied in this case as the scheme refers to “site area for extraction” and the calculation was based on the total site area. The relevant area for extraction, and thus coming within the scope of the contribution scheme, is 4.57 hectares. On the basis of two euro per square metre, this comes to €91,400 plus buildings of 477 square metre at €38.50 per square metre (current charge) (€18,365), this brings the total contribution payable to €109,765.

5.0 Policy Context

5.1. Roscommon County Development Plan 2014-2020

- 5.1.1. Section 3.4.4 of the development plan and policies therein support mineral extraction quarrying subject to appropriate development control.

5.2. Roscommon County Council Development Contribution Scheme 2014

- 5.2.1. This scheme sets out charges applicable.

- Table 4 sets out levels of contribution required for a range classes of infrastructure depending on class of development. The relevant rate is a total of €20 per sqm of industrial/commercial development.
- Table 5 sets out levels of contribution required for a range classes of infrastructure for other classes of development. The rate for Category E Extractive Industry (which is in addition to any buildings) is €2.10 per sqm of site extraction area
- Section 14 sets out categories of developments that may be considered for full or partial exemptions. The most relevant being categories (j) and (l). One refers to temporary permission e.g. 66% of normal rate for a 10-year permission. The other refers to redevelopment whereby a charge to only the net additional development will apply.

- 5.2.2. In the previous scheme the rate of €32.50 applied to commercial buildings and quarry areas were subject to €2 per sq.m.

5.3. Natural Heritage Designations

The NIS identified 8 sites within 15km of the site – the closest being the River Shannon Callows SAC, the Middle Shannon Callows SPA and the River Suck Callows SPA.

5.4. EIA

An Environmental Impact Assessment Report was submitted with the planning application to the local authority. As this is a Section 48 appeal which relates solely to the development contribution set out in condition 21 it is not considered necessary to assess the EIAR in determining this appeal.

6.0 The Appeal

6.1. Grounds of Appeal

- This follows a previous appeal to the Board for quarrying at the same site. In that case the grounds were based on the planning authority applying the contribution to the site area as opposed to extraction area. The site area included historic extraction areas, processing areas, settlement lagoons and peripheral berms, roads etc.
- It is clarified that the proposed extraction area is 3.15ha and is to the east of the former works which is now water filled. Upon completion both areas will be separated by a causeway to be retained.
- In addition, an area to the south east of the site is reserved for processing and stocking area for quarry goods from the adjacent sand and gravel pit for which permission exists. A C and D stocking and recycling area is also included in this area permission.
- Other elements in the application site include the main access and roads, the quarry office and weighbridge, a workshop , restored and partially restored areas and areas of historic and completed extraction including water filled areas.
- The previous permission was subject to a 10-year limit however due to a recession in the sector until fairly recently the quarrying is incomplete resulting in an area of limestone reserves only partially extracted and some fully unworked.
- The proposal is for the continuation of previously approved quarrying.
- The rate has since increased by 20 cents per square metre of extraction area.

- The contribution amount being sought is around 3 times greater than the amount considered appropriate by reference to the Board previous approach.
- In view of the foregoing €2.10 should be applied to the 3.15 areas in addition to rates for buildings.
- It is requested that an effective double charging should be taken into account by reference to the guidelines Development Contributions Guidelines for Planning authorises . ‘.. Authorities are reminded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.’
- Development contributions must be consistent with the spirit of capturing planning gain in an equitable manner.
- The previous levy was paid in full (a schedule of payment is attached by the PA) and it is submitted that condition 21 does not take account of this.

6.2. Planning Authority Response

6.2.1. In a letter dated 25th September the planning authority responds to the grounds of appeal. The rationale for the application of the development contribution rate of €2.10 per sqm of site extraction for extractive industry to the proposed development is explained as follows:

- Full extent of site area as stated in question 11 of the planning application form is used and this is 13.89 hectares. Similarly the planning application fee relates to this area.
- The extraction area as outlined in purple encompasses substantial areas of the site each side of the causeway. The totality of the planning application documentation does not identify curtailment of the proposed extension to 3.15ha as referred to in the appeal submission.
- There is no double charging as the previous sum of €109765 was for a 10-year permission and related to a specific time and reflected the utilisation of public infrastructure and facilities during that time only. Similarly in the subject case

there is an expectation that the 20-year quarrying and associated activity will utilise public infrastructure and facilities during that period.

- It could not be countenanced that contribution for one-time limited permission could compensate for utilisation of infrastructure for subsequent permission.

7.0 Assessment

- 7.1. This is an appeal made under the provisions of Section 48(10) (b) of the Planning and Development Act, 2000 (as amended), and therefore the Board is restricted to considering Condition No. 3 only and cannot consider the proposed development *de novo*. I have therefore confined my assessment to the terms of the Roscommon Council Development Contribution Scheme. Condition No. 21 requires the applicant to pay a contribution of €300,910 in total to the Planning Authority towards expenditure in respect of public infrastructure and facilities as provided for in the approved Roscommon Council Development Contribution Scheme 2016-2020 in accordance with Section 48 of the Planning and Development Act, 2000 (as amended).
- 7.2. The development contribution is recommended for the extraction activity and for the commercial development.
- 7.3. The table below provides a breakdown of the proposed development and recommended contributed by the planning authority and by the applicant:

Category	Contribution scheme	PA	Applicant
Extraction Area		€291690 (€2.10 x 138,900 sq.m.)	€66,150 (€2.10 x 31500sq.m.) further reducing taking account of previous levy
Buildings (other development – category F)	€20/sq.m	€9220 (€20 x 461)	€9220 (€20 x 461) further reducing taking account of previous levy
C and D waste As ancillary use to extraction Or As other development: category F	€2.10 /sq.m €20/sq.m	No additional charge as whole site is levied	
Total levy		€300910	€75370

7.3.1. There is no dispute that the development contribution scheme applies to the subject development. The disputes centres on the area of application and also the application of exemptions.

7.4. Area

- 7.4.1. The scheme has a specific rate per square metre for the extraction area in the extractive industry. This area is exclusive of buildings related to such activity. The planning authority has however attached this rate to the entire site as outlined in red rather than the delineated extraction area.
- 7.4.2. In a previous contribution appeal on the same issue the Board decided to modify the amount by applying the rate to the extraction area only and in the interest of consistency this principle should I consider still apply.

- 7.4.3. The planning authority justifies its application on the basis of the documentation submitted and particular details on the application form which states the whole site as the quarry area. It is further pointed out that the purple area delineating the extraction area extends over a large proportion of the site. I also note that the EIAR is required on the basis of size. In the opening chapter in the Screening section 1.2 it explains how the extraction area is greater than 5 hectares. These cumulative areas would however meet this threshold.
- 7.4.4. The applicant makes the case that the extent of extraction as permitted was not carried out but does not clearly quantify what was extracted. There is I accept some ambiguity as to the precise extent of extraction proposed given the purple delineation. The ambiguity is further highlighted by the use of the term continuation, yet the layout and phasing has differed from that previously permitted. Firstly, while it is a continuation of a former permitted (but time restricted) quarry, the operations have changed. In the previous plans dating from 2007 the quarry extraction area was a single excavation pit extending over an area of 4.57ha, however in the subject proposal the extraction phase and routes are different. The excavation area as outlined in purple in the current proposal is divided by a causeway. On the western side there is a deep pit which is described as the excavated area and on the east side it is described as the area to be excavated. It could be construed that the excavated area is to be subject of further quarrying.
- 7.4.5. The second change is that the overall site is reduced from 16 hectares and the site layout in terms of lagoons and ancillary activities have been modified. The third change is the introduction of a C and D facility. This is outside the purple area and delineated in a broken line and is in the order 10,000 sq.m.
- 7.4.6. Notwithstanding these ambiguities, the applicant however confirms in the appeal documentation that the proposed extraction area is only 3.15 hectares. The C and D area is excluded and is separate,
- 7.4.7. Having regard to the stated area of 3.15hectares and the Board's previous approach that the excavation area should be the basis for the application, the rate of €2.10 should be accordingly applied. The C and D area is a new activity and the area is not stated but I estimate it to be around 9,750 sq.m. and this should area be levied at a rate of 2.10sq.m. as I consider it as an ancillary use to the extractive industry. In

this regard I note the use of return loads of C and D material from quarry deliveries. Alternatively the Board may consider applying the rate of €20 as it is a category that is not classified falls under category F and this would amount by itself to a contribution of €195,000.

- 7.4.8. The final element relates to buildings. There is no dispute on the areas or base rate, and this accordingly should remain at €9,220 subject to exemptions where applicable.

7.5. Exemption/Partial Exemption

- 7.5.1. The appellant makes the case that in view of the previous contribution which has been paid in full and there is no dispute on this, and in view of the partial extraction due to the economic recession and drop in demand that the full levy application is not entirely reasonable. The planning authority refutes that there is any basis for a reduction and that the application of a contribution at the DCS rates does not amount to double charging. This is based on the time-fixed duration of the previous permission and application of rates for infrastructure during that time.
- 7.5.2. I concur with the planning authority that the application of a full rate for the quarry extraction area is reasonable. I accept that the levy in the previous case was based on an extraction area of 4.57 hectares but that only a portion of this was quarried with a likely reduction in anticipated wear and tear on infrastructure such as roads. However the quarry was operational for the 10 years albeit quiet and had the opportunity to carry out operations with access to infrastructure and facilities at all times. I do not consider it reasonable to curtail on-going Council expenditure that is likely to be incurred over the next 20 years. I note there is provision for a reduced rate in the case of temporary permission, but this only relates to periods of up to 10 years and cannot be reasonably applied in this case.
- 7.5.3. An exemption could be applied to the buildings on the basis that the proposed continued use amounts to a redevelopment or change of use whereupon no additional net increase in floor area will occur. The buildings which were previously permitted for 10 years and subject of full levy (€32.50sq/m), were required to cease use and be removed as part of the site restoration and it could therefore be reasonably argued that the buildings amount to new development. In view of the

condition, in this case requiring reinstatement of site, I understand the scope of the permission does not extend to the permanent continued use of such buildings beyond the extraction period of 20 years and that continued existence will require further permission. A further levy could be deferred to this time. On balance I consider the development to amount to redevelopment and that the rate for new building development as applied by the planning authority should be omitted,

- 7.5.4. In the case of the C and D facility I consider this to amount to a new development for which no exemption applies within the terms of the Development Contribution Scheme.
- 7.5.5. In view of the foregoing I consider the appropriate application of the development Scheme should amount to €66,150 for the extraction area and €20,475 for the ancillary C and D facility estimated to extend over an area of at least 9,750 sq.m. Accordingly the overall contribution would be €86,150.

8.0 Recommendation

- 8.1. Having particular regard to the stated area of extraction being confined to an area of 3.15 hectares I am satisfied in these circumstances that the planning authority has incorrectly applied the Development Contribution Scheme in that it has included the site area for the quarry as opposed to the site area for extraction as set out in the said Scheme. I recommend that the Board directs the said Council under Section 48 (13) of the Planning and Development Act, 2000 to AMEND condition no. 21 as follows.

The developer shall pay to the planning authority a financial contribution of €86,525 (eighty-six thousand, five hundred and twenty-five euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of

payment. The application of any 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 a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

9.0 Reasons and Considerations

Having regard to the wording of Table 5, Section E, 'Extractive Industry' which states "*€2.10 per m² of site extraction area*" of the Development Contribution Scheme adopted by Roscommon County Council under Section 48 of the Planning and Development Act 2000 as amended it is considered that the terms of the scheme have been incorrectly applied in this instance. The relevant site area for extraction liable for assessment in accordance with the terms of the said scheme is 31,500 sq. m. (3.15 ha). In addition, the proposed C and D facility is considered to constitute new ancillary development with an area of site usage amounting to around 9750sq.m. The proposed buildings amount to redevelopment with an overall reduced floor area. Accordingly, it is considered that condition no. 21 should be amended.

Suzanne Kehely

Senior Planning Inspector

18th December 2019