



An  
Bord  
Pleanála

## Inspector's Report

### ABP-305831-19

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<b>Development</b>	Phased restoration works of quarry back to its original topographical profile and all associated site works
<b>Location</b>	Foxhill (in the townlands of Clegarrow, Formal & Issacstown), Rathmolyon , Co. Meath
<b>Planning Authority</b>	Meath County Council
<b>Planning Authority Reg. Ref.</b>	TA191072
<b>Applicant(s)</b>	Rossmore Civils Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Permission
<b>Type of Appeal</b>	First Party against Contribution
<b>Appellant(s)</b>	Rossmore Civils Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	Not required
<b>Inspector</b>	Angela Brereton

## 1.0 Site Location and Description

- 1.1. The application site is an existing and gravel extraction facility which is accessed from a county road (cr.561) c.1.2km to the south of the road's junction with the R156 and c. 2km to the south east of Rathmoylan and c.3km to the south west of Summerhill.
- 1.2. It is bounded by agricultural land to the north, south and west with shared boundaries delineated by hedgerows. A drainage channel runs along the southern boundary. A wooded area which is part of the Rathmoylan Esker (proposed NHA) bounds the existing pit to the north west with extraction having occurred right up to its boundary. The main area of the application site (6.2926ha) is located to the west of the site where there is an area that has been excavated.
- 1.3. The Formal watercourse flows past the north western boundary of the site and is a tributary of both the Boyne and the Blackwater Rivers. There are a number of detached dwellings with frontage to the local road network in the vicinity of the site.

## 2.0 Proposed Development

- 2.1. This is to consist of the following:
  - 1) Phased restoration of a worked out authorised quarry back to its original topographical profile and agricultural use.
  - 2) Associated ancillary temporary works and items including: inspection & quarantine area; refuelling area; storm water ditch; silt fences; portable staff canteen & welfare unit; portable WC & handwashing unit; and a parking area.
  - 3) Continuation of uses of existing previously authorised infrastructure including; site access; internal access roads; wheelwash; and sprinkler system for the duration of the development.

The application site boundary encloses c.7.5862 Ha which is comprised of 6.2926Ha of quarry to be restored and 1.2936 Ha of site access; internal access roads, wheelwash; and sprinkler system.

The restoration works are to comprise of the phased backfilling of the existing quarry void of c. 209,535m<sup>3</sup> with clean subsoil and topsoil followed by grass

seeding and cultivation for agricultural use. The subsoil and topsoil are to come from clean natural imported soil and from existing stockpiles of soil stored onsite.

The application is accompanied by an Environmental Impact Assessment Report (EIAR) and a Natura Impact Statement (NIS). A waste facility permit and/or waste licence will be required in relation to the development.

### 3.0 Planning Authority Decision

#### 3.1. Decision

On the 8<sup>th</sup> of October 2019, Meath County Council granted permission for the proposed development subject to 26no. conditions in general relevant to the operations of the quarry and restoration works and restrictions/mitigation measures to comply with environmental issues.

Condition no. 26 which is the subject of this Appeal concerns a Special Development Contribution i.e.:

*The developer shall pay the sum of €116,875 (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 the planning authority as a special contribution towards expenditure that is proposed to be incurred by the planning authority in respect of the cost of restoration of the structural integrity of the Local Road, L6211 and the Regional Road R156 as a result of the proposed development, in accordance with the provisions of Section 48(2)(c) of the Planning and Development Act 2000-2018, unless otherwise agreed in writing with the planning authority. Payment of this sum shall be made prior to the commencement of development or in such phased payments as the planning authority may facilitate. The application of 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 considered reasonable that the developer contribute towards the specific exceptional costs which are incurred by the planning authority which*

*are not covered in the Development Contribution Scheme and which will benefit the proposed development.*

### **3.2. Planning Authority Reports**

#### **3.2.1. Planner's Report**

This has regard to the locational context of the site, planning history and policy and to the inter-departmental reports and submissions made. Their Assessment includes the following:

- They have regard to the NIS submitted and conclude that the proposed development (entire project), by itself or in combination with other plans and developments in the vicinity, would not be likely to have a significant effect on European sites.
- They have regard to and provide a summary under the relevant headings of the EIAR submitted and note the environmental and construction measures set out.
- They recommended permission subject to a number of conditions, including as recommended by the Transportation Section, the special development contribution condition.

### **3.3. Other Technical Reports**

#### **Transportation Section**

They do not object but recommend a number of conditions including that the applicant pay a special contribution of €116,875 towards the cost of carrying out improvement works on roads affected by the development.

#### **Water Services**

They do not object but recommend a condition relative to surface water treatment and disposal.

#### **Environmental Health**

Their report comments on Environmental Health Impacts of the proposed development as outlined in the EIAR and the adequacy of the EIAR from an EH

viewpoint. They make a number of observations and submissions on specific EH areas.

#### Environment Section Report

They have no objection to the proposal subject to a number of recommended conditions.

#### Heritage Officer

They have reviewed the application, EIAR (Biodiversity Report) and NIS (AA). They are satisfied that the proposed development subject to appropriate mitigation measures either alone or in combination with other plans or projects will not adversely affect the integrity of Natura 2000 sites. They recommend conditions to ensure mitigation measures are incorporated.

### **3.4. Prescribed Bodies**

No responses noted on file.

### **3.5. Third Party Observations**

No submissions noted on file.

## **4.0 Planning History**

The Planner's Report and the First Party Appeal have regard to the Planning History of the site, which includes the following:

- TA/140811 – Permission granted for Extension of Duration of Planning Permission TA/30305 for Extension of existing sand and gravel extraction facility, provision of haul roads, surface water lagoons, restoration works and associated works on a 41.5 hectare site -TSH Enterprises Limited.
- TA30305 – Permission refused by the Planning Authority and subsequently granted (2004) subject to conditions by the Board (Ref. PL17.207122 refers) for an Extension of an existing sand and gravel extraction facility, provision of haul roads, surface water lagoons, restoration works and associated works, including the restoration of the worked out areas of the existing pit and

proposal to use the processing facilities in the existing pit to crush, screen and wash the extracted material all on a 41.5 hectare site in the townlands of Issacstown, Formal and Gregarrow, Rathmoylon, County Meath.

Condition no. 20 concerned a special development contribution and is as follows:

*The developer shall pay the sum of €62,000 (sixty two thousand euro)(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 the planning authority as a special contribution under section 48(2)(c) of the Planning and Development Act 2000 in respect of road improvement and strengthening works. This contribution shall be paid prior to the commencement of the development or in such phased payments as may be agreed between the planning authority and the developer. Payment is subject to the provisions of section 48(12) of the Planning and Development Act 2000.*

*Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which will be incurred by the planning authority which are covered in the Development Contribution Scheme and which will benefit the proposed development.*

- TA/20073 – Permission granted in 2002 for changes to conditions 2,6,7 and 21 attached to the said permission. Condition 2 as amended states that the proposal shall be based on the resources available to the sand and gravel and/or from the extension to this gravel pit subject to the necessary permission. Standard aggregate and sand from other sources was not to be imported to serve the proposed development without the prior agreement in writing of the PA. Condition no. 21 refers to the restoration/reinstatement of the site.
- 01/506 – Permission granted by the Council in November 2001 for a pre-cast concrete panel and cladding production facility and ancillary facilities on the lands to the east of the existing Kilsaran facility.
- 00/2296 – Permission refused for the construction of a pre-cast concrete plant and associated works on the lands to the east of the existing pit.

- 95/1218 – Permission granted for the Kilsaran batching plant on site.

## 5.0 Policy Context

### 5.1. Meath County Development Plan 2013-2019

#### *Extractive industry*

Section 10.12 refers to the Extractive Industry and Building Materials. This includes that the cost of haulage affects economic competitiveness in this sector. *Extractive industries by their nature can give rise to detrimental environmental and residential amenity effects including traffic generation, vibration, dust, noise, water pollution, visual intrusion and loss of ground water supplies. The impact on the road network of the County is significant.*

The Goal seeks: *To facilitate adequate supplies of aggregate resources to meet the future growth needs of the County and the wider region while addressing key environmental, traffic and social impacts and details of rehabilitation.*

Policies RD POL 21 – 27 refer. Policy RD POL 25 is particularly relevant to the extractive industry and roads related issues and is referred to in the Assessment below.

#### *Development Contributions*

Chapter 11 provides Development Management Guidelines & Standards. This includes: *A Development Contributions Scheme is in place for County Meath. In circumstances where additional specific infrastructure for an area is required, Meath County Council may bring forward a special contribution scheme.*

Section 11.14 refers to the Extractive Industry and Building Materials and includes: *A contribution towards the improvement of public roads serving a proposed and/or existing extractive development which are considered to be inadequate in width, alignment or structure to carry the size and weight of loads proposed as are necessary to safely accommodate such traffic, will be required by the Council as a condition of any permission granted. Where improvements cannot be achieved the proposal will be refused.*

Chapter 12 provides for Implementation & Monitoring. Section 12.4.3 includes regard to Development Contributions i.e: *Meath County Council may, when granting planning permission, attach conditions requiring the payment of contribution(s) in respect of public infrastructure and facilities, benefiting the development. Details of such contributions must be set out in a Development Contribution Scheme. Meath Local Authorities Development Contributions Scheme 2010-2015 was adopted in 2009 and is available to view on Meath County Council's website.*

## **5.2. Meath County Council Development Contributions Scheme 2016-2021 (as amended October 2018)**

This is the pertinent scheme. This notes that The Act provides for three types of development contributions that may be attached as conditions to grants of planning permission:

*(i) General Development Contributions*

*(ii) Special Development Contributions*

*(iii) Supplementary Development Contributions*

Section 4.1 refers to the General Development Contributions Scheme. The type of public infrastructure and facilities that can be funded by this mechanism includes:

*(c) The provision of roads, car parks, car parking places, drains and surface water drainage infrastructure.*

*(e) The refurbishment, upgrading, enlargement or replacement of roads, car parks, car parking spaces, drains and surface water drainage infrastructure.*

Section 4.2 provides for *Special Development Contributions*:

*A Planning Authority may, in addition to the terms of a General Development Contribution 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 the Local Authority in respect of public infrastructure and facilities which directly benefit the proposed development. The Planning Authority must specify in a planning condition attached to the grant of permission, the particular works carried out, or proposed to be carried out, to which the contribution relates.*



*The Act makes provision for the reimbursement of Special Contributions if the specified works are not carried out.*

*Special development contributions will be required as deemed appropriate by the relevant Authority in accordance with the provisions of the Act. The level of special contribution required in each instance will be determined by the relevant Authority having regard to the actual costs incurred in relation to the particular works carried out, or the estimated cost in the case of works proposed to be carried out.*

Section 5 provides the Section 48 (General Scheme) *Classes of Public Infrastructure and Facilities*

Class 2: Roads & Public Transport Infrastructure - *to include the provision, refurbishment, upgrading, enlargement or replacement of roads, car parks, car parking places.*

Section 6 provides the *Basis for the Determination of Development Contributions.*

Section 6.1 – *Proportioning Contributions –*

Class 1 – Surface Water Drainage

Class 2 – Roads

Class 3 – Social Infrastructure

Section 7 provides in tabular format a *Schedule of Charges- Meath County Council - effective from 1<sup>st</sup> of January 2016.* Class 5 includes reference to *Quarry/Extractive Industry (per 0.1hectare) €2,500.* Note 6 provides: *Relates to footprint of surface extraction area only, does not apply to underground mining.*

Section 7.1 refers to Exemptions and Reduced Contributions (Section 48(3)(c) of the Act refers). There is no exemption relative to the extractive industry and quarrying.

Section 8 provides for Payment of Contributions under the Section 48 Scheme.

Section 9 refers to Appeals to An Board Pleanala relative to where the Scheme has not been properly applied.

As noted in Section 14, Appendix B set out the detailed rates of development contributions payable under this Scheme in respect of different classes or descriptions of development as set out in Appendix B. This provides a Breakdown of

Development Contributions effective from 1<sup>st</sup> of January, 2016. This includes regard to Quarries in Class 5.

### 5.3. **Development Contributions - Guidelines for Planning Authorities 2013**

The Minister for the Environment, Community and Local Government has issued these guidelines under section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines in performance of their functions under the Planning Acts.

The primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, without which development could not proceed. Development contributions have enabled much essential public infrastructure to be funded since 2000 in combination with other sources of, mainly exchequer, funding. Discussion is had of the concept of the General Development Scheme, Special Contributions and Supplementary Contributions Schemes. This also provides that Planning authorities should ensure that the necessary monitoring and control procedures are in place to prevent double charging.

Chapter 2 provides Key Messages for Supporting Economic Development. These include: *The practice of “double charging” is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing “planning gain” in an equitable manner. 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.*

### 5.4. **Development Management Guidelines for Planning Authorities 2007**

Section 7.12 has regard to development contribution conditions (sections 48 and 49 of the Planning Act). This also provides details relative to appeal of the three categories of conditions for development contributions i.e. General as covered by the Section 48 Development Contributions Scheme, Special Contribution as covered by Section 48(2)(c) and Supplementary as covered by Section 49.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

M.F.Dineen & Co. Ltd. (MFD), Chartered Consultant Engineering & Professional Services have submitted a First Party Appeal on behalf of the Applicant Rossmore Civils Ltd, relevant to Condition no.26 of the Council's permission (Reg.Ref. TA/191072) Special Development Contribution. Their Grounds of Appeal include the following:

- They contend that the imposition of a special contribution amounting to €116,875 under condition no. 26 has not been properly applied, is unsubstantiated, and is grossly excessive.
- The Planning Authority did not choose to require payment of a *General Development Contribution* as described in the County's Development Contributions Scheme 2016-2021 as amended 1<sup>st</sup> of October 2018.
- They have regard to Section 4.8 of the EIAR submitted with the application which states that the local road network is in good condition (referring to the L6211 and the R156).
- Condition no. 26 does not refer to the particulars of what works are required or the spatial extent of the works.
- The proposed development will not cause any unusually wide or heavy loads to be generated and site traffic will be in keeping with the character of the current traffic environment.
- They submit that the substantial amount of development contributions previously paid to the PA relative to previous planning permissions on the same site should be accounted for by the PA and the Board.
- They provide that roadworks were previously funded by such contributions and that this may well account for the particularly good repair and unusually wide cross sections which characterise the L6211 and R156 roads.
- They provide a discussion of development contributions relative to previous planning applications and provide a listing of these.

- They provide that the development proposed by the Appellant comprises of the phased restoration of a worked out authorised quarry back to its original topographical profile and agricultural use. Accordingly, the development proposed can be considered to be an extension of use, or an amendment of use of the previous development (TA/30305) and they provide their reasoning for this.
- They contend that the PA requires the Appellant to fund c. 31% of the projected contributions from non-residential development for year 2019 through a single contribution – Condition no. 26.
- The PA requires the Appellant to pay nearly twice the special contribution in 2019 compared to the previous larger scale development in 2004 for the same road improvement works described at the same site address.
- Section 48 of the Act does not entitle a PA to demand whatever special development contribution it wants, notwithstanding any shortfalls in the local government budgets.
- This should have regard to the relevant facts and circumstances outlined, the spirit of Section 48(3)(c) of the Act and the PA's own Scheme in relation to contributions already made in relation to existing development on site and the findings of the Board's own review in this case.
- They confirm that as per Section 48(13)(b) of the Act, a bond will be lodged with the Council to allow them to proceed with a grant of permission pending the outcome of their appeal.

## 6.2. Planning Authority Response

They refer to the grounds of appeal and to the Report from the Transportation Section that recommended the special development contribution levy.

- They note that the amount of the levy is €116,875. It is calculated that the Council's cost of carrying out the improvement works is €401,250 and they provide details of the discounted nature of the contribution sought.
- They note that the existing HGV traffic on the L6211 is very low and estimate that 95% of the HGV traffic on the L6211 for the duration of the development

will be a direct result of the development. They provide details of approximate loads and HGV movements over the duration of the development.

- In a similar development PL17.248391 the applicant was conditioned by The Board to pay a special development contribution in respect of the restoration of the structured integrity of the local road.
- They request the Board to uphold the decision of the PA to seeks a Special Levey under condition 26 of application TA191072. They provide that they attach a specifically requested additional engineering report on the matter.
- They ask the Board to retain condition no. 26 on the basis of the rationale they have set out.

### 6.3. Applicant Response

M.F.Dineen & Co Ltd, response to the Grounds of Appeal on behalf of the Applicant includes the following:

- MCC have not provided any substantiation in relation to the type or extent of the damage it predicts will be caused by the development and offers no details of the nature or specification of the works proposed by MCC in order to remedy the alleged damage.
- MCC have not clarified how the €401,250 or €116,875 figures have been calculated and they are concerned at the lack of numerical information provided.
- While MCC has regard to the maximum of 50 loads per day to be imported to the site, the typical rate of fill import has been projected at c. 25 loads per day or 50HGV movements per day (EIAR Table 3.5). They provide that in general associated traffic and HGV movements or increase in traffic per day will be lower than predicted.
- They refer to the special contribution sought under TA/30305/ PL17.207122 of €62,000 (2004) and note that the current €116,875 (2019) is 1.89 times greater.

- The PA requires the Appellant to pay nearly twice the special contribution in 2019, compared to the previous larger scale development in 2004 for the same road improvements works description at the same site address.
- They agree that the Local Authority should seek a contribution towards the cost of carrying out improvements works on the L6211 and the junction of the R156; however, the amount levied should be fair, equitable, proportional, and the calculation of the levy should be readily transparent.
- They note that an Engineering Report referred to in the Council's response to the grounds of appeal has not been submitted.
- They provide an alternative calculation of special contribution using a mixture of assumptions – Table 01 refers. Their calculations provide for €16,904.22 which they provide is the upper limit of potentially acceptable special contribution which has been derived using a more equitable basis and appropriate level of detail than that apparent from MCC.
- They conclude that the MCC submission has addressed very few of the issues raised in their appeal and their levy remains unsubstantiated. They further argue that the amount derived under Table 01 could be further discounted for the reasons given in their submission together with the arguments made in their original appeal submission.
- They submit to the Board that the format and content of Table 01 of their submission would form a sound basis for the Board's analysis and ultimate determination.
- They include mapping showing the route to the quarry and a Contract Quotation from Roadstone.

#### 6.4. Further Responses

##### Meath County Council

They provide that in response to the Board's Section 132 request they have submitted the 'Additional Engineering Report' as requested. This is dated the 27<sup>th</sup> of November 2019 and reiterates many of the points made in the original

Transportation Report dated 2<sup>nd</sup> of October 2019 and in the Planning Authority's response to the grounds of appeal dated 2<sup>nd</sup> of December 2019 and includes:

- They refer to the cost of improvement works on the L6211 and the junction of the R156, which will be required as a direct result of the damage caused by the HGV traffic associated with this development.
- They also refer to PL17.248391 (a separate development) where the applicant was requested by the Board to pay a special development contribution in respect of the restoration of the structural integrity of the local road.
- They do not consider it unreasonable for the Local Authority to seek a contribution towards the cost of carrying out improvement works which will be required as a direct result of the damage caused by the HGV traffic associated with the development.
- They ask the Board to uphold the PA decision and to seek a special development contribution under condition no.26 of the Council's permission.

#### First Party

M.F.Dineen & Co Ltd, further response on behalf of the Applicant reiterates many of their points made in their grounds of appeal and subsequent response and includes the following:

- The *Additional Engineering Report* submitted by MCC does not provide any additional information to the file as it is essentially a facsimile of the previous submission by MCC dated 2<sup>nd</sup> of December 2019, which was quoted in the report but never attached to it.
- They do not consider that the Council has provided any substantiation to type or extent of damage to the roads or to the damage it predicts or specification of the works proposed by MCC in order to remedy the alleged damage.
- They submit that it is very doubtful that any damage will be caused to the roads in question by the proposed development and that they are in good repair.

- They provide that site traffic will be in keeping with the character of the current traffic environment generated by the site i.e predominantly quarry type haulage traffic.
- As previously note MCC have not clarified how the €401,250 or €116,875 figures have been calculated.
- They provide comments on the MCC submission and consider it has not been substantiated, is inaccurate and misleading and provide details of this.
- The Planning Authority requires the Appellant to pay nearly twice the special contribution in 2019 compared to the previous larger scale development in 2004 for the same road improvement works described at the same site address.
- They provide that the PA's decision to seek a contribution is not at issue, rather that, the amount is unsubstantiated. They include Table 01 which they consider provides an alternative calculation for the special contribution which they provide has been derived from a more rigorous approach and a higher level of detail than that provided by MCC.

## 7.0 Assessment

### 7.1. Regard to Development Contributions

- 7.1.1. Section 48 of the Planning and Development Act 2000, (as amended) details the methodology and guiding principles by which Development Contributions Schemes should be arrived at. The wording of S.48(10)(b) of the 2000 Act states that '*an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the Planning authority*'. The wording of this section is restrictive in so far as it limits consideration of such appeals to the application of the terms of the adopted development contribution scheme and the powers of the Board to consider other matters.
- 7.1.2. This appeal is against Condition no. 26 of the Council's permission (Reg.Ref. TA191072) which concerns the inclusion of a special development contribution.



Section 48(2)(c) provides the provision for a special contribution i.e.: *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.*

- 7.1.3. Section 48(12) of the Act refers to a special contribution required in accordance with subsection (2)(c) and subsection (a) provides: *the conditions shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates.* The First Party have regard to Section 48(12) of the Act and consider that the Council has failed to justify the need for this special development contribution and consider that the proposed levy is unsubstantiated and excessive.
- 7.1.4. Section 48 (13)(a) includes: *Notwithstanding sections 37 and 139, where an appeal received by the Board after the commencement of this section 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 appeal.* Therefore, the application is not being considered 'de novo' and the issue in question in this case is solely in regard to the application of the Special Development Contribution and whether it is deemed to be applicable and justifiable in this case and in accordance with the Council's Development Contributions Scheme.
- 7.1.5. Therefore, this appeal is not being considered 'de novo' and regard is had to the special development contribution condition and to the documentation submitted and the relevant planning legislation, policies and objectives and guidelines in this Assessment below.

## 7.2. **Regard to Condition no. 26**

- 7.2.1. This has been quoted in full above but in summary provides that the developer shall pay the sum of €116,875 as: *a special contribution towards expenditure that is proposed to be incurred by the planning authority in respect of the cost of restoration*

*of the structural integrity of the Local Road, L6211 and the Regional Road R156 as a result of the proposed development...*

- 7.2.2. The Planner's Report noted that Development Contributions are not required for this type of development, however the Transportation Department recommends a special roads contribution of €116,875 for the restoration of the local road due to the large amount of HGV movements associated with the development. It is noted that a Section 48 Condition under the General Development Contributions Scheme has not been included in the Council's permission.
- 7.2.3. The Transportation Section Report noted that the applicant proposes to import 209,536m<sup>3</sup> of clean subsoil and topsoil to restore the disused quarry. It is stated that the maximum number of loads to be imported per day will be 50 which equate to 100 HGV movements per day. They provide that this will be a huge increase on the adjacent local road the L-6211 and a 25-30% increase on the R-156. They also advised that the applicant should be restricted to importing a maximum of 50 loads per day. They recommended conditions including that the applicant pay a special contribution of €116,875 towards the cost of carrying out improvement works on roads affected by the development.
- 7.2.4. The Development Contributions Guidelines for Planning Authorities 2013 notes 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.*
- 7.2.5. It is of note that the Council's Development Contributions Scheme 2016-2021 also refers to Special Development Contributions, Section 4.2 refers and is quoted in the Policy Section above. This allows for such a condition i.e: *where specific exceptional costs not covered by the Scheme are incurred by the Local Authority in respect of public infrastructure and facilities which directly benefit the proposed development. It also provides that the Planning Authority: must specify in a planning condition*

*attached to the grant of permission, the particular works carried out, or proposed to be carried out to which the contribution relates.*

- 7.2.6. RD POL 25 of the Meath County Development Plan is of note relevant to roads and seeks: *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.*
- 7.2.7. Having regard to Transportation Impacts this is reiterated in Section 11.14 relevant to the Extractive Industry (as noted in the Policy Section above) and includes: *Where deemed appropriate a special contribution will be attached to a grant of permission in accordance with section 48 of the P&D Act 2000-2012.*

### 7.3. The First Party Case

- 7.3.1. The First Party contend that the PA have not specified the particular works carried out or proposed to be carried out to which this contribution relates. They consider it doubtful that any substantial works will be required as a result of the proposed development and submit that the PA have already collected sufficient special contributions in relation to the road network in the vicinity of the site and have: either spent same on road improvements, or, have held the monies in trust for future road improvements.
- 7.3.2. They submit that the Appellant's planning application can be considered as an amendment or an extension of use on the restoration aspect of the previous planning grant (TA/30305) which has already made a considerable special contribution to the PA in 2004 for the same generic works proposed by the PA under Condition no. 26. Ref.PL17/207122 and specifies a special contribution of €62,000 (condition 20 refers). They provide details of their reasons for this relative to the description of development and infrastructural works required, including that the public roads in the vicinity of the site are the same roads.
- 7.3.3. They consider that the amount sought by Condition no.26 is excessive and provide details of calculations. They note that €116,875 yields over 30% of the projected contributions from non-residential development for 2019 and that it is 1.89 greater than the €62,000 special contribution applied in Ref. PL17/207122. They submit that

the Board should ascertain from the PA the exact level of development contributions already paid in relation to the subject site and amend the amount payable by the Appellant under Condition 26 to a more equitable amount. They refer to Section 48(3)(c) of the Act and the PA's own Scheme in relation to contributions already made in relation to existing development on a site, and findings of the Board's own review in this case.

#### **7.4. Regard to Council's Response**

- 7.4.1. The Council's response to the grounds of appeal relevant to Condition no. 26 includes that it is calculated that the total cost of carrying out of the improvement works is €401,250. They note that this has been discounted due to the duration of the development in relation to the design life of the road due to the fact that not all the HGV's travelling on this road will be associated with the development. They note that the existing HGV traffic on the L6211 is very low and that the applicant has been conditioned a maximum of 50 loads per day. They estimate that 95% of the HGV traffic on the L6211 for the duration of the development will be a direct result of this development. They note that development of this nature can cause damage to the local road network. They provide that in this case development of approximately 14,500 loads will be imported or 29,000 HGV movements over the duration of the development.
- 7.4.2. The Council do not consider it unreasonable to seek a contribution towards the cost of carrying out improvement works on the L6211 and the junction of the R156 which they provide will be a direct result of the damage caused by the HGV traffic associated with this development. They noted that they had attached a specifically requested additional engineering report on this matter. However, this was not included with their response and its submission was subsequently the subject to a Section 132 request by the Board.
- 7.4.3. In response the Council submitted the 'Additional Engineering Report' Referred to in their response to the Appeal. This is dated the 27<sup>th</sup> of November 2019 and is separate from the original Transportation Report on file relevant to the application which has been noted above and was dated the 2<sup>nd</sup> of October 2019. This reiterates the previous points made and considers that it is not unusual for the LA to seek a

contribution towards the carrying out of improvement works on the L6211 and the junction of the R156, which will be required as a direct result of the damage caused by the HGV traffic associated with this development.

- 7.4.4. They refer to a similar development of this nature Ref. PL17.248391 and provide that the applicant was conditioned by the Board to pay a special contribution *in respect of the restoration of the structural integrity of the local road L2206*. In that case Condition no.13 provided for a special development contribution of €200,000. They ask the Board to uphold condition no. 26 relative to the special contribution required.

## 7.5. Regard to Calculations

- 7.5.1. It is noted that the First Party consider that the *Additional Engineering Report* submitted by MCC in their response to the Board's Section 132 request is similar to that already submitted and does not provide additional information relative to the damage it predicts will be caused by the development, and offers no details of the nature or specification of the works proposed by the Council to remedy the alleged damage.
- 7.5.2. They consider that the Planning Authority's decision to seek a contribution towards the cost of carrying out a justifiable level of improvements works is not at issue; however, the amount of the contribution has been appealed and MCC have so far been unable to explain. They provide that the amount levied should be fair, proportional and readily transparent.
- 7.5.3. They refer to Table 01 which they provide offers an alternative calculation for the special contribution which has been derived using a more rigorous approach. This provides a calculation of €16,904.22. They consider that this figure represents an upper limit of a potentially acceptable special contribution which has been derived using a more equitable basis and appropriate level of detail. They submit that this would form a sound basis for the Board's analysis and determination.
- 7.5.4. It is also of note that a Development Contributions Calculation Form is included on file which provides for the Special Contribution of €116,875 relative to the: *cost of restoration of the structural integrity of the Local Road L6211 and the Regional Road R156 as a result of the proposal*. However, it is noted that a breakdown of how this

figure as specified and as per condition no. 26 was arrived at has not been included in the documentation submitted.

## 7.6. Conclusion

- 7.6.1. It is the case that whereas the Council have included their reasoning for this special contribution condition and while this appears to have some justification, the issue is that they have not given a detailed breakdown of their analysis of how this amount has been formulated. It is noted that the need for such a condition has been accepted by the First Party Appellant but that they query the amount and their calculations have come up with an alternative much reduced amount.
- 7.6.2. Regard is had to Section 48 (2)(c) and Section 48 (12)(a) of the Planning and Development Act 2000 as amended and as noted above relative to the provision of a special development contribution condition. It is noted that the latter provides that *the condition shall specify the particular works to be carried out, or proposed to be carried out, by any local authority to which the contribution relates*. It does not stipulate that a costing must be done relative to the works involved.
- 7.6.3. Regard is also had to the Meath County Council Development Contribution Scheme 2016-2021 where Section 4.2 refers to Special Development Contributions, which allows for an estimate of costs in the case of works proposed to be carried out. It is considered that as noted above and as per the documentation submitted the Council has made a case for the inclusion of this condition. This includes that they provide that it is estimated that 95% of the HGV traffic on the L6211 for the duration of the development will be as a direct result of the development and details are provided relative to loads and HGV movements. The First Party response to this is also noted.
- 7.6.4. In this case I would consider that as noted by the First Party regard needs to be had, to the planning history of the quarrying operations on the site and in particular to the inclusion of a special development contribution relative to the previous Board decision Ref.PL17.207122 where Condition no. 20 required a special development contribution of €62,000 *in respect of road improvement and strengthening works*.
- 7.6.5. The Council's reasoning for Condition no.26 of the current application is also relative in respect of the cost of restoration or the structural integrity of the local road network for the ongoing restoration works. Regard is had to the concept of and avoidance of

*Double Charging* in the Development Contributions Guidelines 2013. It is my opinion that as a detailed explanation relative to the costings has not been provided by the Council that the special development contribution should take account of this previous contribution (provided it has been paid to the Council). If the Board decides that it has been established that there is sufficient justification to include this condition, I would recommend that, the special development contribution be reduced to take this into account i.e  $€116,875 - €62,000 = €54,875$ .

## 8.0 Recommendation

- 8.1. I recommend that Condition no.26 of the Meath County Council permission Reg.Ref.TA191072 be amended and the level of special contribution be reduced as noted above.

## 9.0 Reasons and Considerations

The Board considers that the Meath County Development Contributions Scheme 2016-2021 (as amended) is the applicable contribution scheme in this case. The Board concluded that a special contribution in respect of infrastructural works in respect of the cost of restoration of the structural integrity of the Local Road, L6211 and the Regional Road R156 as a result of the proposed development does fall within the scope of the provisions for special contributions set out in Section 48(2)(c) of the Planning and Development Act 2000(as amended), being works which comprise specific exceptional costs not considered to be provided for in the Development Contributions Scheme adopted by the planning authority. However, the Board also concluded that account needs to be taken of the special contribution (provided it has been paid) in respect of Condition no.20 of the previous Board decision relative to this site Reference PL17.207122 refers and accordingly it is recommended that this condition be amended and that the amount of the special contribution be reduced i.e.  $€116,875 - €62,000 = €54,875$ .

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Angela Brereton  
Planning Inspector

20<sup>th</sup> of May 2020