



An
Bord
Pleanála

Inspector's Report

ABP-306717-20

Development

Retention and Permission for the continuance of importation of gravel (15,000 tonnes per annum), for processing, including screening, crushing and washing, and exportation of finished aggregates; (ii) permission for importation of inert soil and stone (8,500 tonnes per annum) for restoration of part of pit floor (2.8ha); (iii) permission for restoration of remainder of pit floor (2.4ha) (including removal of all plant) using accumulated site won materials for a 5 year period, including all associated civil works, within the overall 8.2ha former extraction site.

Location

Carrowkeel, Clonfinlough, Co. Offaly

Planning Authority

Offaly County Council

Planning Authority Reg. Ref.

19/253

Applicant

Dermot Nally Stone Ltd.

| | |
|------------------------------------|---|
| Type of Application | Permission for Retention and Permission |
| Planning Authority Decision | Grant Permission for Retention and Permission |
| Type of Appeal | First Party v Development Contribution Only |
| Appellant | Dermot Nally Stone Ltd. |
| Observer(s) | Ciaran Guinan |
| Date of Site Inspection | 08.06.2020 |
| Inspector | Anthony Kelly |

1.0 Introduction

- 1.1. This report relates to a first-party appeal against Condition No. 10 of the planning authority decision to grant permission for retention and permission for the development. Condition No. 10 relates to the payment of a development contribution of €62,489.70 in accordance with the Council's Development Contribution Scheme. Section 48(10)(b) of the Planning & Development Act, 2000 (as amended) states that an appeal may be brought to the Board where an applicant considers that the terms of the development contribution scheme have not been properly applied.

2.0 Site Location and Description

- 2.1. The site is a former quarry located in a rural area approx. 6km east of Clonmacnoise and approx. 6.5km north west of Ferbane in north west Co. Offaly.
- 2.2. The former quarry pit is hidden from view of the public road and is accessed by a private roadway. There are stockpiles of gravel on the pit floor and there is also some plant machinery.
- 2.3. The site has a stated area of 8.2 hectares.

3.0 Proposed Development

- 3.1. The planning application is for permission for retention and permission as follows:
- Retention and continuance of importation of 15,000 tonnes p.a. of gravel for processing including screening, crushing and washing and export of finished aggregates.
 - Permission for importation of inert soil and stone (8,500 tonnes p.a.) for restoration of part of pit floor (2.8 hectares).
 - Permission for restoration of the remainder of the pit floor (2.4 hectares), including removal of all plant, using accumulated site won materials.
 - For a five-year period including all associated civil works.

- 3.2. In addition to standard planning application plans and particulars the application was accompanied by a 'Site Report', a 'Schedule 7A EIA Screening Report', and a 'Stage 1 Appropriate Assessment Screening Report'.
- 3.3. Further information was submitted including in relation to the source of the imported gravel, the source of the imported soil and stone, anticipated timescales, section drawings and resurfacing and surface water treatment at the entrance area.
- 3.4. Clarification in relation to sections and resurfacing and surface water treatment at the entrance area was also submitted.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission subject to 10 no. conditions. Condition No. 10 requires the payment of a development contribution as follows.

10. Prior to commencement of development, a contribution shall be payable to Offaly County Council, in accordance with the Council's Development Contribution Scheme, in respect of public infrastructure and facilities benefitting development in County Offaly, that is provided or that is intended will be provided by, or on behalf of, the Council.

The amount of the development contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction), and interest for late payment, in accordance with the terms of the Council's Development Contribution Scheme:-

| Class of Infrastructure | Amount of Contribution |
|---|-------------------------------|
| <u>4.095ha / 0.1ha = 40.95 x €1,526 / 0.1 ha.</u> | <u>€62,489.70</u> |
| Total | €62,489.70 |

Reason: It is considered reasonable that the developer should contribute towards the expenditure incurred or proposed to be incurred by Offaly County Council in

respect of the provision/improvement of public services/infrastructure benefitting development in the area of the Planning Authority.

4.2. **Planning Authority Reports**

4.2.1. Planning Reports of 24.07.2019 and 28.01.2020 form the basis of the planning authority decision. The report considers that, having regard to the rural nature of the site, the intended use, the County Development Plan, reports received and the pattern of existing development in the area the proposed development would not seriously injure the amenities of the area or property in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

4.2.2. **Other Technical Reports**

Road Design – No objection, following the further information response, subject to conditions including surfacing of the entrance and surface water drainage.

Area Engineer – Recommends trimming of verge and ditches. No report was received on foot of the further information response.

Environment & Water Services – No objection, following the further information response, subject to conditions including detail of imported material, surface water discharge and construction practices.

4.3. **Prescribed Bodies**

Dept. of Culture, Heritage and the Gaeltacht – Observations/recommendations made including leaving an area of exposed gravel to recolonise naturally, importation of clean soil and rock only, timescales for restoration and monitoring by an ecologist. No report was received on foot of the further information response.

4.4. **Third Party Observations**

Two submissions were received from Ciaran Guinan, Ballyhearth, Clonfanlough and Elizabeth Mahon, Meadows, Carrowkeel (closest house to the south of the site entrance). The main issues raised in the submissions are:

- The application is almost an exact copy of that refused under P.A. Reg. Ref. 18/421.

- Importation of sand and gravel is continuing in breach of the planning order.
- There is a history of non-compliance on site.
- Extraction has recently been carried out from deep below the water table.
- There is a concern that if permission is granted the conditions will be ignored.
- Privacy.
- Noise.
- Disturbance to natural trees along the south eastern site boundary.

5.0 Planning History

The relevant planning history of the site is as follows:

P.A. Reg. Ref. 18/421 – Permission was refused in 2018 for a change of use of sand/gravel pit from extraction and processing to importation and processing of sand/gravel material on a 7.4 hectare site because (i) it would result in the quarry not being restored contrary to Policy RDP-14 and (ii) the planning authority was not satisfied that the proposal ensured no risk to the amenities of the area or the environment.

P.A. Reg. Ref. 04/385 / ABP Reg. Ref. PL19.209692 – Permission was granted in 2005 for the extension (2.4278 hectares) of gravel extraction operations and relocation of the existing access gate and permission was refused for the extension of gravel extraction operations in Plots 1 and 2 (5.12 hectares) because (i) it was located within an Area of High Amenity and a Highly Sensitive Landscape and it was not demonstrated the extension of operations to the north and west can be visually accommodated and (ii) ABP was not satisfied the applicant had sufficient interest in Plot 2. Condition 21 required a security bond to secure the satisfactory reinstatement of the site. Condition 22 required payment of a development contribution of €20,289.14. An Extension of Duration was granted by P.A. Reg. Ref. EX/14/016 up to 04.08.2019.

P.A. Reg. Ref. 95/480 – Permission was granted in 1997 for the development of a sand and gravel pit including extraction and processing, service building and septic

tank. Condition 30 required adequate security for the satisfactory reinstatement of the excavated site, which was later decided as £26,000. Condition 31 required payment of a development contribution towards the cost incurred on improvement upkeep and maintenance of public roads in the area. The amount of the development contribution was subsequently decided as £20,000.

6.0 Policy Context

6.1. Offaly County Development Plan 2014-2020

6.1.1. Section 2.8.6 (Sand and Gravel Extraction) states, among other issues, that worked out quarries should be rehabilitated to a use agreed with the planning authority which could include recreational, amenity and end-of life uses. The use of these rehabilitated sites shall be limited to wastes such as soil, stone and subsoils. Policy RDP-14 (Section 2.9 – Rural Development Policy) reflects this.

6.1.2. Section 8.13 (Extractive Industries) is also relevant.

6.2. Offaly County Council Development Contribution Scheme 2014-2020

6.2.1. 'Table 2 – Levels of Contributions – Other Categories of Development' Section D states that land used for:

(a) The winning and working of minerals,

(b) Deposit of refuse or waste

(c) Land filling (inert material)

Shall have a contribution amount of €1,526 per 0.1 hectare of site area subject to a minimum charge of €10,000.

Category F (Raising of sites (inert materials)) has a charge of €0.52 per m².

6.2.2. Section 2.4.9 (Retention Permission) states all retention permissions will be charged at the rates outlined in the Schedules i.e. there is no higher rate for a retention application. No exemptions or reductions will apply to any applications for retention of development.

6.2.3. Section 2.5 (Exemptions & Reductions) (j) (Change of Use Permissions) – In order to avoid the practice of ‘double charging’, change-of-use permissions or extensions to existing developments, where the change of use or extension does not lead to the need for new or upgraded infrastructures/services or significant intensification of demand placed on existing infrastructure (including for example, transport infrastructure) – (100% exemption).

6.2.4. Section 2.5 (m) (Temporary Permissions) gives reduced rates for temporary permissions. Subsection (b) provides for 50% of the normal rate for permission up to 5 years.

6.3. Natural Heritage Designations

6.3.1. The closest Natura 2000 site is Pilgrims Road Esker SAC approx. 1.8km to the north west. The closest heritage area is Clonfinlough Esker pNHA approx. 1.3km to the west.

7.0 The Appeal

7.1. Grounds of Appeal

The main points raised in the grounds of appeal can be summarised as follows:

- This is a first party appeal in relation to Condition 10 of the planning authority decision. In applying the contribution rate for the winning and working of minerals and the deposition of waste to the entire active area of the former pit, and in the entire unreduced amount where it might be applicable, the planning authority has erred.
- Under P.A. Reg. Ref. 04/385 the development contribution sought by the planning authority was based on the full extraction area, including stockpiling and processing. On foot of the third party appeal the Board refused certain areas for extraction and the reduced contribution level of €20,289.14 was based on the reduced extraction area. This is relevant here where there is no

extraction area, yet the same part of the development scheme has been applied.

- While the 8.2 hectares site area in the application refers to the entire former pit, just the 5.2 hectares owned by the applicant is included in the application as the other landowner is satisfied with the current status of that area. The area for soil importation and recovery is clearly identifiable as 2.8 hectares within the 5.2 hectares application area. Soil recovery is required to ensure the restoration of the site. This activity is prospective and will require the dual consent of a waste facility permit, which is relevant to reductions in applicable contributions.
- The remaining 2.4 hectares of the applicant site includes a small area for the entrance road and banks to be preserved for biodiversity. The planning authority identified the operations area of the proposed activities as 4.095 hectares which implies a net area of 1.695 attributable to non-soil recovery activities. It should be noted restoration is proposed for all this area from existing and future silt. This will give effect to the restoration requirements of both ABP Reg. Ref. PL19.209692 and P.A. Reg. Ref. 19/253 and such activity does not come under the development contribution scheme. Additionally, this activity is entirely prospective and already partially completed under the last application.
- This leaves the restoration and continuance of importation of gravel and its re-exportation. It does not include extraction as these have been extracted elsewhere, from sites that have paid or are exempt from development contributions. Imposing development contributions relating to extraction would constitute an attempt at double charging. The main source of gravel is the applicant's own site at Clonadarg. Development contributions were applied under the relevant permission so a reapplication under this permission constitutes double charging which is not permissible.
- Quarrying must include the act of extraction or winning of materials. Without extraction, processing and stockpiling constitutes a mixture of a minor area of industrial activity with a larger area of open storage. The application site is a former pit, devoid of resources and with no extraction. The Development Contribution Schemes refers to the winning and working of materials.

- Soil recovery and other site restoration works are all prospective and, therefore, open to exemptions and reductions under the Scheme. Section 2.5 (j) states, to avoid double charging, change of use permissions where the change does not lead to new or upgraded infrastructure or significant intensification of demand placed on existing infrastructure can be given a 100% exemption. It is clear from Section 2.5 (m) (Temporary Permissions) that, without prejudice to subsection (j), exemption is also provided for due to the short term nature of this development. Restoration of the site using site won material is not development coming under the Scheme. Soil recovery is subject to (j) and, at least (m).
- If ABP finds contributions are payable it is requested to expressly permit payment in a phased manner as provided for in Section 2.6.3.
- The site has been incorrectly treated as an ongoing quarry. The area where it is proposed to recover soil is a new activity, but the restoration of an old pit is not open to contributions. Importation, processing and export of gravel does not constitute a quarry. The large silt storage areas and soil berms must be regarded as stockpiles of accumulated site won soils to be distributed across the areas for restoration, not including soil recovery areas. The soil recovery area is potentially open to development contributions. The restoration of non-soil recovery areas is not open to contributions as it is to comply with the former and current permission. Even if the prospective soil recovery operation on 2.8229 hectares is subject to contributions it must be at a 50% reduction on the basis of the 5-year permission resulting in a contribution of €21,538.73. However, a full exemption should be considered.

7.2. Planning Authority Response

7.2.1. The main points made in the planning authority response can be summarised as follows:

- The planning authority considered Phases 3 (0.892 hectares), 4 (1.931 hectares) and 5 (1.272 hectares) for the application of development contributions, 4.095 hectares.

- The planning application documentation states soil will be imported for Phases 3 and 4. Condition 4 of ABP Reg. Ref. PL 19.209692 requires reinstatement of the site. The Inspector's Report noted reinstatement will include covering the site with silt, clay and top soil deposits retained on site. The planning authority response states there is no requirement for the importing of material onto the site. The importation of the required fill material falls under Category D (c) of Table 2. Phase 3 + Phase 4 (2.823 ha / 0.1 ha. = 28.23 x €1,526 = €43,078.98.
- Land within Phase 5 (1.272 hectares) contains the aggregate processing infrastructure which is now used to process materials from other sources as extraction has finished on the site. By using the existing infrastructure to process gravel sourced offsite the applicant is extending the lifetime and usability of the site beyond that originally envisaged and impact on the surrounding public infrastructure is continued by a further five years. Having considered the activities it was found that the most applicable level of contributions was the rate associated with Table 2 Category D (a), the winning and working of minerals; €19,410.72.
- Section 2.5 of the Scheme 'may' allow for exemptions at the planning authority's discretion, including for temporary permissions. While the permission is temporary, it is not the planning authority's intention that this exemption would apply to quarry developments.
- Section 2.4.9 of the Scheme states no exemptions or reductions will apply to any application for retention. Part of the application is for retention permission.
- The planning authority respectfully requests the Board to support its decision.

7.3. Observations

- 7.3.1. One observation was received from Ciaran Guinan, Ballyhearth, Clonfanlough. A number of issues have been raised in the observation such as the poor road network, the location of the site within the Clonmacnoise heritage site, concern in relation to the ground water, unstable quarry boundary and various enforcement issues.
- 7.3.2. Notwithstanding, as the first-party appeal solely relates to development contributions, the Board's consideration of the appeal is confined to the consideration of whether the

terms of the scheme were properly applied by the planning authority. Therefore, a de novo consideration of the application cannot be carried out.

7.4. Further Responses

A further response has been received from the applicant. The main points made can be synthesised as follows:

- The project description is precise and divides the development into distinct activities. The second item (importation of inert soil and stone) is referenced throughout the application and decision to grant and reflected in the application fee accepted by the planning authority i.e. 2.8 hectares at €50 per 0.1 hectare (Class 6) and 5.4 hectares at €10 per 0.1 hectare (Class 13). The submitted Site Layout Map (Drawing No. PP-110-00) clearly shows in its phases of work that Phases 3 and 4 are for soil recovery and includes calculations for soil tonnage within the legend confirming that only Phases 3 and 4 are for soil recovery. This is also addressed in the submitted 'Site Report'. The applicant is satisfied that the prospective development in Phases 3 and 4, a distinct development separate from past extraction or the parallel importation and processing activity, come under the section 48 contributions.
- The soil recovery operation, being prospective, is entitled to the reduction in contributions provided for temporary permissions. The Council's response asserts that reductions were never meant for quarries, but it is a soil recovery activity, not a quarry. The appropriate calculation for Phases 3 and 4 should be $2.823 \text{ hectares} \times \text{€}1,526 / 50\% = \text{€}21,539.49$.
- The planning authority's justification in relation to Phase 5 quotes from the submitted EIA Screening Report. The justification details the ongoing use of site infrastructure to process imported gravel as distinct from the soil recovery activity. Primarily, material processed at the site is from a different quarry the applicant owns covered by P.A. Reg. Ref. 17/408 which included a development contribution. Application of contributions to Phase 5 is incorrect because:
 - 'Winning and working' of materials requires extraction to take place. The entire site is exhausted. Phase 5 is a depot for outside sites.

- The Development Contribution Scheme is area dependant. It relates to the area from which materials are extracted. Only processing and stockpiling takes place.
- Phase 5 activities do not come under the definition of quarrying.
- Where section 48 has been applied to outside sources applying contributions constitutes a double application of contributions.
- The application fee for non-soil recovery areas was agreed with the planning authority.
- The site acts as a storage depot using existing infrastructure which would otherwise have to be replicated in other pits. This site minimises development on other sites and should not be penalised for such an approach.

8.0 Assessment

8.1. The documentation submitted with the application states that all economically attainable resources on site have been extracted since 2018. Significant stockpiles will be removed in the coming months and this will make way for initial phases of the site restoration to begin. In 2018, raw gravel was imported onto the site to be processed, there being no processing facilities at the originating site. This ongoing use requires regularisation during this application. It is the applicant's intention to continue to use the existing infrastructure for a limited time and at a limited scale during which the site will be returned to its original agricultural use. As a last phase, plant will be removed, and the current processing area restored. The site layout plan indicates five separate areas on site (5.177 hectares) with five distinct phases for restoration. The imported inert soil and stone will be used to fill Areas 3 and 4. The accumulated site won materials will be used to fill Areas 1, 2 and 5. The restoration is described as a soil material recovery activity and not a waste disposal activity. I consider that the development contributions liability for each activity should be separately assessed as set out in the public notices.

- 8.2. Retention and continuance of importation of 15,000 tonnes p.a. of gravel for processing including screening, crushing and washing and export of finished aggregates.
- 8.2.1. There is no permission on site for the importation and processing of gravel, hence the retention and continuance application for a five-year period. I do not consider the development comes under the contributions set out in Table 1 i.e. residential or industrial/commercial development. The industrial/commercial levy is charged on a square metre basis inferring that it is for floorspace. There is no floorspace, as such, in the current application. Table 2 refers to other categories of development. Category D (Land use for: (a) the winning and working of minerals (b) deposit of refuse or waste (c) land filling (inert material)) was the basis for Condition 10. The planning authority response considers (a) was the 'most applicable level of contribution'. However, I do not consider that this element of the application sits within any of these definitions. As referenced in the grounds of appeal and the further response, no winning of minerals is being carried out and Category D requires both the winning and working of minerals (as opposed to 'the winning and/or working of materials'). The activity is not consistent with either (b) or (c). I also do not consider that the specific activity is accommodated under any other category of development. Therefore, while Category D might appear to be the most obvious category, I do not consider the activity is accommodated under the definition set out.
- 8.2.2. As there is no category that specifically references this particular activity, and no 'catch all' category separate to those in Tables 1 and 2, I do not consider this element of the development can be subject of development contributions under the Scheme.
- 8.3. Permission for importation of inert soil and stone (8,500 tonnes p.a.) for restoration of part of pit floor (2.8 hectares).
- 8.3.1. This importation relates to Areas 3 and 4 of the Site Layout map submitted with the planning application (Drawing No. PP-110-00). These two areas have a combined area of 2.8229 hectares. The imported inert soil and stone are to be used to land fill this area and return it to agricultural use. I consider this proposed activity to be accommodated in Table 2 Category D, specifically subsection (c) – land filling (inert

material). In the context of this planning application I consider land filling to be more applicable than Category F (Raising of sites (inert material)).

- 8.3.2. The grounds of appeal note that there is a requirement to restore the site under both previous grants of permission. I do not consider that required compliance with previous permissions can result in exemption from a development contribution that may reasonably be required, on its own merit, under a different planning application.
- 8.3.3. 2.8229 hectares at €1,526 per 0.1-hectare results in a contribution of €43,077.45 which is that calculated in the grounds of appeal. However, the applicant considers that this sum should be reduced by 50% to €21,538.73 having regard to Section 2.5 (Exemptions & Reductions) (m) (Temporary Permissions) on the basis of the five-year permission being sought.
- 8.3.4. I do not agree with the grounds of appeal in this regard. The works to be carried out will result in a permanent use and change to the landscape. The reduced rates for temporary permissions are relevant to actual temporary developments such as in the current application if the temporary five-year permission for the importation of 15,000 tonnes p.a. of gravel for processing including screening, crushing and washing and export of finished aggregates was subject of development contributions i.e. the activity is to be discontinued in five years.
- 8.3.5. I do not consider the importation of inert material for restoration of part of a pit floor to be a temporary activity such that subsection (m) applies. Therefore, for this aspect of the proposed development I consider a development contribution of €43,077.45 applies.
- 8.4. Permission for restoration of the remainder of the pit floor (2.4 hectares, including removal of all plant) using accumulated site won materials.
- 8.4.1. The remaining three areas (1, 2 and 5 with an area of 2.3541 hectares) are also to be filled and the areas returned to agricultural use. It is stated that these areas will be filled with existing on-site silt and stored soil. As the works do not require the importation of any material, I consider that no development contributions apply to this element of the development.

8.5. Having regard to the foregoing, I consider a reduced development contribution of €43,077.45 is applicable to this development. The grounds of appeal specifically request that, in the event of a contribution being applied, the Board expressly permits the payment in a phased manner. The standard condition is recommended. I consider the method of payment to be a matter for the planning authority.

9.0 Recommendation

9.1. I recommend that Offaly County Council be directed to amend Condition No. 10 on the grounds that the terms of the Development Contribution Scheme 2014-2020 have not been properly applied.

10.0 Reasons and Considerations

Having regard to:

- The provisions of the Offaly County Council Development Contribution Scheme 2014-2020; and
- The nature of the existing and proposed developments;

The Board considers that the terms of the Development Contribution Scheme have not been properly applied and Condition No. 10 shall be amended as follows;

The developer shall pay to the planning authority a financial contribution of €43,077.45 (forty three thousand and seventy seven euro and 45 cent) in respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided on or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning & Development Act 2000, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine.

Reason: It is a requirement of the planning and development Act 2000, as amended, 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.

Anthony Kelly

Planning Inspector

27.07.2020