



An
Bord
Pleanála

Inspector's Report ABP-307694-20

Development	Importation of soil and stone for the raising of an agricultural field in order to improve its agricultural output, the construction of a new haul road, and a new entrance.
Location	Ballynanelagh, Knockraha, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	19/6939
Applicant(s)	Ed Barry
Type of Application	Permission
Planning Authority Decision	Grant, subject to 38 conditions
Type of Appeal	Section 48(13)
Appellant(s)	Ed Barry
Observer(s)	None
Date of Site Inspection	29 th October 2020
Inspector	Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located 3.3km to the east of Junction 18 of the M8, which serves the town of Glanmire, and 0.5km to the south of the village of Knockraha. This site lies within gently rolling countryside, which is in use for agriculture and forestry. It is accessed off the western side of the L-2964.
- 1.2. The main body of the site comprises a roughly square area of land, which forms the northern portion of a larger field, and the route of the proposed means of access, which passes through a dogleg to the local road. This site, which is presently in agricultural use, extends over an area of 2.93 hectares.

2.0 Proposed Development

- 2.1. The proposal would entail the importation of soil and stone in order to raise part of a field and improve its agricultural output. The total volume and weight of these imported materials would be 58,720 cubic metres and 88,080 tonnes, respectively. The field slopes downwards from the north-east to the south-west. It would be raised between 0.01m and 3m in height with an average increase of 2.15m.
- 2.2. The applicant predicts that the proposal would take from 4 to 5 years to complete and he estimates that 5900 loads would be generated.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of CFI, permission granted subject to 38 conditions, including the following one, Condition No. 38:

At least one month before commencing development or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the developer shall pay a special contribution of €20,000 to Cork County Council, updated monthly in accordance with the Consumer Price Index from the date of grant of permission to the date of payment, in respect of specific exceptional costs not covered in the Council's General Contributions Scheme, in respect of works proposed to be carried out, for the provision of repairing damage to the public road

having regard to the volumes of HGVs. The payment of the said contribution shall be subject to the following:

(a) Where the works in question – (i) are not commenced within 5 years of the date of payment of the contribution (or final instalment if paid by phased payment), (ii) have commenced but have not been completed within 7 years of the date of payment of the contribution (or final instalment if paid by phased payment), or (iii) where the Council has decided not to proceed with the proposed works or part thereof, the contribution shall, subject to paragraph (b) below, be refunded to the applicant together with any interest which may have accrued over the period while held by the Council.

(b) Where under sub-paragraphs (ii) or (iii) of paragraph (a) above, any local authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion to those proposed works which have not been carried out.

(c) Payment of interest at the prevailing interest rate payable by the Council's Treasurer on the Council's General Account on the contribution or any instalments thereof that have been paid, so long and in so far as it is or they are retained unexpended by the Council.

Reason: It is considered appropriate that the developer should contribute towards these exceptional costs, for works which will benefit the proposed development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Further information (FI) requested with respect to the consistency of submitted documents, widening of buffer zone on the west of the site, and siting of silt fence. Clarification of further information (CFI) requested with respect to an outstanding matter of consistency.

3.2.2. Other Technical Reports

- Inland Fisheries Ireland: FI requested.
- Irish Water: No objection, standard observations.
- Area Engineer: No objection, 12 conditions requested including the following one:

A €20,000 special contribution to be applied to this application for the quantity of waste been transported to the site on substandard road network. The calculation is based on the quantity of waste been handled on the site by the approximate distance vehicles have to travel to and from the site. The exact location where the waste will come from is not known at this office. The above special contribution is based on a minimum distance to cover the cost of damage to the public road as a result of heavy vehicles travelling to and from the site.

Reason: Road damage caused by the proposed development.

- Environment: Following receipt of CFI, conditions requested.
- Ecology: Following receipt of FI, conditions requested.

4.0 Planning History

19/5285: Similar proposal to the current one: Withdrawn.

5.0 Policy and Context

5.1. Development Plan

Under the Cork County Development Plan 2014 – 2020 (CDP), the site is shown as lying within a rural area. Under the Landscape Character Assessment of the County, this site is shown as lying within Landscape Character Type 1 “City Harbour and Estuary”, which is deemed to be of very high landscape value and sensitivity and national importance.

5.2. Natural Heritage Designations

- Great Island Channel SAC (001058)
- Cork Harbour SPA (004030)

5.3. EIA Screening

Under Item 11(b) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2020, an EIAR is required to be prepared where

the following is proposed: “Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.”

The proposal would entail the total importation of 88,080 tonnes of inert waste over a 5-year period, i.e. the equivalent of 17,616 tonnes per annum, and so it would be sub-threshold.

Under Item 15 Part 2 of Schedule 5 to Article 93 of the aforementioned Regulations, if, having regard to the criteria set out in Schedule 7 of these Regulations, sub-threshold development would have significant effects on the environment, then an EIAR may still be necessary. The Planning Authority concluded that such effects would not arise in this case.

6.0 The Appeal

6.1. Grounds of Appeal

Legislative context

- The applicant cites references to special contributions in Section 48 of the Planning and Development Act, 2000 – 2020. Thus, he cites, for example, Section 48(2)(c), which states that such contributions arise “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.”
- The applicant cites references to special contributions in the Development Management Guidelines. Thus, for example, under Section 48(12) of the aforementioned Act, the basis for the calculation of the contribution must be explained and hence the nature and scope of the works involved. Such contributions may be warranted where costs are incurred directly as a result of, or in order to facilitate, the development in question. Where the benefit would be more widespread, the Planning Authority (PA) should consider revising its general contribution scheme.

Permitted development

- The proposal would entail the importation of 88,080 tonnes of inert soil and stone over a 5-year period, i.e. 17,616 tonnes per annum. Such importation would lead to the raising of the subject site by an average height of 2.15m. Once complete, this site would be re-seeded for the resumption of its use as agricultural grazing land.

Grounds of appeal

- In the light of the above cited legislative context, the key issue is whether Condition No. 38 is appropriate. This Condition was requested by the Area Engineer, due to the anticipated damage to the public road resulting from heavy vehicles travelling to and from the site. It is critiqued on the basis that it fails to specify the particular repair works that would be carried out by the Local Authority and it fails to establish how the sum of €20,000 was calculated.
- Furthermore, the exceptional nature of the costs has not been demonstrated, i.e. the public road links Knockraha with Glanmire and Carrigtwohill and it serves surrounding farmland, too, and so any improvements to it would be of wider benefit.
- The special contribution itself fails to strike an appropriate balance between the funding of infrastructure and economic development and so it would undermine the viability of the project.
- The view is expressed that, as the relevant General Contribution Scheme levies on the basis of proposed floorspace for the purpose of funding road works and as the current proposal would not entail the provision of floorspace, the PA is seeking to use a special contribution to “plug this gap”. As the works in question would otherwise be funded under this Scheme, resort to such a contribution is mis-placed. In this respect, no consideration has been given by the PA to the payment for such works by means of levies under the General Contribution Scheme required under other permitted proposals.

6.2. Planning Authority Response

No response

6.3. Board request

On 7th September 2020, the Board requested that the Planning Authority specifically address the grounds of appeal relating to the special contribution. No response has been received.

7.0 Assessment

- 7.1. The applicant has appealed condition 38 attached to Planning Authority's (PA's) permission granted to application reg. no. 19/6939. This condition refers to repairs to the public road that would be damaged by the volume of HGV movements generated by the proposal. These repairs are described as being specific exceptional costs which are not covered in the PA's General Development Contributions Scheme.
- 7.2. I have reviewed the applicant's appeal of condition 38 and I consider that it can be determined under Section 48(13)(a) of the Planning and Development Act, 2000 – 2020, i.e. on a non-*de novo* basis.
- 7.3. Condition 38 was requested by the Area Engineer, who expressed concern over the likely damage to public roads that would be incurred by the volume of HGV movements that would be generated by the proposal. The figure of €20,000 was calculated in light of the amount of waste that would be imported and the likely length of journeys. While the PA was requested, under a Section 132 notice, to elucidate further this figure, no response was received.
- 7.4. The applicant draws attention to the wording of both Section 48(2)(c) of the Planning and Development Act, 2000 – 2020, and the commentary on this Section, which is found in the Development Management Guidelines. This Section states that special contributions may arise "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." This commentary cites Section 48(12)(a) of the Act, which refers to the need to "specify the particular works carried out, or proposed to be carried out,

by any local authority to which the contribution relates” and so the nature and scope of the works involved need to be known, along with their direct benefit in facilitating the development.

7.5. The applicant critiques condition 38 on the following grounds. The PA has failed to:

- State what particular works would be involved,
- Show how the special contribution was calculated,
- Demonstrate that the special contribution would be capable of funding the particular works, and
- Establish the exceptional nature of the costs, i.e. damage to public roads would be attributable to not only the HGV movements generated by the proposal but to other vehicles using these roads. Consequently, any repairs would be of wider benefit.

I concur with this critique and so, in these circumstances, I do not accept the validity of condition 38.

7.6. The applicant also expresses concern that the special contribution would threaten the viability of the proposal and that the PA’s use of the same should be discontinued, in favour of relying upon funds generated by the General Development Contribution Scheme to pay for repairs to public roads.

7.7. In relation to the applicant’s former concern, I am not in a position to assess the question of project viability. In relation to the PA’s General Development Contribution Scheme, it is based solely on raising development contributions on foot of proposals that result in new floorspace. Consequently, proposals, such as the applicant’s, which do not result in new floorspace are not subject to it. The PA may wish to widen the basis upon which development contributions can be raised to include proposals that do not result in new floorspace.

7.8. I conclude that condition 38 fails to meet the criteria set out in Section 48 of the Planning and Development Act, 2000 – 2020, for the attachment of a valid special contribution condition.

8.0 Recommendation

8.1. That condition 38 be omitted.

9.0 Reasons and Considerations

It is considered that condition number 38 attached to the permission granted under planning register reference number 19/6939 would fail to comply with the provisions of section 48(2)(c) of the Planning and Development Act, 2000, as amended, insofar as the planning authority has not demonstrated that the proposed development would result in the planning authority incurring specific exceptional infrastructural costs, which would not be covered by its General Development Contribution Scheme and which would benefit the proposed development. It is, therefore, considered that condition number 38 would not come within the scope of section 48(2)(c) of the Planning and Development Act, 2000, as amended and would, therefore, be inappropriate.

Hugh D. Morrison
Planning Inspector

17th November 2020