



An
Bord
Pleanála

Inspector's Report

ABP-309109-21

Development	Continuation of existing permitted quarry (QD.0017) and a lateral and vertical extension to the existing quarry.
Location	Heronstown Townland, Lobinstown, Navan, Co. Meath.
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	LB200106
Applicant(s)	Lagan Materials Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant permission
Type of Appeal	First Party against conditions (s.48 appeal)
Observer(s)	None.
Date of Site Inspection	11 th August 2021.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site, which has a stated area of 14.12ha, consists of an operational quarry about 2km south-east of Lobinstown village and 8km north-west of Slane. The site has been used for quarrying for a number of years, with quarrying activities concentrated in the area to the east of the internal roadway.
- 1.2. Access to the quarry is taken from a county road, the L1603, with the site access on the northern side of the road.
- 1.3. The surrounding area is characterised by agricultural uses, with rural housing interspersed. The closest residential property to the site lies approx. 100m south-west of the internal roadway.

2.0 Proposed Development

- 2.1. The proposed development as described in the public notices entailed: -
 - Continuance of operation of the existing permitted quarry (ABP 17.QD.0017),
 - Lateral and vertical extension to the existing quarry including the deepening of the quarry extraction area by extractive benches to 50m OD, within a total quarry extraction area of 4.5ha,
 - Increase in the permitted extraction rate to 200,000 tonnes per annum,
 - Provision of an aggregates and overburden stockpiling area and settlement lagoon system (c. 2000sqm),
 - Restoration of the site to natural habitat after uses following completion of extraction,
 - All within an overall application area of c. 14.12ha and for a period of 20 years.
 - An Environmental Impact Assessment Report was submitted with the application.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 4th December 2020, subject to 21 No. planning conditions. In the context of the subject appeal, the condition of relevance is:

'21. The applicant shall pay the sum of €150,000 (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 strengthening and repairing the local roads affected by the development over the life of operation, in accordance with the provisions of Section 48 (2) (c) of the Planning and Development Act 2000 (as amended), unless otherwise agreed in writing with the Planning Authority. This contribution shall be paid 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 by the Planning Authority and the applicant, or in default of such agreement, the matter shall be referred to the Board to determine.'

Reason: *It is considered reasonable that the developer should 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. Planning Reports dated 25th March 2020 and 4th December 2020 have been provided. The first report stated that permission was granted by An Bord Pleanála in 2017 for continued quarry development and the officer expressed satisfaction that there were no factors prohibiting the assessment of the proposed development. The Report stated that the proposed development seeks to supersede the extant permission in terms of appropriate period, extraction rate per annum and extraction depth OD. The proposed development was stated to be acceptable in principle, subject to appropriate site rehabilitation and assessment of environmental effects.

The Report recommended that Further Information should be sought, in relation to the following issues: -

- The proposed blasting regime,
- Traffic and transport issues,
- Potential impacts on groundwater and on other wells in the area and also the adequacy of the settlement lagoon to serve the development,
- The ecology and heritage potential on the site,
- Flood risk.

3.2.2. The second report followed receipt of the additional information response and followed a period of additional public consultation, following the submission of significant additional information on 12th October 2020. The report summarised the responses to the further information items and concluded that development would be in accordance with the proper planning and sustainable development of the area. The report recommended that permission be granted, subject to 21 no. planning conditions.

3.2.3. Other Technical Reports

Handwritten comments from the **Conservation Officer** dated 6th March 2020 have been provided, which outlined no objection to the development.

A report from the **Heritage Officer** dated 19th March 2020 has been provided, which requested that further information should be sought in relation to biodiversity aspects of the development, including a requirement for additional surveys to be undertaken. Reference is also made within the second planning report, to a further Heritage Officer report dated 3rd December 2020, which followed the additional information response and which recommended a number of planning conditions. This report has not been provided as part of the appeal documents, but is summarised within the planning report. Given the limited scope of this appeal, I have not pursued this matter any further

Emailed comments from the **Environment (Flooding)** section dated 21st March 2020 and 24th November 2020 have been provided. The initial comments requested that a flood risk assessment and justification test should be submitted. The

comments also advised of the need to make provision for riparian maintenance strips on the watercourses adjacent to and traversing the site and also Section 50 consents for any watercourse crossings. The subsequent comments followed receipt of the additional information response and advised that there was no objection to the development, subject to a number of recommended planning conditions.

A report from the **Environment** department, dated 25th March 2020, has been provided, which advised that there was no objection to the development subject to a number of recommended planning conditions.

Transportation Department reports dated 18th March 2020 and 2nd November 2020 have been provided. The first report requested further information in relation to signage in the vicinity of the site entrance and works required in order to provide sightlines at the quarry entrance. The report also suggested that consideration should be given to a reduced 10-year permission for the development and it was recommended that peak export loads per day should not exceed 40. It was also requested that the applicant should be advised that a special levy of €150,000 would be applied, as a contribution towards the cost of upgrading and strengthening the local road network. The report stated that the contribution was based on a 10-year permission and that the amount should be increased commensurate with the duration of the permission. The second report followed receipt of the additional information response and advised that there was no objection, subject to a number of recommended planning conditions, including a requirement for a levy of €150,000 as a special contribution towards the cost of strengthening and repairing the local roads affected by the development.

A report from the **Water Services** department dated 19th October 2020 has been provided. This report followed receipt of the further information response and expressed no objection to the development, subject to a recommended planning condition. The Planning Report refers to an initial Water Services report, dated 6th March 2020, although this report has not been provided as part of the appeal documents. Given the limited scope of this appeal, I have not pursued this matter any further.

3.3. Prescribed Bodies

- 3.3.1. The Health and Safety Authority made a submission dated 2nd March 2020, which advised that the Authority had no observations to make on the application.
- 3.3.2. Irish Water made a submission dated 9th March 2020, which advised that there was no objection to the development subject to a number of standard requested planning conditions.
- 3.3.3. Inland Fisheries Ireland made submissions dated 9th March 2020 and 2nd October 2020, outlining no objection to the development.
- 3.3.4. The Department of Culture, Heritage and the Gaeltacht (Development Applications Unit) made a submission dated 26th March 2020, which recommended that archaeological monitoring of the development should be undertaken.
- 3.3.5. The application was also circulated to An Taisce and the Health Service Executive. No responding submissions were received from these bodies.

3.4. Third Party Observations

- 3.4.1. A single third party letter of observation was received as part of the Significant Further Information consultation, the issues raised within which can be summarised as follows: -
 - The long term impacts of the proposed increase in depth on groundwater/aquifers in the area was considered unclear.
 - The applicant stated that they were willing to accept a 10-year permission in respect of extraction, but no such undertaking had been provided in relation to restoration.
 - The applicant should be required to formulate a strategy for the future acceptance of concrete/bricks/etc from other developments, as an aggregate/concrete supplier.
 - The applicant should demonstrate how restoration will be provided in line with the extraction process and that the processes will not be classified as separate projects. It was suggested that there should be an annual requirement for

material being accepted as part of the restoration process, which should be linked to the volume extracted.

- Information regarding surface water drainage was considered inadequate, with reference to stormwater contingency,

3.4.2. The submission also made additional observations regarding quarrying activities more generally:

- Construction activity creates a need for disposal of excavated soil and that such soil can be used as part of the restoration process for quarries.
- The cost of disposal of foundation soil has an impact on the cost of housing which is reflected in affordable housing schemes being unattainable to people on the average industrial wage.

4.0 Planning History

Previous applications at the site include: -

17.QD.0017 - Permission granted (under Section 37L of the Act) on 3rd May 2017 for further quarry development at Heronstown, Lobinstown, Co. Meath. Permission was granted subject to 19 No. conditions, which included the following: -

Condition No 3 limited the lifetime of the permission to 10 years.

Condition No. 4 limited the rate of extraction to 100,000 tonnes per annum.

Condition No. 5 required that the depth of excavation should be no lower than 79m OD.

Condition No. 6 required that a new site entrance shall be constructed, with the old entrance closed up, within 6 months of the date of the Order.

SA/20207 - (ABP Ref. PL17.204854) Permission granted on 15th March 2004 for construction of an asphalt plant, associated material bays, shipping office, site office and associated development works.

5.0 Policy Context

5.1. Ministerial Guidelines

Quarries and Ancillary Activities Guidelines for Planning Authorities (2004)

5.1.1. The Guidelines contain guidance on planning for the extractive industry through the development plan process and determining applications for planning permission for quarrying and ancillary activities. The following sections are relevant to the current appeal:

- Section 4.7 Possible planning conditions

Development Contributions Guidelines for Planning Authorities (2013)

5.1.2. The Guidelines provide guidance on the drawing up of development contributions schemes. Under section 48 of the Act, planning authorities must draw up a development contribution scheme (a general development contribution scheme) in respect of certain public infrastructure and facilities provided by, or on behalf of, the local authority that generally benefit development in the area. All planning permissions granted are subject to the conditions of the development contribution scheme.

5.1.3. The Guidelines advise that a special development contribution may be imposed under section 48(2)(c) of the Act 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.

Development Management Guidelines (2007)

5.1.4. Section 7.12 refers to conditions requiring development contributions (sections 48 and 49 of the Planning Act), advising that Development contribution conditions may only be attached if they accord with the provisions of either section 48 or section 49 of the Planning Act and these are based on the application of the terms of one or more development contribution schemes which have been formulated and adopted

in accordance with those sections of the Act, or on the need for a special financial contribution.

- 5.1.5. The Guidelines also advise a requirement for a special contribution may be imposed under Section 48(2)(c), where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. Section 7.12 of the Guidelines states, in respect of special contribution conditions: -

'A condition requiring a special contribution must be amenable to implementation under the terms of section 48(12) of the Planning Act; therefore it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.'

5.2. National Planning Framework

- 5.2.1. National Policy Objective 23 - *'Facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector, together with forestry, fishing and aquaculture, energy and extractive industries, the bio-economy and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism.'*

5.3. Eastern and Midlands Regional Spatial and Economic Strategy

- 5.3.1. RPO 6.7 – *'Support local authorities to develop sustainable and economically efficient rural economies through initiatives to enhance sectors such as agricultural and food, forestry, fishing and aquaculture, energy and extractive industries, the bioeconomy, tourism, and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage.'*

5.4. Development Plan

5.4.1. The subject site is in a rural, unzoned part of County Meath. Section 10.12 of the Meath County Development Plan 2013-2019 relates to '*Extractive Industry and Building Materials Production*'. Relevant policies within this Section include: -

RD POL 22 - *To facilitate the exploitation of the county's natural resources and to exercise appropriate control over the types of development taking place in areas containing proven deposits, whilst also ensuring that such developments are carried out in a manner which would not unduly impinge on the visual amenity or environmental quality in the area.*

RD POL 23 - *To support the extractive industry where it would not unduly compromise the environmental quality of the county and where detailed rehabilitation proposals are provided.*

RD POL 24 - *To seek to ensure that the extraction of minerals and aggregates minimise the detracting from the visual quality of the landscape and do not adversely affect the environment or adjoining existing land uses.*

RD POL 25 - *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.*

RD POL 26 - *To ensure that all existing workings shall be rehabilitated to suitable land uses and that all future extraction activities will allow for the rehabilitation of pits and proper land use management. The biodiversity value of the site should be considered in the first instance when preparing restoration plans. Where land filling is proposed, inert material is the preferred method. Each planning application shall be considered on a case by case basis and where relevant will be dealt with under the relevant regional Waste Management Plan.*

RD POL 27 - *To ensure that development for aggregates / mineral extraction, processing and associated processes does not significantly impact in the following areas: i. Existing & Proposed Special Areas of Conservation (SACs); ii. Special Protection Areas (SPAs); iii. Natural Heritage Areas and Proposed Natural Heritage Areas; iv. Other areas of importance for the conservation of flora and fauna; v. Areas*

of significant archaeological potential; vi. In the vicinity of a recorded monument, and; vii. Sensitive landscapes. viii. World Heritage Sites.

5.5. Meath County Council Development Contribution Scheme 2016-2021

5.5.1. Section 7 'Schedule of Charges' identifies the following contribution rates, per square metre of development: -

Category of Development	Floor Area	Contribution
Quarry / Extractive Industry	Per 0.1ha	€2,500

5.5.2. Appendix B contains a breakdown of development contributions and for quarries, the contribution is broken down as follows: -

- Class 1: Surface water drainage €75,
- Class 2: Roads and public transport €1,850,
- Class 3: Social Infrastructure €575.

5.6. Natural Heritage Designations

5.6.1. The site is not within or adjacent to any Natura 2000 sites. The closest Natura 2000 sites are the River Boyne and River Blackwater Special Area of Conservation (Site Code 002299) and Special Protection Area (Site Code 004232), which are both approx. 8.4km south.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal are set out against the relevant condition and can be summarised as follows:

- Under the current development contribution scheme (DCS) a rate of €2,500 per 0.1ha is applicable to quarry/extractive industry. The proposed extraction area equates to a contribution of €112,500, which is consistent with the rate applied under conditions 18, 19 and 20 of the decision issued by Meath County Council.

- Section 5 of the DCS includes Class 2: Roads & Public Transport Infrastructure, which provides for *'the provision, refurbishment, upgrading, enlargement or replacement of roads, car parks, car parking places.'*
- Section 4.2 of the DCS acknowledges that a special financial contribution may be sought, where it relates to specific exceptional costs not covered by the DCS, and that, in such circumstances, the Planning Authority must specify, in a planning condition, the particular works to which the contribution relates.
- Section 48(12) of the Act provides that, where payment of a special contribution is required, the following provisions shall apply: -
 - (a) the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates,
 - (b) where the works in question—
 - (i) are not commenced within 5 years of the date of payment to the authority of the contribution (or final instalment thereof, if paid by phased payment under subsection (15)(a)),
 - (ii) have commenced, but have not been completed within 7 years of the date of payment to the authority of the contribution (or final instalment thereof, if paid by phased payment under subsection (15)(a)), or
 - (iii) where the local authority decides not to proceed with the proposed works or part thereof. the contribution shall, subject to paragraph (c), be refunded to the applicant together with any interest that may have accrued over the period while held by the local authority.
- Chapter 2 of the Development Contributions Guidelines for Planning Authorities (2013) states that 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.
- The works proposed to be carried out by the Planning Authority are not specified under condition No. 21 or within internal planning reports. The Roads reports on the application state that the contribution is required for the strengthening and repair of local roads, but the particular works are not specified.

- The further information response accepted that there would be a requirement to contribute towards the cost of upgrading and strengthening the local road network and the contributions levied under conditions 18, 19 and 20 provide for the 'provision, refurbishment, upgrading, enlargement or replacement of roads.'
- Condition No. 21 does not specify the particular works to be carried out, to which the contribution relates and the submissions on file from the Planning Authority do not provide any adequate rationale to underpin the requirement. Consequently, it would not be possible for the applicant to seek a refund under Section 48(12)(b), should the works not be carried out.
- The Board is requested to remove condition No. 21.

6.2. Planning Authority Response

6.2.1. The Planning Authority made a submission on 19th February 2021, the contents of which can be summarised as follows: -

- The Transportation Department recommended a special levy, given the anticipated increase in traffic volumes over the life of the permission.
- The design life of a roadway is c.25 years and the cost of repair of the proposed haul route is in the order of c.€2.9m.
- The special levy of €150,000 was estimated based on a commensurate reduction in the permission duration (a 10-year permission) and the anticipated additional HGV volumes arising from the development.
- The special levy will be spent on the upgrade of the access junctions (McEntaggart's and Sally Gardens) plus the restoration of c.380m of L-1603. Restoration works will include edge strengthening, drainage and surfacing regulating course, binder course and surfacing.
- A summary table of the cost of road improvement works along the L-1603 has been provided.
- The proposed development will have an impact on existing local road infrastructure and the developer should be requested to make a contribution to

the strengthening and repair costs of the road network in the area and therefore Section 48(2)(c) is applied.

- The Board is requested to uphold the decision to grant permission and to include condition No. 21, in accordance with the terms of Section 48(2)(c) of the Act.

6.3. Observations

6.3.1. None.

6.4. Further Responses

6.4.1. A further first party submission dated 19th March 2021 was received, the contents of which can be summarised as follows: -

- In accordance with Section 48(12) of the Act, the particular works relating to the special contribution should have been specified in the planning condition.
- There is no opportunity for the Planning Authority to provide additional information in relation to the works relating to the special contribution in an appeal response. The additional details provided with the Planning Authority's submission are considered to be inadmissible.
- Section 5 of the Meath County Council Development Contributions Scheme 2016-2021 contains Class 2 'Roads & Public Transport Infrastructure', which provides for 'the provision, refurbishment, upgrading, enlargement or replacement of roads, car parks, car parking spaces.' The contributions levied under condition Nos. 18, 19 and 20 totalling €112,500 provide for the 'provision, refurbishment, upgrading, enlargement or replacement of roads.'
- The developer will be making a significant contribution towards upkeep of the road network in the area and there is no justification for imposing a separate special contribution on the development.
- The Board is requested to remove condition No. 21 as it amounts to double charging, is not related to a specific exceptional cost and it does not specify the particular works to which contribution relates. It is therefore not compliant with the requirements of the Development Contribution Scheme or Section 48 of the Act.

7.0 Assessment

- 7.1. Section 48(10) (b) of the Planning and Development Act 2000, as amended, makes provision for an appeal to be brought to the Board where an applicant for permission under section 34 considers that the terms of the relevant development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority.
- 7.2. As this is an appeal in relation to the application of a development contribution only, the Board will not determine the application as if it were made to it in the first instance and will only determine the matters under appeal. The condition the subject of this appeal is No. 21.

Condition 21

- 7.3. Condition No. 21 was applied by the Planning Authority as a special contribution towards expenditure that is proposed to be incurred by the Planning Authority in respect of strengthening and repairing the local roads affected by the development over the life of operation. The condition was applied in accordance with the provisions of Section 48(2)(c) of the Planning and Development Act 2000 and a contribution sum of €150,000 was specified.
- 7.4. Under Section 48 of the Act, planning authorities have 2 mechanisms by which to require the payment of a contribution in respect of existing and/or proposed public infrastructure and facilities benefiting development:
- (1) In accordance with a development contribution scheme made under Section 48, and/or,
 - (2) 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.
- 7.5. Regarding the facility to require payment under a development contribution scheme, the Meath County Council Development Contribution Scheme 2016-2021 is the operative development contribution scheme for the Planning Authority, and it makes provision for the payment of a contribution, per square metre of development, towards individual classes of development grouped under the headings of 'surface water drainage', 'roads & public transport infrastructure' and 'social infrastructure.' I

note that condition Nos. 18, 19 and 20 of the Planning Authority's decision require financial contributions in accordance with the development contribution scheme.

- 7.6. Regarding the facility to require a contribution towards specific exceptional costs, Section 48(2)(c) of the Act is clear that specific exceptional costs should arise in order to justify any request for a special contribution.
- 7.7. Section 48(12) states that a condition requiring payment of a special contribution under Section 48(2)(c) '*shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates*'. Section 7.12 of the *Development Management Guidelines* also outlines that for such a condition to be attached by a planning authority, it is essential that the basis for the calculation of a contribution should be explained in the planning decision, including identifying the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.
- 7.8. I consider the condition, as worded, does not meet the requirements of Section 48(12) as it does not specify the works to be carried out. The reference within the condition to '*strengthening and repairing the local roads affected by the development over the life of operation*' is, in my opinion insufficiently precise or specific, to meet the requirements of the legislation.
- 7.9. I also consider the condition fails to accord with guidance within the *Development Management Guidelines*, as the decision does not provide any basis for the calculation of the contribution, including the nature/scope of works and the expenditure involved.
- 7.10. I am aware that in its response to the appeal, the Planning Authority has provided additional details regarding the specific works to which the special contribution would be allocated, identifying that the monies would be spent on the upgrade of the access junctions (McEntaggart's and Sally Gardens) plus the restoration of c.380m of the L-1603, with these works including edge strengthening, drainage and surfacing regulating course, binder course and surfacing. Whilst I have given consideration to the submission, I am in agreement with the applicant, that this information should have been contained within the planning condition and within the planning authority's decision.

- 7.11. I would also highlight to the Board that the submission states that the €150,000 special contribution has been 'estimated', as a proportion of the cost of restoration of the haul route, based on anticipated usage of the haul route by HGVs over a 10-year period. And whilst a 25-year restoration costing for the section of the L1603 between the N52 and the R163 has been provided within the submission, no clarification of how the €150,000 contribution amount was estimated has been provided. I consider this approach also fails to meet the requirements of Section 48(2)(c), which requires that the exceptional cost should be specific. An estimated costing is, in my opinion, not adequately specific, to meet the requirements of Section 48(2)(c).
- 7.12. In conclusion, I consider condition No. 21 of the Planning Authority's decision does not accord with the provisions of Section 48(2)(c) of the Planning and Development 2000, as amended.

8.0 Recommendation

- 8.1. Having regard to the above assessment, I would recommend the following Draft Decision Order:

The Board considers, based on reasons and considerations set out below, that condition No. 21 does not accord with the provisions of Section 48(2)(c) of the Planning and Development 2000, as amended and direct the Planning Authority to OMIT condition No. 21 from the final grant.

9.0 Reasons and Considerations

- 9.1. Having regard to:

- a. Section 48(2)(c) of the Planning and Development Act, 2000 as amended;
- b. The Development Contributions Guidelines for Planning Authorities (2013);
- c. The Meath County Council Development Contribution Scheme 2016-2021;

In respect of condition No. 21, the Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered that the condition failed to meet the requirements of Section 48(2)(c) of the Act and should thus be omitted.

Barry O'Donnell
Planning Inspector

18th August 2021.