



An  
Bord  
Pleanála

## Inspector's Report ABP309244-21

---

<b>Development</b>	Continued use as a quarry.
<b>Location</b>	Fiddancoyle, Kiltegan, County Wicklow.
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	20847
<b>Applicant(s)</b>	David Eager.
<b>Type of Application</b>	Retention permission
<b>Planning Authority Decision</b>	Grant permission with conditions.
<b>Type of Appeal</b>	First v Condition 4
<b>Appellant(s)</b>	David Eager.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	None.
<b>Inspector</b>	Hugh Mannion.

## **1.0 Site Location and Description**

- 1.1. The application site is part of landholding which includes a permitted sand/gravel quarry at Fiddancoyle, Kiltegan, County Wicklow.

## **2.0 Proposed Development**

- 2.1. 10 no. year permission is sought for the continued use of the existing sand and gravel pit (permitted under Wicklow County Council Reg. Ref. 04/1447; An Bord Pleanála Ref. PL27.211640 and further extended under Wicklow County Council Reg. Ref. 14/2005) which has a permitted extractive area of c. 8.93 hectares (c. 4.9 hectares of which has not been developed to date) and the continued provision of washing/rinsing plant, dry screener, settlement lagoons, bunded fuel storage tank, wheel wash, areas of stockpiling and access road, and all other site development works, including landscaping and restoration works of the final pit void (extractive area). Extraction in the new area of c. 4.9 hectares is sought to a maximum depth of 166m OD and will be extracted at a rate of up to 100,000 tonnes per annum. An Environmental Impact Assessment Report (EIAR) and a Natura Impact Statement (NIS) will be submitted with the application.
- 2.2. All at Fiddancoyle, Kiltegan, County Wicklow.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority granted permission and attached condition 4 as follows.

The developer shall pay a financial contribution of €22,770 (twenty-two thousand seven hundred and seventy euro) to the planning authority as a contribution in respect of public infrastructure and facilities benefitting the development in the area of the planning authority. A phasing plan for the payment of the contributions shall be agreed in writing with the planning authority prior to commencement of development.

The contribution shall be determined in accordance with Wicklow County Council's Development Contribution Scheme for the area in which the site in

located and Section 41(1) of the Planning and Development Act 2000. Where the contribution remains unpaid the monies payable shall be updated in accordance with the Wholesale Price Index as published by the central statistics office on the 1<sup>st</sup> of January each year following the date of the final grant.

**Reason:** The public infrastructure and facilities included in the Development Contribution Scheme will facilitate the development and it is considered reasonable that the developer should contribute towards the cost thereof.

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

#### 3.2.1. Planning Reports

The initial planner's report requested further information on the depts of the quarry so as to allow for the calculation of the contribution payable.

The final planner's report considered that the additional information submitted as deficient.

#### 3.2.2. Other Technical Reports

#### 3.2.3. **Roads Section** raised concerns in relation to road safety which were subsequently addressed by the applicant.

#### 3.2.4. The **HSE** reported no comment.

### 4.0 **Planning History**

PL27.211640 Permission granted for quarrying on 14.47ha on the landholding of which this site forms part.

### 5.0 **Policy and Context**

#### 5.1. The relevant development contribution scheme is the Wicklow County Council Development Contribution Scheme 2015.

## 5.2. **Natural Heritage Designations**

Not relevant.

## 5.3. **AA Screening**

5.4. This appeal is limited to the contribution condition imposed under section 48 of the Planning and Development Act 2000, as amended, and since the Board's order in this case is not a planning consent, I will not address this matter further.

## 5.5. **EIA Screening**

5.6. An EIAR was submitted with this application but as this appeal is limited to the contribution condition imposed under section 48 of the Planning and Development Act 2000, as amended, the Board's order in this case is not a planning consent, I will not address this matter further.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

- The applicant's agent calculated the volume to be extracted in terms of 10m benches. The volume to be extracted is 440,990m<sup>3</sup> which equates to 4.409ha of a 10m bench which gives a contribution figure of €14,552.76.
- The applicant's consultant's calculations were incorrect in that the depth of extraction was given as between 5.5m to 15m depth which included overburden and the net resource extraction area would have been less.
- The planning authority did not have proper regard to the applicant's calculations when determining the amount payable.
- The planning authority arbitrarily decided that an unidentified 2ha would exceed the first 10m deep bench and that any additional area constituted a second 10m bench.
- One option is to take the figures set out in the response to the planning authority's request and calculate €14,553 as payable. Otherwise take the site area as 4.9ha apply the per ha levy of €3,300 and arrive at €16,170.

## 6.2. Planning Authority Response

- The planning authority requested a schedule of the 10m depths of extraction proposed as this would assist the planning authority in calculating the contribution payable.
- The applicant stated that depths of quarrying within the site would be between 6.5m deep and 15m deep. The applicant converted ha in  $10,000\text{m}^3$  and submitted that  $440,990\text{m}^3/100,000$  by €3,300 would give a contribution payable of €14,552.69.
- The development contribution scheme calculates the sum payable by area not volume and therefore the applicants' figures are incorrect.
- Basing its calculations on the submitted drawings/sections the planning authority calculated that of an overall area of 4.9ha would be extracted at 10m depth and the remaining 2ha at a depth greater than 10m.

## 7.0 Assessment

- 7.1. The Wicklow County Council Development Contribution Scheme is the relevant development contribution scheme in this case. Table 4.4 of the scheme provides that a sum of €3,300 shall be payable per 10m depth. Section 4.7 refers to table 4.4 and states that "the area for the purposes of the extractive/disposal development type in table 4.4 will be the area of land from which it is proposed materials will be extracted from or deposited on. Buffer zones will not be included".
- 7.2. The planning authority requested further information (see point 4 of the request dated 20<sup>th</sup> October 2020) from the applicant as follows; "please submit a schedule of 10m depths of excavation proposed, having regard to the development contribution scheme as it applies to Quarries/Extractive Developments. This is required to assist the planning authority in calculating the development contributions that may be due in the event permission was granted".
- 7.3. The applicant responded to the FI request that extraction depths varied between 6.5m and 15m, that 1ha at 10m deep in volume is  $100,000\text{m}^3$  and that since the application proposed extracting  $440,990\text{m}^3$  the contribution payable should be 14,552.67 ( $440,090/100,00 \times €3,300$ ).

- 7.4. The figure for volume extracted comes from 3.3.3.1 of the EIAR. I agree with the planning authority that the applicant's converting areas into volume may not reflect the requirements of the Development Contribution Scheme and the applicant's figure is therefore not definitively reliable. The planning authority gave the applicant an opportunity to submit a schedule of depths for the area of the quarry but the applicant did not do so.
- 7.5. The EIAR (3.3.2) states that the area of extraction is approximately 4.9ha. There are unknown factors such as the depths of overburden on site before the material proposed for extraction material is reached and also unclear is the element of the 4.9ha which exceeds 10m of extractable material and extends into a second 10m bench of extractable material.
- 7.6. However the Board is constrained to consider only if the planning authority has properly applied the terms of the adopted scheme and having regard to the wording of the scheme, the request for further information, and the applicant's submissions to the planning authority and the Board I conclude that planning authority was unreasonable in including a second 10m bench over 2ha but not considering any overburden on site which should be excluded from the calculation of the amount due.
- 7.7. Having regard to the terms of the development contribution scheme and the submissions made in relation to the application and appeal it is necessary, in order to properly apply the scheme, to strike a balance between the matter of overburden and excavation into a second 10m deep bench. I recommend that both overburden and a second bench should be excluded from the calculation. I accept that the permitted extraction figure of 440,090m<sup>3</sup> entails the extraction to an average depth of 9m over the site for an area of 4.9ha and accordingly the amount payable should be 4.9ha/€3,300 for €16,170. Indexation should be applied to the figure by the parties and I make provision for this in the draft condition number 4 below.

## 8.0 Recommendation

- 8.1. I recommend that the Board's attach an amended condition 4 for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

The Board had regard to the terms of the Wicklow County Council Development Contribution Scheme 2015 and to the submissions made in relation to the application and appeal. The Board concluded that the proper application of the scheme required the balancing of overburden removal against the potential localised extraction below the first 10m bench level on the overall site of 4.9ha. Having regard to these factors the Board directs the planning authority to attach an amended condition number 4 as follows.

The developer shall pay to the planning authority a financial contribution of €16,170. (sixteen thousand, one hundred and seventy euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, 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.

---

Hugh Mannion  
Senior Planning Inspector  
31<sup>st</sup> March 2021.