



An
Bord
Pleanála

Inspector's Report ABP-312650-22

Development	Filling quarried land with topsoil, subsoil to raise level of land for agricultural purposes.
Location	Glasshouse, Shinrone, Co. Offaly.
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	21599
Applicant(s)	Diarmaid Costello
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	First Party v. Condition
Appellant(s)	Diarmaid Costello
Observer(s)	None.
Date of Site Inspection	None required.
Inspector	Robert Speer

1.0 Introduction

- 1.1. This report relates to a first party appeal made under S.48(10)(b) of the Planning and Development Act, 2000, as amended, in respect of Condition No. 12 as attached to the notification of the decision to grant permission for the proposed development

2.0 Site Location and Description

- 2.1. The proposed development site is located in the rural townland of Glasshouse, Co. Offaly, approximately 2.5km south of the village of Shinrone and 9.0km north of Moneygall & Junction 23 on the M7 Motorway. The surrounding area is typically rural in character and dominated by agricultural fields interspersed with farmsteads and intermittent one-off housing. The site itself comprises a disused sand and gravel quarry with an overall size of 15.3 hectares, although the infilling works will be limited to an area of 8.5 hectares.

3.0 Proposed Development

- 3.1. The proposed development consists of the importation of up to 150,000m³ / 200,000 No. tonnes of inert material (comprising soil, topsoil and stone) to raise the ground level over an area of 8.5 No. hectares within the confines of a disused sand & gravel quarry with a view to returning the land in question to agricultural use. It will include for the re-grading / re-contouring of the site to achieve a more even profile (and all related ancillary development and associated site works) with the increase in ground levels expected to be a maximum of 3m. The existing quarry entrance will be used to accommodate the works.
- 3.2. (The proposal is described elsewhere in the application documentation as comprising the development of a waste facility for the importation of inert waste material (LoW 170504: 'Soil and stone' & LoW 20 02 02: 'Soil and stones') for the purposes of filling and raising lands to facilitate land reclamation for subsequent agricultural uses).
- 3.3. Although it is not possible at this stage to identify the exact locations from where the infill material will be sourced, it is expected that the bulk of the material will come from excavations associated with building and development activity in the region and

public road works in the vicinity. It is anticipated that material will be imported to the site over a period of 10 No. years at a rate of 15,000m³ / 22,500 tonnes per annum (or c. 20,000 tonnes per annum) which will equate to 20 No. truck movements to and from the site daily.

- 3.4. The work will be undertaken in phases with filling to commence in the southern portion of the quarry before moving northwards. The fill will be compacted in layers of 0.5m with a final fill depth of approximately 2m. This will then be covered with a final 0.3m layer of topsoil which will be seeded when the weather permits. All existing trees and shrubs at the top of the cliffs will be retained.
- 3.5. Amended particulars were subsequently submitted in response to a request for further information which revised the site boundary and the area proposed for infilling. Regrettably, no figures were provided of the amended site area, however, the Planning Authority has based its calculation of a development contribution on an infill area of 8.098 hectares.

4.0 Planning Authority Decision

4.1. Decision

- 4.1.1. Following the receipt of a response to a request for further information, on 12th January, 2022 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 15 No. conditions. These conditions are generally of a standardised format whilst Condition No. 12 (the subject of this appeal) states the following:

4.1.2. Condition No. 12:

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: -

<i>Class of Infrastructure</i>	<i>Amount of Contribution</i>
<u>Category D: 8.098ha / 0.1 ha = 80.98 x €2,000 / 0.1 ha = €161,960</u>	
Total	€161,960

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:

An initial report details the site location, planning history, and the applicable policy considerations before analysing the merits of the proposal. It includes a screening exercise for the purposes of environmental impact assessment and determines that the proposal would not be likely to have any significant effects on the environment based on the characteristics, location, and potential impacts of the proposed development. The report concludes by recommending that further information be sought as regards the difference in the extent of the site area (as outlined in red) when compared to the previous planning application lodged under PA Ref. No. PL2 20499.

Following the receipt of a response to a request for further information, a final report was prepared which recommended a grant of permission, subject to conditions.

4.2.2. Other Technical Reports:

Senior Executive Architect: Refers to the site location relative to the historic 'Glassworks' archaeological site (RMP No. OF042-049) and notes that the proposed development will re-establish the site for agricultural use. It subsequently states that it should be confirmed that the development accords with national and Offaly County Council proposals for non-operational quarry sites. The report proceeds to suggest that an archaeological assessment of the proposal may be necessary to confirm that

the land proposed to be infilled is at a significant distance from the area of archaeological interest and that the historic route into the site will not be altered. It further states that the archaeological requirements of the Department should be complied with in full.

Roads Section: No objection, subject to conditions.

Environment & Water Services: No objection, subject to conditions.

Birr Municipal District (Area Engineer): No objection, subject to conditions.

4.3. Prescribed Bodies:

None received.

4.4. Third Party Observations:

- 4.4.1. A single submission was received from an interested third party which raised concerns with respect to the traffic implications of the proposed development.

5.0 Planning History

5.1. On Site:

- 5.1.1. PA Ref. No. PL2 20499. Application by Diarmaid Costello for permission to fill quarried land with topsoil & subsoil to raise the level of the land for agricultural purposes. This application was deemed withdrawn.
- 5.1.2. PA Ref. No. PL2 01505 / ABP Ref. No. PL38.126947. Was granted on appeal on 8th July, 2001 permitting Seamus Whyte permission for a development comprising a sand and gravel quarry with a total extraction area of 8.5 hectares (total site area 16.2 hectares), a storm water retention pond (1,440m³) and reed bed (5,000m²), alterations to existing access arrangements, a wheel wash, new hard surface haul road with temporary haul road to pit invert, realigned farm access road, alterations to the existing disused dwellinghouse to provide for a new site office/staff/storage facilities (62.72m² gross floor area), septic tank and percolation area, landscaping and site restoration works, fencing and associated works.

- *Condition No. 17:*

The developer shall pay a sum of money to the planning authority as a contribution towards the expenditure that is proposed to be incurred by the

planning authority in respect of proposed road works facilitating the proposed development, including necessary strengthening, improvements necessitated and remediation works. The amount of the contribution and the arrangements for payment shall be agreed between the developer and the planning authority or, in default of agreement, shall be determined by An Bord Pleanála.

Payment of this contribution is subject to the provisions of section 26(2)(h) of the Local Government (Planning and Development) Act, 1963 generally, and in particular, the specified period for the purposes of paragraph (h) shall be the period of seven years from the date of this order.

Reason: It is considered reasonable that the developer should contribute towards the expenditure proposed to be incurred by the planning authority in respect of works facilitating the proposed development.

- 5.1.3. PA Ref. No. 981010 / ABP Ref. No. PL19.110813. Was refused on appeal on 4th November, 1999 refusing Seamus Whyte permission to win sand and gravel, erect processing plant and ancillary building and install a septic tank.

5.2. Other Relevant Files:

- 5.2.1. PA Ref. No. 19253 / ABP Ref. No. ABP-306717-20. Was granted on 28th January, 2020 permitting Dermot Nally Stone Ltd. permission for (i) The retention and continuance of importation of gravel (15,000 tonnes per annum), for processing, including screening, crushing and washing, and exportation of finished aggregates; (ii) importation of inert soil and stone (8,500 tonnes per annum) for restoration of part of pit floor (2.8 hectares); (iii) restoration of remainder of pit floor (2.4 hectares) (including removal of all plant) using accumulated site won materials for a 5 year period, including all associated civil works, within the overall 8.2 hectares former extraction site at Carrowkeel, Clonfinlough, Co. Offaly.

A first party appeal subsequently determined by the Board on 26th August, 2020 held that the terms of the Development Contribution Scheme had not been properly applied with respect to Condition No. 10 and, therefore, the Planning Authority was directed to amend the condition accordingly.

6.0 Policy and Context

6.1. National and Regional Policy:

- 6.1.1. The ‘*Development Contributions, Guidelines for Planning Authorities*’ published by the Department of the Environment, Community and Local Government in January, 2013 aim to provide non-statutory guidance on the drawing up of development contributions to reflect the radical economic changes that have impacted across all sectors since guidance was last issued in 2007.

6.2. Development Contribution Scheme:

- 6.2.1. The Offaly County Council Development Contribution Scheme, 2021-2025 was adopted on 18th January, 2021 (becoming effective immediately thereafter) and includes an indicative list of the public infrastructure / services (please refer to Appendix 1) which are considered to comprise projects that can be progressed with the funding which it is projected will be received under the Scheme (when taken in combination with funding from other sources). The Scheme sets out the basis for the determination of the relevant development contributions, including those instances where a reduction / exemption in the contribution rate may apply. Section 19 details the rates of contribution applicable in respect of the various classes of infrastructure for specified categories of development within certain areas, including:

Table 2 – Levels of Contributions – Other Categories of Development:

	Category	Amount of Contribution
D	Land use for: (a) the winning and/or working of minerals (b) deposit of refuse or waste (c) land filling (inert material)	€2,000 per 0.1 hectare of site area subject to a minimum charge of €15,000
F	Raising of sites (inert material)	€0.52 per m ²

- 6.2.2. Section 20 refers to ‘*Agricultural Development*’ and states that a contribution will be payable on all roofed structures, whether open or enclosed. In addition, contributions are to be payable on the cumulative roofed floor area exceeding 500m².
- 6.2.3. Section 27: ‘*Exemptions*’ includes for the following exemption:

(k) *Agriculture:*

The first 500m² of agricultural development granted permission within a farm – (100% exemption). Thereafter, the rates as set out in Table 2 (B) will apply. (Agricultural development in this instance excludes silos and yards). In relation to polytunnels, the flat rate agricultural charge applies.

Agricultural development - demolition and replacement of buildings on existing site shall be exempted subject to no intensification or increase in animal numbers taking place or an increase in floor area.

7.0 The Appeal

7.1. Grounds of Appeal

- The Planning Authority has incorrectly applied the Development Contribution Scheme based on its application of the ‘land fill’ use category and by ignoring the development contributions previously levied on the site under ABP Ref. No. PL38.126947.

The correct land use category in this instance is ‘Agricultural’ (as outlined in the development description and public notices), and as development contributions were already levied for the sand / gravel extraction approved under ABP Ref. No. PL38.126947, no contributions should apply to the development.

- Category ‘D’ of Table 2 of the Offaly County Council Development Contribution Scheme, 2021-2025 includes the use of land for the winning / working of minerals and land fill for refuse / inert material. In this respect, it is apparent that a contribution rate of €2,000 per 0.1 hectare (with a minimum charge of €15,000) is to be applied to development where the land use involves extraction or land fill. The land use in this instance is ‘agriculture’ and not ‘land fill’.

The purpose for the importation of topsoil / subsoil is to allow the land to be used for agricultural purposes. The proposed development does not seek to use the land as a ‘land fill’. Furthermore, given that development contributions have already been levied on the extraction operation previously permitted

under ABP Ref. No. PL38.126947, the Planning Authority cannot now impose duplicate contributions on the reinstatement of the quarried lands to agricultural use.

Section 20 of the Development Contribution Scheme refers to '*Agricultural Development*' and states that '*a contribution shall be payable on all roofed structures, whether open or enclosed. Contributions shall be payable on the cumulative roofed floor area exceeding 500m²*'. Given that the proposed development does not involve the provision of a structure, Section 20 is not applicable in this instance. Moreover, in the absence of any 'agricultural' category of development relevant to the subject proposal, no development contribution should be applied.

- The Planning Authority has sought to double-charge the applicant by imposing development contributions on the same (extraction) area which was previously levied for under ABP Ref. No. PL38.126947.

Condition No. 17 of the grant of permission issued in respect of ABP Ref. No. PL38.126947 required the payment of a development contribution as follows:

'The developer shall pay a sum of money to the planning authority as a contribution towards the expenditure that is proposed to be incurred by the planning authority in respect of proposed road works facilitating the proposed development, including necessary strengthening, improvements necessitated and remediation works. The amount of the contribution and the arrangements for payment shall be agreed between the developer and the planning authority or, in default of agreement, shall be determined by An Bord Pleanála.

Payment of this contribution is subject to the provisions of section 26(2)(h) of the Local Government (Planning and Development) Act, 1963 generally, and in particular, the specified period for the purposes of paragraph (h) shall be the period of seven years from the date of this order'.

There is no justification for a further development charge to be levied on what is essentially a remediation plan for the previously approved quarry. In doing so, the Council will be double charging the applicant by imposing development contributions on the extraction area that was already levied for under ABP Ref. No. PL38.126947.

- The report of the case planner has cited PA Ref. No. 19253 / ABP Ref. No. ABP-306717-20 as a precedent for the application of the Category 'D' development contribution rate, however, this is not relevant in the context of the subject proposal.

PA Ref. No. 19253 / ABP Ref. No. ABP-306717-20 included for the '*retention and permission for the continuance of importation of gravel (15,000 tonnes per annum)*' and can be differentiated from the subject development in that it did not have the benefit of a previous grant of permission for quarrying / extraction activities (hence the requirement for retention). In any event, in its assessment of ABP Ref. No. ABP-306717-20, the Board determined that Category 'D' of the Development Contribution Scheme did not apply with the reporting inspector stating the following:

'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'.

Therefore, ABP Ref. No. ABP-306717-20 is not a relevant precedent and the subject proposal should be determined on its merits having particular regard to the development contribution previously levied under ABP Ref. No. PL38.126947.

- The contribution to be levied is completely disproportionate and would undermine the viability and sustainable re-use of the former quarry for agricultural purposes.

7.2. Planning Authority Response

- The Board is referred to the Planning and Technical Reports held on file and is requested to uphold the decision of the Planning Authority.

7.3. Observations

None.

7.4. Further Responses

None.

8.0 Assessment

8.1. This is an appeal made under the provisions of Section 48(10)(b) of the Act and therefore the Board is restricted to considering Condition No. 12 and cannot consider the proposed development *de novo*. I have therefore confined my assessment to the condition that has been appealed.

8.2. Following a review of the grounds of appeal, it is clear that the key issue in respect of Condition No. 12 concerns whether or not the Planning Authority has properly applied the terms of its Development Contribution Scheme in seeking the payment of a development contribution in the amount of €161,960. More specifically, the matters arising can be summarised as:

- (1) Whether or not the Planning Authority has correctly categorised the nature of the development proposed for the purposes of calculating the applicable development contribution; and
- (2) Whether the application of any development contribution would amount to 'double-charging' by reference to the levy already paid in respect of the development approved under PA Ref. No. PL2 01505 / ABP Ref. No. PL38.126947.

8.3. With respect to the categorisation of the proposed development, it is apparent from the report of the case planner that in calculating the applicable development contribution, a determination was made that the proposal amounts to a land use for

the purposes of *'land filling (inert material)'* as per Category 'D' of Table 2: *'Levels of Contributions – Other Categories of Development'* of the Development Contribution Scheme. In support of this assertion, reference is made to the Board's assessment of ABP Ref. No. ABP-306717-20 wherein it was held that the importation of inert soil and stone for the restoration of part of the pit floor of a former quarry (so that it could be returned to agricultural use) amounted to landfilling and thus attracted a contribution by way of Category D: (c) – land filling (inert material) of Table 2 of the Offaly County Council Development Contribution Scheme, 2014-2020 (noting that the same provision is included in the current Offaly County Council Development Contribution Scheme, 2021-2025).

- 8.4. In assessing the subject proposal, it is of relevance in the first instance to note that the proposed development is described in the public notices as comprising the *'filling [of] quarried land with topsoil, subsoil to raise level of land for agricultural purposes'*. Accordingly, it is clear that the activity for which permission has been sought amounts to the 'filling' of land. This is corroborated by the supporting plans and particulars which state that the proposed development will involve the importation of up to 150,000m³ / 200,000 No. tonnes of inert material (comprising soil, topsoil and stone) to raise the ground level over an area of 8.5 No. hectares within the confines of the existing disused sand & gravel quarry with a view to returning the land in question to agricultural use. Other accompanying documentation describes the proposal as comprising the development of a waste facility for the importation of inert waste material for the purposes of filling and raising lands to facilitate land reclamation for subsequent agricultural use.
- 8.5. In my opinion, the suggestion that the proposed development should not attract a development contribution on the basis that the intended final use of the filled land will be for agricultural purposes is unconvincing. While I would accept that the agricultural use of land (as opposed to the construction of a building for agricultural purposes) would not attract a development contribution (likely on the basis that *'development consisting of the use of any land for the purpose of agriculture'* would constitute exempted development pursuant to S.4.(1) of the Planning and Development Act, 2000, as amended), it is apparent from the submitted particulars that notwithstanding the ultimate intentions for the lands in question, the proposed development amounts to the 'use' of the land for the receipt of fill material (as has

been acknowledged in the application documentation wherein the proposal is described as the development of a waste facility for the importation of inert waste material). Indeed, the infilling works proposed are part and parcel of the use of the land for infilling purposes. Accordingly, it is the use for 'land filling (inert material)' which is reckonable for the purposes of calculating the applicable development contribution by reference to Category D: (c) of Table 2 of the Development Contribution Scheme. Such a conclusion is supported by the Board's previous determination of ABP Ref. No. ABP-306717-20 wherein it was held that the importation of inert soil and stone for the infilling of land so that it could be returned to agricultural use amounted to an activity accommodated by Table 2: Category D, Subsection (c) – land filling (inert material) of the Development Contribution Scheme then applicable.

- 8.6. For the purposes of clarity, the extract from the inspector's report for ABP Ref. No. ABP-306717-20 which has been quoted in support of the grounds of appeal is somewhat selective. When taken in the context of that report as a whole, it would appear that the inspector was of the opinion that a distinction could be made between the '*winning and working of minerals*' as opposed to '*the winning and/or working of materials*' to the effect that the processing of sand / gravel etc. which emanated on site would attract a contribution under Category D whereas an activity that amounted to the importation of sand / gravel from outside of the site for processing purposes was not to be subject to contributions (on the basis that there was no category in the then Scheme that specifically referenced this latter activity or any 'catch all' category separate to those contained in Tables 1 and 2 under which a levy could be imposed).
- 8.7. Therefore, I am satisfied that it is appropriate to classify the proposed development as 'land filling (inert material)' and to apply a development contribution in accordance with Category 'D' of Table 2: 'Levels of Contributions – Other Categories of Development' of the Offaly County Council Development Contribution Scheme, 2021-2025.
- 8.8. With respect to the suggestion that the imposition of a development contribution in this instance would amount to 'double-charging' on the basis that a levy has already been paid in respect of the development approved under PA Ref. No. PL2 01505 / ABP Ref. No. PL38.126947, I am unconvinced of the merits of this argument.

- 8.9. The grant of permission issued for ABP Ref. No. PL38.126947 approved the development of a sand & gravel quarry and associated site works, including landscaping and restoration works, with a development contribution having been imposed towards *'the expenditure that is proposed to be incurred by the planning authority in respect of proposed road works facilitating the proposed development, including necessary strengthening, improvements necessitated and remediation works'*. Notably, it is unclear as to why the rehabilitation plan approved as part of ABP Ref. No. PL38.126947 (which was to have provided for the phased restoration of the site and its return to agricultural use) is not to be undertaken, however, it may be the case that the subject proposal differs from that plan in that it specifically provides for the importation of material to the site (as opposed to the exclusive use of overburden etc. generated on site as a result of the extraction activities). In my opinion, the subject proposal amounts to a standalone development separate from any previously approved land filling works which must be considered on its own merits. In this regard, the infilling of the site as proposed should be considered independent of and unrelated to the site restoration works approved under ABP Ref. No. PL38.126947 as part of that application. Notwithstanding that ABP Ref. No. PL38.126947 included for the site's rehabilitation and return to agricultural use, I do not consider that this would exempt the subject proposal from a development contribution that may reasonably be required on its own merit and under a different planning application.
- 8.10. It is of further relevance to note that the development contribution sought by ABP Ref. No. PL38.126947 was limited to expenditure to be incurred in respect of road works whereas the contribution applicable under the current Development Contribution Scheme is all-encompassing and will provide funding for various classes of public infrastructure or facilities i.e. Transportation, Community Facilities, Recreation & Amenity, and Surface Water.
- 8.11. Having regard to the foregoing, it is my opinion that the applicable development contribution can be calculated as follows based on the revised 'infilling' area identified by the Planning Authority (the extent of which has not been disputed by the applicant):

Site Area: 8.098 ha @ €2,000 per 0.1 hectare = €161,960

9.0 Recommendation

9.1. On the basis of the foregoing, I consider that the Planning Authority has correctly applied the terms of its Section 48 Development Contribution Scheme and, therefore, it is my recommendation that the Planning Authority should be directed accordingly to **ATTACH** Condition No. 12 for the reasons and considerations set out hereunder

10.0 Reasons and Considerations

10.1. Having regard to:

- the submissions made on the file;
- the nature of the development proposed; and
- the provisions of the Offaly County Council Development Contribution Scheme, 2021-2025,

the Board considers that the terms of the Development Contribution Scheme have been properly applied and condition number 12 shall be attached accordingly.

Robert Speer
Planning Inspector

11th July, 2022