



An
Bord
Pleanála

Inspector's Report

ABP-314189-22

Development	New site entrance from regional road R618, and access road into the property.
Location	Coolnagearagh Townland, Coachford, Co. Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	225038
Applicant(s)	Paudie Sheahan
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	First Party vs Financial Contribution
Appellant(s)	Paudie Sheahan
Observer(s)	None
Date of Site Inspection	14/04/23
Inspector	Adrian Ormsby

1.0 Site Location and Description

- 1.1. The appeal site is located within the townlands of Coolnagearagh and fronts along the R618 regional road approximately 3 km west of the village of Coachford in County Cork. The site forms part of a site with recently permitted quarrying activity to the Carhoo quarry to the south of the regional road. The site lies north and west of the Glashagarriff River, which is a tributary of the River Lee which flows from west to east c. 0.5km south of the site. The site has a stated area of 0.65 hectares.
- 1.2. The existing entrance just west of the application site provides access to the Carhoo soil recovery and quarry facility and the Ballyhass Aquapark. There is an existing entrance to the immediate east of the application site serving a residential property. The boundary to the site includes existing mature trees and post with wire fencing.

2.0 Proposed Development

- 2.1. The application comprises of-
 - A new site entrance from regional road R618
 - access road into the property,
 - provision for heavy goods vehicles accessing Carhoo Quarry and the permitted soil recovery site.
 - installation and use of a mobile wheel wash.
 - removal of roadside trees
 - 1.8m high security fence and gate
 - the planting of screen hedging and
 - erection of signage.
- 2.2. The application cover letter indicates the Council have requested the applicants to consider options to separate truck traffic from passenger cars using the existing entrance just southwest of the site.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission on the 30/06/22, subject to 15 conditions. The following condition is relevant to this appeal-

- C10- Special Development Contribution of €21,000 to be paid in respect of works for the future resurfacing at the entrance to facilitate the development.

4.0 Planning Authority Reports

4.1. Planning Reports

The planners report reflects the decision of the Planning Authority.

4.2. Other Technical Reports

- Environment Section
 - 17/06/22- No objection subject to conditions
- Area Engineer Report
 - 28/06/22-
 - No objections raised, special development contribution for 50m section of carriageway as the existing surface dressing is not suitable for turning movements associated with the new entrance serving HGV's. Cost estimated at 50m * 6m wide * €70 = €21,000.
 - A similar condition was imposed under 20/4969 and 20/6446. As this proposal will reduce the impact to existing entrance the contribution attached to above permissions can be superseded by this contribution.

4.3. Prescribed Bodies

- Inland Fisheries Ireland

- 03/06/22- comments in relation to soiled water run-off and protection measures to the adjoining river.
- An Taisce
 - 15/06/22- Compliance with existing permissions should be evaluated.

4.4. Third Party Observations

- None

5.0 Planning History

- This and adjoining sites-
 - 22/6650, Current Application awaiting **FI** response- development of lands previously used as a quarry for holiday and tourism use.
 - 20/6446, ABP-310214-21 Permission **granted 18/01/22** for development of a quarry for the extraction and processing of rock c. 80,000m³, a footprint of 2.15 hectares, with the depth of extraction ranging up to 6 metres. Permission for an eight-year period to include restoration of that part of the former quarry and a mobile wheelwash. The existing site access from the regional road was to continue.
 - It is noted the Inspector recommended inclusion of special contribution condition (No. 10) in respect of future resurfacing at the existing entrance to the site. The board **did not** include this condition in their decision.
 - 20/4969 Permission **granted 15/12/20** for importation of soil and stone for the restoration of a quarry in order to improve the agricultural output of the quarry and return it to an agricultural field. C.0.2km southeast of appeal site.
 - Condition 29 sought special development contribution of €21,000 in respect of works proposed to be carried out, for the provision of proposed future resurfacing at the entrance to facilitate the development.

- This was not appealed.

Other relevant history obtained from contents of Inspectors Report on ABP-310214-21 and the Council's Planning Report include-

- 77/2154 Permission was granted by the planning authority for extraction of sand and gravel.
- PL04.102163 (P.A. Ref. 92/3016) Permission was granted by the Board for a readymix batching plant and block making yard to be located on the western portion of the site.
- PL 04.102168 (P.A. Ref. 96/1445) Permission was granted by the Board for the retention of an extension of the sand and gravel quarry on the eastern portion of the site and for retention of an access bridge. There was an appeal to the Board against a financial contribution which the Board amended.
- ABP Ref. PL04.116796 (P.A. Ref. 99/4229) Planning permission was granted by the planning authority for a further extension/retention of extension of the sand and gravel quarry.
- ABP Ref. 04.QC.2128 (P.A. Ref. QR039) The Board, in accordance with subsection (9)(b) of section 261 of the Planning and Development Act, 2000, confirmed with modifications the decision of the planning authority under section 261A of the Planning and Development Act and directed the Council to amend conditions numbers 7 and 48 of its 58 conditions imposed on the operation of the quarry.

6.0 Policy Context

6.1. Legislation

6.1.1. Planning and Development Act 2000 (as amended)

- Section 48 Development Contributions states-
 - *(2)(c) A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution 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.

6.2. Ministerial Guidelines

6.2.1. Development Contributions - Guidelines for Planning Authorities (January 2013)

- 'Status of the Guidelines'- Page 2-

This guidance updates and supplements non-statutory guidance previously issued in Departmental Circulars PD 4/2003 and PD 5/2007

- These Guidelines aim to assist planning authorities in achieving a balance between the costs of services provided and the need to support economic activity via Development Contribution Schemes.

- Section 1, Page 7 states-

“A special development contribution may be imposed under section 48(2)(c) 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.”

6.2.2. Development Management – Guidelines for Planning Authorities (2007)

- Section 7.12 of the Guidelines provides guidance on planning conditions relating to development contributions.
 - *“....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. Circumstances which*

might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it. Where the benefit deriving from the particular infrastructure or facility is more widespread (e.g. extends to other lands in the vicinity) consideration should be given to adopting a revised development contribution scheme or, as provided for in the Planning Act, adopting a separate development contribution scheme for the relevant geographical area. Conditions requiring the payment of special contributions may be the subject of appeal.”

- Section 8.12 of these Guidelines refers to appeals regarding development contribution conditions.

6.3. Local Planning Context

- Cork County Development Plan 2022-2028 section 19.7.13-
 - *Following the issuing of Development Contribution Guidelines by the Department of the Environment, Community and Local Government, Cork County Council undertook a detailed review and analysis of its existing development contribution schemes to inform the adoption of its future schemes. The adoption of the National Planning Framework (2018), the realignment of the Cork local authorities’ boundaries (2019) and the adoption of the Southern Region RSES (2020) required this work to be paused. It is intended to adopt a new development contribution scheme(s) following the adoption of this County Development Plan.*
- The Cork County Council Development Contribution Scheme 23rd February 2004 (DCS)¹
- DEVELOPMENT CONTRIBUTION SCHEMES – RATES FOR 2014 and until further notice²

¹ <https://www.corkcoco.ie/sites/default/files/2022-12/adopted-development-contribution-schemes-pdf.pdf>

² <https://www.corkcoco.ie/sites/default/files/2022-03/development-contribution-scheme-rates-pdf.pdf>

6.4. Natural Heritage Designations

- None in close proximity or relevant to this appeal

6.5. EIA Screening

- Not for consideration due to nature of this appeal

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1. This first party appeal relates solely to Condition no. 10 of Cork County Council's decision, which requires the payment of a Section 48 Special Development Contribution of €21,000. The grounds of appeal can be summarised as follows-

- Condition 10 is not appropriate.
- It is questionable if a Special Development of Contribution attached to 20/4969 and 20/6446 should be applied in this instance given the Area Engineers opinion that the new entrance will reduce the impact of the proposed development on the roadway adjacent to the existing entrance.
- The contribution of €21,000 under 20/4969 was paid in full over two instalments in June and July of 2021 and the contribution under 20/6446 was to be waived.
- The council is in effect double charging. There is no basis for a further charge especially as the new entrance will reduce the impact on the roadway adjacent to existing entrance.
- Section 48 (17) (e) of the Act includes refurbishment, upgrading, enlargement of replacement roads under the definition of public infrastructure and facilities.
- The Cork DCS of 2015 clarifies that a charge is levied per m² for 'Roads and Amenities'.

- As there is no floorspace associated with the proposed development no general development contribution applies. The special contribution appears to seek to replicate a charge that would ordinarily have been attached as a general contribution.
- Condition 10 is not in accordance with section 48 (2) (c) of the Act as amended.

7.2. Planning Authority Response

The Planning Authority's response to the grounds of appeal (05/10/22) can be summarised as follows-

- The proposed contribution is to cover costs which the Council would not be expected to incur at this location.
- The existing surface at the entrance to the site is a standard surfaced dressed surface and is not suitable for the turning movements associated with a new entrance to serve HGV's.
- The proposed development will result in a large volume of HGVs turning into and out of the site. This concentration of these traffic movements will result in the deterioration of the existing surface far quicker than what would be expected under normal wear and tear
- It is appropriate to impose a special development charge for the surfacing of a 50m section of the carriageway around the entrance which will have to be carried out in the next 5 years. The cost of this resurfacing with Hot Rolled Asphalt is estimated as follows: 50m x 6m wide x €70= €21,000
- The rate of €70/m² is based on tenders submitted from surfacing contractors for 2021, with additional 15% added to allow for price rises with the next 5 years to cover increases in the price of oil (which impacts directly on the price of tarmacadam) and labour.
- As the area of the work is quite small, the Council will not benefit from tender rates received for larger projects.

- This section of roadway is not in the current 3-year roads improvement programme and will therefore not be receiving funding from the State or the European Union.
- The applicant sought and was granted planning under 20-4969 (importation of soil and Stone for restoration of quarry) and 20-6446 (Small scale quarry) Both of these plannings proposed to use an existing entrance into the quarry and a contribution of €21,000 was imposed to cover the costs of proposed future resurfacing at the entrance to facilitate the development.
- The applicant states in his appeal letter to the Bord that this contribution was paid in full. Under the current application the applicant proposes to construct a new entrance to serve the existing quarry and soil recovery site approximately 40m to the east of the existing entrance.
- The existing surface at the entrance to the site is a standard surfaced dressed surface and is not suitable for the turning movements associated with a new entrance to serve HGV's.
- Planning was only considered on the basis that it would not impact the surface of the existing roadway hence the reason for the special contribution.
- As the applicant no longer proposes to use the existing entrance the contribution paid under 20/4969 and 20/6446 can be used to cover the cost of the contribution attached to the current application.

7.3. Observations

- None

8.0 Assessment

8.1. Introduction

- 8.1.1. The appeal relates to condition no. 10 only, which imposes a Special Development Contribution in accordance with the provisions of Section 48 (2) (c) of the Planning and Development Act 2000 (as amended).

8.2. Legislation and Guidance

8.2.1. Section 48 (13) (a) of the Act makes provision where an appeal received by the Board relates solely to a condition dealing with a special contribution, the Board shall not determine the relevant application as if it had been made to it in the first instance but shall determine only the matters under appeal.

8.2.2. Section 48 (2) (c) of the Act states-

“A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution 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.”

8.2.3. Further guidance on Special Contributions is provided in section 7.12 of the Development Management Guidelines, 2007 and the Development Contributions Guidelines for Planning Authorities of 2013 and Departmental Circulars PD 4/2003 and PD 5/2007.

8.2.4. It is clear from the legislation and the guidance that a requirement for a Special Contribution should only be made in respect of a particular development, whereby demands likely to be placed on the public services and facilities are deemed to be exceptional, thereby incurring costs not covered by the General Development Contribution Scheme.

8.3. Cork County Council's Justification

8.3.1. The application is for a new entrance onto the R618 regional road, but it is intended the new entrance will replace the use of an existing entrance just south west of the site by HGV vehicles.

8.3.2. The Council detail the existing road surface at the new entrance to the site is standard surface dressing and is not considered suitable for the turning movements associated with a new entrance to serve HGV's. The proposed development will result in a large volume of HGVs turning into and out of the site. This concentration of these traffic movements will result in the deterioration of the existing surface far quicker than what would be expected under normal wear and tear.

8.3.3. The specific breakdown of works and costs are set out in the Area Engineers Report dated 28/06/22 and the Council's Response to the Appeal dated 04/10/22. The charge covers-

- the surfacing of a 50m section of the carriageway around the entrance.
- the cost of this resurfacing with hot rolled asphalt is estimated at-
 - 50m x 6m wide x €70= €21,000
- the rate of €70 per m² is based on tenders submitted from surfacing contractors for 2021, with additional 15% added to allow for price rises with the next 5 years to cover increases in the price of oil (which impacts directly on the price of tarmacadam) and labour.

8.3.4. The Applicants/Appellants have not questioned the breakdown of costs for these works, rather their appeal is based on the appropriateness of such a condition including the fact that a similar contribution has already been paid under 20/4969.

8.3.5. The Council Engineer has indicated in response to the appeal that the contribution already paid can be used to cover the cost of the subject special contribution appeal.

8.4. **Cork County's DCS**

8.4.1. The applicable DCS was adopted on the 23rd of February 2004 with the rates amended in 2014. Page 3 of the scheme states-

*“Contributions for Water, Sewerage, Roads³ and Amenities will be charged per **square metre (m2) gross floor area** for the various types of developments proposed.”*

In this regard the application does not provide for any gross floor area and therefore it would appear that no typical development contribution should apply in this instance.

8.4.2. However page 3 details-

“Development contributions for windfarms, golf courses, quarries, gravel pits and other non-agricultural developments, which are not specifically allowed

³ Underlined emphasis added.

for in the General Scheme, will be levied as special contributions (however, buildings provided as part of quarries/gravel pits, golf courses and other leisure facilities, etc. will also be levied in accordance with the General Scheme on the gross floor area).”

8.4.3. The cover letter accompanying the application details the proposed entrance is intended to separate existing truck traffic serving the existing soil recovery and rock quarry from passenger’s cars accessing the Aquapark. This application does not propose buildings.

8.4.4. Appendix 1 of the DCS sets out some particular types of developments where special contributions shall be levied and the amounts of the contributions in such cases shall be calculated on the basis of the criteria set down. Appendix 1 specifically identifies Quarries and Gravel Pits and states-

Special contributions for quarries and gravel pits shall be based on the following criteria: -

.....

- *The condition of the road serving the development;*
- *The length of the road or roads from the development to the nearest major road which is in good condition;*
- *The cost of bringing the road or roads up to a standard necessary to facilitate the development and not cause an adverse impact on other road users*

.....

8.4.5. The basis for calculating the special contribution by the Council is detailed in section 8.3.2 above. This is not challenged by the Applicant and therefore I see no reason to question it. Having considered the above, it is clear to me that the DCS intended for developments such as that proposed to be levied as a ‘special contribution’. However I am not convinced a special contribution attributable through the general DCS is the appropriate mechanism for applying special contributions under section 48 (2) (c).

8.5. Section 48 (2) (c)

8.5.1. Section 48 (2) (c) of the Act states-

“A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution 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.”

8.5.2. This clearly details three considerations-

- in addition to the terms of a scheme
- specific exceptional costs
- public infrastructure and facilities which benefit the proposed development.

8.5.2.1. In addition to the terms of a scheme

- a) The Planning Authority appear to have sought to apply a section 48 (2) (c) special contribution through the general DCS rather than in addition to it.

8.5.2.2. ‘Specific Exceptional Costs’

- a) The requirements of section 48 (2) (c) in relation to special contributions detail ‘specific exceptional costs’ that are not covered by a Council Development Contribution Scheme (DCS).
- b) Page 3 of the general DCS clearly states that contributions for ‘*Water, Sewerage, Roads and Amenities*’ will be charged per square metre for various types of developments. The application does not provide a floor area nor is it a type of development detailed as subject to general contribution.
- c) I acknowledge that the DCS does detail quarrying related activity should be subject to special contribution and considerations for calculations include those of the impact of the proposal on the roads. I am not convinced this is the appropriate mechanism for specifying special contributions under section 48 (2) (c).

- d) There is a clear and recent planning history of quarrying and other such activity from the existing entrance serving the site which are obviously subject to HGV use and turning movements. The application is not intended to provide a second entrance for all vehicular movements, instead it is to provide for segregated entrances for HGVs from other vehicles using the existing entrance.
- e) In this context I consider the nature of the works as set out in condition 10 to be standard road works with no greater traffic associated with the wider area because of the development. There is no special contribution condition under ABP-310214-21 (20/6446). The works specified are not 'specific exceptional costs' as required by section 48 (2) (c).

8.5.2.3. **Are the works 'public infrastructure and facilities which benefit the proposed development'.**

- a) The first test to be considered under this section is if the road improvements works in the context of condition 10 are "*public infrastructure and facilities*". Section 48 (17) of the Act details what "public infrastructure and facilities" mean.
- Paragraph 'c'- states
 - *the provision of roads, car parks, car parking places, surface water sewers and flood relief work, and ancillary infrastructure,*
 - Paragraph 'e' states-
 - *the refurbishment, upgrading, enlargement or replacement of roads, car parks, car parking places, surface water sewers, flood relief work and ancillary infrastructure*
 - Paragraph 'h' states-
 - *any matters ancillary to paragraphs (a) to (g)*
- b) The R618 regional road clearly falls within a reasonable interpretation of the above definitions and therefore the works are '*public infrastructure and facilities*'.

- c) The next test to consider is do the works *'benefit the proposed development'*. The proposed development would provide a new entrance to the regional road. The works specified in Condition 10 would clearly benefit the proposed development by providing a public road surface dressing more suitable and more resilient to wear from HGV vehicles. That benefit would be shared by all users of the R618 road. Furthermore it must be noted the overall intention of the proposed development is to provide a dedicated HGV's entrance and segregate those vehicle types from more vulnerable traffic using the existing entrance serving the Aquapark.
- d) Without the works set out in condition 10 there is a risk the surface of the R618 regional road at the proposed entrance would be subject to deterioration from its use by HGV's.
- e) It is clear to me that these works are public infrastructure and given their location directly along the boundary of the proposed entrance the specified works would certainly benefit the proposed development as well as all road users.

8.6. Conclusion

- 8.6.1. Condition 10 of the Planning Authority's decision sought a Special Development Contribution of €21,000 towards the costs of works for the future resurfacing of part of the R618 Regional Road facilitate the proposed development.
- 8.6.2. Having considered the planning history of the site as set out in section 5 above, it is apparent that a quarry operates at this location, with access from the existing entrance just southwest of the proposed development. I note planning applications-
- 20/4969 permitted the importation of soil and stone for the restoration of a quarry in order to return it to an agricultural field. A special contribution of €21,000 was sought by the council (condition 29) for works similar to those subject to the current appeal but instead at the existing entrance. The applicant indicates this has been paid in the appeal. This is not disputed in the Planning Authority's response to the Appeal.

- 20/6446 and ABP-310214-21 permitted new quarrying activity with access from the existing site entrance onto the regional road. The Board decided not to include a special contribution condition contrary to the Inspectors recommendation for a contribution in relation to resurfacing at the entrance.

8.6.3. The Applicant indicates they have already paid a special contribution of €21,000 under 20/4969 for similar works to the existing entrance which was originally intended to serve HGV movements that are now proposed to be relocated to the new entrance. In this context I note Section 48 (12) of the Planning and Development Act provides for circumstances where refunds can be paid to the applicant including in respect of a works which have not been carried out.

8.6.4. I have considered the proposed works in the context of section 48 of the Act. I am satisfied they are works that can be considered 'public infrastructure and facilities' and they would benefit the proposed development.

8.6.5. However, and especially considering the historical and permitted use of the wider site area and the intentions of the applications as regards the existing entrance, I consider the nature and extent of these works are general road works that are already provided for under the Council's 2004 DCS as they are works that reasonably fall within the General DCS which provides for contributions to '*Water, Sewerage, Roads and Amenities*'. They therefore are not 'specific exceptional costs' as required by section 48 (2) (c) of the Act.

8.6.6. The Planning Authority should be requested to **REMOVE** condition number 10.

9.0 Recommendation

9.1. I recommend that the Board directs the Planning Authority to **REMOVE** Condition 10 and the reason therefor for the reasons and considerations set out below.

10.0 Reasons and Considerations

10.1. It is considered that the contributions sought towards the costs of works for the future resurfacing of the R618 regional road along the public road adjoining the proposed entrance and in close proximity to the existing entrance which serves an established purpose are not 'specific exceptional costs' as required by section 48 (2) (c) of the

Planning and Development Acts 2000 (as amended). It is considered that these works are provided for under Cork County Council Development Contributions Scheme 2004 i.e. contributions to '*Water, Sewerage, Roads and Amenities*'.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Adrian Ormsby

Planning Inspector

19th of April 2023