



An
Bord
Pleanála

Inspector's Report ABP-315050-22

Development	Continued use and operation of the existing quarry (permitted under P.A. Ref. 01/525). The planning application is accompanied by an Environmental Impact Assessment Report (EIAR) and a Natura Impact Statement (NIS).
Location	Deerpark, Castlepollard, Co. Westmeath.
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	2242
Applicant(s)	Lagan Materials Ltd
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	First Party Vs Condition No. 7
Appellant(s)	Lagan Materials Ltd
Observer(s)	None
Date of Site Inspection	21 st of September 2023
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The site is an existing quarry located in north-east Co. Westmeath. It is located in the townland of Deerpark, 2km south of Castlepollard and 13.5 km northwest of Delvin. It is in a rural area accessed off the Regional Road R395.
- 1.2. The site is almost rectangular with an access road extending from the northeastern corner of the main section of the site.
- 1.3. The proposed haulage route for all site-related HGV traffic is therefore directly onto the R395, the site traffic will be immediately directly onto the regional road network and thus avoid adversely impacting the local road network.

2.0 Proposed Development

- 2.1. The proposed development will consist of the continued use and operation of the existing quarry (permitted under reference 01/525) including deepening of the quarry along with minor amendments to the permitted quarry layout comprising an extraction area of c. 4 ha within an overall application area of 11.4Ha.

3.0 Planning Authority Decision

3.1. Decision

Westmeath Co. Co. issued a Notification of Decision to Grant Planning Permission on 12th of October 2022.

Condition No. 7 is relevant to this appeal.

The Planning Authority is of the view that the construction of the development may lead to localised damage of the road serving the development. The applicant is required to contribute to the cost of repairing the damage and a Special Development Contribution, in accordance with Section 48 of the Planning and Development Act 2000 (as amended) not exceeding €21,750.00 indexed linked to the Planning Authority each year that the development is operating as a contribution towards the costs of road maintenance associated with this development.

Reason: It is considered reasonable that the developer should contribute to the repair of public infrastructure as a result of the proposed development.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

The Planning Report states the District Engineers report refers to the construction of the development may lead to localised damage to the road serving the development. A Special Development Contribution is payable in accordance with Section 48 of the Planning and Development Act 2000 (as amended), not exceeding €21,750.00 indexed linked, to the planning authority each year that the development is operating. The special contribution is towards the costs of road maintenance associated with this development will be applied

3.2.2. **Other Technical Reports**

The relevant report on the planning file is from the Assistant Engineer to the Area Engineer dated 11th of March 2022. It states amongst other issues the following:

Prior to the commencement of the development that applicant shall enter into an agreement with Westmeath Co. Co. to pay the sum of €21,750 (PP 01/525 IRE £12,500 + CSO inflation 36%) index linked today's to the planning authority each year that the development is operating as a contribution towards the costs of road maintenance associated with the development.

Reason: In the interests of traffic safety and to ensure the proposal integrates appropriately into the setting.

4.0 **Planning History**

4.1 **Planning Reference PP 01/525 (PL25.128072)**

In 2001, P. Clarke & Sons Ltd applied for planning permission to reopen/ work the quarry and install a bituminous macadam manufacturing plant. Westmeath Co. Co. granted planning permission for the development on 7th of December 2001. The decision was the subject of a third-party appeal. An Bord Pleanála subsequently granted planning permission for the development under appeal reference PL25.128072.

Condition No. 29: of PP 01/525

Prior to the commencement of development the applicant shall enter into agreement with Westmeath Co. Co. to pay a sum of £12,6000 index linked to the planning authority each year that the development is operating as a contribution towards the costs of road maintenance associated with the development.

Reason: The applicant has stated that 80% of heavy traffic generated by the development will be travelling on the R395 between the development and Castlepollard town. Approximately 1km of this stretch of road crosses bog rampart. It is reasonable to assume that the impact of such increase in heavy vehicles on this stretch of road will greatly increase maintenance requirement at this location and should be considered reasonable that the developer should contribute towards the costs.

On appeal the condition was omitted. A new condition was included in the Board's decision to grant planning permission for the development:

Condition No. 16 of PL25.128072

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 road improvements and other works facilitating the proposed development. 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 Board Pleanala.

Payment of this contribution is subject to the provisions of Section 26(2)(h) of the Local Government (Planning and Development) Act 1963 and shall be for a period of 7 years form this date.

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.

5.0 Policy Context

5.1. Development Plan

Westmeath County development Plan 2021-2027

16.10 Extractive Industry (Quarries/Sand and Gravel Pits) Planning applications for any extractive industry should have regard to the Quarrying and Ancillary Activities (DEHLG 2004), Guidelines for Environmental Management in the Extractive Sector (EPA, 2006), Guidance on Biodiversity in the Extractive Industry (NPWS), GSI's Geological Heritage Guidelines for the Extractive Industry, the Archaeological Code of Practice and the Irish Concrete Federation Environmental Code (2005) and any other relevant superseding policy guidance.

CPO 16.56	Require by way of planning condition that the developer lodge a financial bond to ensure the satisfactory reinstatement of the site following the completion of extraction. This bond shall be index linked.
CPO 16.57	Require that a special contribution levy may be required from the developer towards the cost of upgrading or repairing the local roads serving the quarry and to minimise the adverse impacts of associated quarry operations on the road network.

16.14.3 Special Contribution: The Planning Authority will 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 the Local Authority in respect of public infrastructure and facilities which benefit the proposed development, in accordance with Section 48.2(c) of the Planning and Development Act 2000, as amended.

5.2 ***Development Contribution Scheme 2022***

Under Section 2.2. of the Westmeath Co. Co. Development Contribution Scheme 2022 under Section 48(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.

5.3 Legal

48. (2) (a) Subject to *paragraph (c)*, the basis for the determination of a contribution under *subsection (1)* shall be set out in a development contribution scheme made under this section, and a planning authority may make one or more schemes in respect of different parts of its functional area.

(b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.

(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.

48. (12) Where payment of a special contribution is required in accordance with *subsection (2) (c)*, 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,

(ii) have commenced, but have not been completed within 7 years of the date of payment to the authority of the contribution, 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,

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

5.2. Natural Heritage Designations

Not applicable.

5.3. EIA Screening

Not applicable.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The appellant accepts all of the conditions attached to the Notification of Decision to Grant Planning Permission issued by the planning authority 12th of October 2022 except Condition No. 7 which relates to a Special Development Contribution not exceeding €21750 on an annual basis.

The appeal relates solely to a condition dealing with a financial contribution under Section 48 of the Planning and Development Act 2000 as amended, which is made in accordance with the provisions of Section 48 (10)(b) and 48(13) of said Act.

The Special Contribution flows from the Westmeath County Development Plan Policy CPO 16.57 given in Section 16.10 Development Management Standards with respect to the Extractive Industry Quarries/ Sand and Gravel Pits) of Westmeath County Development Plan 2021-2027 which states:

Require that the special contribution levy may be required from the developer towards the cost of upgrading or repairing local roads serving the quarry and to minimise the adverse impacts of associated quarry operations on the road network.

Furthermore Section 16.14.3 Special Contribution of the Westmeath County Development Plan 2021-2027 states:

The planning authority will 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 the Local Authority in respect of public infrastructure and facilities which benefit the proposed development, in accordance with Section 48(2))(of the Planning and Development Act 2000 (as amended).

6.1.2 *Development Contribution Guidelines for Planning Authorities (January 2013)*

A Special Development Contribution may be imposed under Section 48(2)(c) where specific exceptional costs, which are not covered by the development contribution scheme, are incurred by the 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.

6.1.3 *Development Management Guidelines for Planning Authorities (June 2007)*

A 'special' contribution in respect of a particular development may be imposed under Section 48(2)(c) of the Planning Act, where specific exceptional costs are not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. It is essential the basis for the calculation of the contribution be explained in the planning decision. This means 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 a particular development.

6.1.4 *The Planning Authority's Decision*

The planning authority is of the view that the continued use of the development will lead to damage to the road network serving the development. It is considered reasonable the developer should pay for towards the repair of public infrastructure as a result of the proposed development. The applicant is required to pay €21,7500 (PP 01/525 £12,500 + CSO inflation 36%) indexed linked to each year the development is operating as a contribution towards the cost of road maintenance associated with the development.

6.1.5 **Considerations**

- Condition No. 7 states the development may lead to localised damage, and the applicant is required to contribute to the cost of repairing the damage and a special development contribution not exceeding €21,750.00 indexed linked each year that the development is operating as a contribution towards the cost of road maintenance.
- Section 48(2) (c) make it clear that specific exceptional costs should arise in order to justify any request for a special contribution. Section 48 (12) (a) states a condition should specify the particular works or proposed to be carried out by any local authority to which the contribution relates.
- Condition No. 7 does not meet the requirements of Section 48(12) as it does not specify the particular works to be carried out. A reference to localised damage that may or may not occur is not considered sufficiently precise or specific to meet requirements of Section 48 of the Act.
- Condition No. 7 fails to comply with the guidance in the Development Contributions Guidelines for Planning Authorities (2013) as the works have not been specified in the condition.
- Condition No. 7 fails to comply with the guidance in Section 7.12 of the Development management Guidelines (2007), as neither the condition nor the notification of decision explain the basis for the calculation, €21,750, they do not identify the specific nature/ scope of particular works. The specific works are not identified and the basis of the calculation, including how it is appropriate to this proposed development. None of this required information is contained within condition No. 7 .

- Condition No. 7 makes reference to Notification of Decision to Grant Planning Permission Ref. 01/525 for development comprising that reopening/ working of existing quarry and installation of bituminous macadam manufacturing plant, i.e.

Condition No. 29:

Prior to the commencement of development, the applicant shall enter into the agreement Westmeath Co. Co. to pay a sum of £12600 index linked to the planning authority each year that the development is operating as a contribution towards the costs of road maintenance associated with the development.

Reason: The applicant has stated that 80% of heavy traffic generated by the development will be travelling on the R395 between the development and Castlepollard town. Approximately 1km of this stretch of road crosses bog rampart. It is reasonable to assume that the impact of such an increase in heavy vehicles on this stretch of road will greatly increase the maintenance required at this location and it is considered reasonable that the developer should contribute towards the costs.

- The Notification of the Decision to Grant planning permission on Reference 01/525 dated 7th of December 2001 was the subject of a third party appeal. An Bord Pleanala under reference PL25.128072 subsequently granted planning permission for the said development in 2002 subject to 18No. conditions. Condition No. 16 of the Board's decision under PI25.128072 stated a sum was to be paid to the planning authority for road improvements in the area facilitating the proposed development. The previous owner of the quarry paid Westmeath Co. Co. €45,000. In compliance with Condition No. 16.
- Reference to a proposed condition that was not imposed by An Board Pleanala on appeal does not meet the criteria to identify the nature and scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. It should be pointed out the planning authority is referring to a figure imposed over 21 years ago in

2001. They have merely taken this figure (£12600) converted it to euros and adjusted it for inflation (15999 euros + CSO Inflation 36%) i.e. 21750 euro.

- The planning authority has provided no basis as to whether this condition relates to the same section of R395 between the development and Castlepollard town. They have provided no update on the current condition of the road, what particular works, including maintenance works have been carried out in the last 21 years and/or are they to be carried out.

6.2. Planning Authority Response

There was no response form the planning authority received.

7.0 Assessment

7.1 Background

This appeal has been taken by the First Party and it solely relates to a condition dealing with a special financial contribution under Section 48 of the Planning and Development Act 2000, as amended, is the appeal has been made in accordance with the provisions of Section 48 (10)(b) and Section 48 (13) of said Act.

The subject matter is condition No. 7 attached to the Decision to Grant Planning Permission under Planning Reference 22/42 dated 12th of October 2022:

Condition No. 7 is relevant to this appeal.

The Planning Authority is of the view that the construction of the development may lead to localised damage of the road serving the development. The applicant is required to contribute to the cost of repairing the damage and a Special Development Contribution, in accordance with Section 48 of the Planning and Development Act 2000 (as amended) not exceeding €21,750.00 indexed linked to the Planning Authority each year that the development is operating as a contribution towards the costs of road maintenance associated with this development.

Reason: It is considered reasonable that the developer should contribute to the repair of public infrastructure as a result of the proposed development.

7.2 I refer to the Planning Report and Engineering Reports on the appeal file. Both reports outline the basis for the inclusion of Condition No. 7 of the decision. The basis relates to the planning history on the subject site.

Under the parent permission relating to the subject quarry, **Planning Reference PP 01/525**, the former owner, P. Clarke & Sons Ltd, applied for planning permission to reopen/ work the quarry and install a bituminous macadam manufacturing plant in 2001. Westmeath Co. Co. granted planning permission for the development on 7th of December 2001. The decision was the subject of a third-party appeal to the Board. An Bord Pleanála granted planning permission for the development under appeal reference **PL25.128072**.

Condition No. 29 on PP Ref 01/525 stated:

Prior to the commencement of development the applicant shall enter into agreement with Westmeath Co. Co. to pay a sum of £12,6000 index linked to the planning authority each year that the development is operating as a contribution towards the costs of road maintenance associated with the development.

Reason: *The applicant has stated that 80% of heavy traffic generated by the development will be travelling on the R395 between the development and Castlepollard town. Approximately 1km of this stretch of road crosses bog rampart. It is reasonable to assume that the impact of such increase in heavy vehicles on this stretch of road will greatly increase maintenance requirement at this location and should be considered reasonable that the developer should contribute towards the costs.*

On appeal Condition No. 29 was **OMITTED**. A new condition was included in the Board's decision, under appeal reference PL25.128072, to grant planning permission for the development:

Condition No. 16

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 road improvements and other works facilitating the proposed development. 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 Board Pleanala.

Payment of this contribution is subject to the provisions of Section 26(2)(h) of the Local Government (Planning and Development) Act 1963 and shall be for a period of 7 years from this date.

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.*

7.3 Under Planning Reference 2242, Lagan Materials Ltd were granted planning permission on 12th of October 2022, for the continued use and operation of the existing quarry, including deepening of the quarry comprising an extraction area of 4hectares within an overall application site of 11.4Ha. Under this decision Condition No. 7 as outlined above was imposed. It is important to establish from the outset how this condition was attached to the Decision to Grant Planning Permission for the development. The relevant report on the planning file is from the Assistant Engineer to the Area Engineer dated 11th of March 2022. It recommends a condition be attached to the decision as follows:

Prior to the commencement of the development that applicant shall enter into an agreement with Westmeath Co. Co. to pay the sum of €21750 (PP 01/525 IRE £12,500 + CSO inflation 36%) index linked todays to the planning authority each year that the development is operating as a contribution towards the costs of road maintenance associated with the development.

Reason: In the interests of traffic safety and to ensure the proposal integrates appropriately into the setting.

The Area Engineer's recommendation is cross referenced in the Planning Report dated 11th of October 2022 whereby the reporting officer states the District Engineer's report stated the construction of the development may lead to localised damage to the road serving the development. A Special Development Contribution in accordance with Section 48 of the Planning and Development Act 2000 (as amended) will be applied. This shall be €21,750 indexed linked to be paid to the planning authority each year the quarry is operating as a contribution towards the costs of road maintenance associated with the proposed development.

7.4 **Development Plan**

The inclusion of the Special Contribution is also based on Development Management Standards of the current development plan serving the area is the Westmeath County Development Plan 2021-2027. Under the Development Management Guidelines relating to the Extractive Industry under section 16.10. The following is a policy objective of Westmeath Co. Co.

CPO 16.57 Require that a special contribution levy may be required from the developer towards the cost of upgrading or repairing the local roads serving the quarry and to minimise the adverse impacts of associated quarry operations on the road network.

In addition, Section **16.14.3 Special Contribution** The Planning Authority will 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 the Local Authority in respect of public infrastructure and facilities which benefit the proposed development, in accordance with Section 48.2(c) of the Planning and Development Act 2000, as amended.

This policy does not form part of the Development Contribution Scheme. In my opinion, it should form part of the Development Contribution Scheme. In addition, if the planning authority consider imposing this provision in the current development plan it would be reasonable, in my opinion, to outline the upgrading and repairing of specified local roads based on the assessment of the condition of said roads, and an equitable portion of costs afforded to the proposed development. This has not been carried out by the planning authority in this instance, and I consider the imposition of the Special Development Contribution to be unfair and not in keeping with the essence of the development plan because the 'specific exceptional costs' have not been calculated or specified by the planning authority.

7.5 **Development Contribution Scheme 2022**

Under Section 2.2. of the Westmeath Co. Co. Development Contribution Scheme 2022 under Section 48(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.

7.6 According to Management Guidelines for Planning Authorities (2007) a 'special' contribution may be imposed under Section 48(2)(c) of the Planning Act 2000 (as amended) where specific exceptional costs are not covered by a scheme are to be incurred by the local authority in the provision of public infrastructure which will benefit the proposed development. The basis for the calculation of the contribution must be explained in the planning decision. This would mean it is necessary to identify the nature and scope of the works, the expenditure involved and the basis for the calculation including how it is apportioned to a particular development. Condition No. 7 states the applicant should contribute to the repair of localised damage to the road network. The particular works are not specified, this could relate to any road. The calculations are based on a condition attached to a planning decision back in 2002, which was subsequently removed by the Board under appeal PL25.128072. The Board had imposed a condition requiring a development contribution be payable by the then applicant at the time (Condition No. 16). The previous owner paid €45,000 to the planning authority in compliance with Condition No. 16. The planning authority has taken a financial sum from a condition that imposed on the parent permission 22 years ago, and indexed linked that financial sum €15,999 + CSO inflation at 36% to create €21750.00 to be paid annually to the planning authority for the operational years of the quarry. There has been no indication which road this relates to. There has been no information regarding the current condition of the said localised roads, including the projected maintenance works.

7.7 **Conclusion**

In my opinion, the planning authority is not complying with Section 48 2(c) or Section 48 (12) of the Planning and Development Act 2000 as amended. It has not specified the particular works to be carried out under the terms of the condition. The imposition of an annual payment would appear to be contrary to the provisions of Section 48(12) also. The condition is not in line with the adopted Westmeath Development Contribution Scheme 2022 in that a special contribution may be payable in respect of a particular development where specific exceptional costs not

covered by a scheme. The planning authority has failed to demonstrate the specific exceptional costs to be incurred by the proposed development.

8.0 Recommendation

- 8.1. I recommend that Condition No. 7 be removed from the Decision to Grant Planning Permission for the proposed development.

9.0 Reasons and Considerations

Having regard to the provisions of the Westmeath Development Contributions Scheme 2022 s. 48(12) of the Planning and Development Act 2000 (as amended) and relevant Guidelines, I considered that the terms of the Scheme have not been properly applied in respect of Condition 7 for the following reasons:

- In calculating the financial sum of €21750.00 to be paid annually as a Special Development Contribution, the Planning Authority failed to consider the specific exceptional costs to be incurred by the local authority in respect of the proposed development.
- In calculating the special financial contribution payable annually subject of the application, the Planning Authority used a condition imposed on the parent planning permission, Planning Reference No. 01/525, which was subsequently revised by the Board under appeal reference ABP PL25.128072 to a single payment which was complied with in full by the previous owner.
- In calculating the sum of the Special Contribution Payable the planning authority has failed to state when the works would be commenced or completed, the location of said works, and the amount appropriate to the proposed development.
- In calculating the sum of the Special Contribution Payable the planning authority has failed to demonstrate the specific exceptional costs

Therefore the Board in accordance with section 48 of the Planning and Development Act 2000, as amended, considered based on the reasons and considerations set out above that the terms of the Development Contribution Scheme had not been

properly applied in respect of condition No. 7 and directs the said Council to remove the condition.

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.

Caryn Coogan
Planning Inspector

26th of October 2023