



An
Bord
Pleanála

Inspector's Report

ABP-315110-22

Development	Extension to a yard and retention of the existing yard and manufacturing buildings/plant.
Location	Lowtown, Robertstown, Naas, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	21/1647
Applicant(s)	Hanlon Concrete Product Limited
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First Party against Condition 11
Appellant(s)	Hanlon Concrete Product Limited
Observer(s)	None
Date of Site Inspection	None
Inspector	Elaine Power

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	5
3.4. Third Party Observations	5
4.0 Planning History.....	6
5.0 Policy Context.....	6
5.2. Kildare County Development Plan 2023-2029	7
5.4. Other Relevant Documentation	7
5.5. Natural Heritage Designations	8
5.6. EIA Screening	8
6.0 The Appeal	8
6.1. Grounds of Appeal	8
6.2. Planning Authority Response	9
6.3. Observations	10
6.4. Further Responses.....	10
7.0 Assessment.....	11
8.0 Recommendation.....	15
9.0 Reasons and Considerations.....	15

1.0 Site Location and Description

- 1.1. The subject site is located in Lowtown, c. 450m west of the village of Roberstown and c. 5km south west of the village of Prosperous, Co. Kildare. The site has a stated area of 3.3ha and forms the northern part of a quarry (49.1ha) within the ownership of the applicant. the site is bound to the south, east and west by the quarry. To the north the site is partly bound by a detached dwelling and partly by agricultural lands. The surrounding area is rural in nature.
- 1.2. The northern portion of the subject site (2.2ha) currently accommodates a yard and a number of existing buildings. The southern portion (1.1ha) comprises an open area within the quarry site.

2.0 Proposed Development

- 2.1. The development comprises the retention of the existing yard and manufacturing buildings and plant, which includes a concrete batching plant (590.2sqm), precast floor building (328sqm), a precast concrete manufacturing building (816.2sqm), a block making machine building (150.1sqm), a laboratory / store building (76.3sqm) and a storage building (152.ssqm). The development also includes the extension (1.1ha) of the existing yard (to be retained) and all associated ancillary facilities within an existing quarry complex.

3.0 Planning Authority Decision

3.1. Decision

Grant Permission subject to 11 no. conditions. Of note is Condition no. 11: -

11. The Applicant / Developer to pay Kildare County Council the sum of €161,202.72 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 5th November 2015 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted by Kildare Council on the 5th November 2015.

Note: Please note water and wastewater development contributions charges now form part of the water connection agreement, if applicable, with Irish Water.

Reason: It is considered reasonable that the Developer should make a contribution in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority.

3.2. Planning Authority Reports

3.2.1. *Planning Reports*

The initial planners report requested that 9 no. items of further information be requested. These items are summarised below:

1. Clarification regarding the possible intensification of extraction as a result of the development.
2. Submit an EIAR Screening Report.
3. Clarification regarding amount of material to be removed to allow for an extension of the yard and justification for the extension to the yard.
4. (a) Sightlines at vehicular entrance, (b) surface water details, (c) details of car parking spaces, (d) details of EV charging points, (e) details of bicycle parking and (f) details of pedestrian routes.
5. (a) Clarify the type of bound treatment for the yard area, (b) surface water runoff collection arrangements for the yard and (c) surface water attenuation and surface water disposal arrangements.
6. Submit a Lighting Report and Site Lighting Layout drawings.
7. Full details of the number and vehicle type of daily traffic movements and predicated traffic movements to and from the existing and proposed development.
8. The exact location and extent of all wastewater treatment systems, streams, ditches and wells, within and bordering the site.
9. Submit a report with recommendations from an independent environmental consultant assessing the impacts of the development on surface and groundwaters.

The planners report dated 11th August 2022 requested that Clarification of Further Information be requested with regard to 3 no. items. These items are summarised below:

1. Clarify the location of the oil interceptor.
2. Clarify the location of a drainage ditch and its connection to the River Slate and proposed mitigation measures to reduce the impact of sediment laden run-off to the river.
3. It would appear from the results of the water monitoring that the concentration levels of some parameters are not compatible with good ecological status. Clarify the exact location of the monitoring point and comment on each of the exceedances.

The planners report dated the 26th October 2022 reflects the decision to grant permission.

3.2.2. **Other Technical Reports**

Roads, Transportation and Public Safety Department: Report dated 22nd December 2021 recommended that further information be sought. Report dated 10th August 2022 raised no objection subject to conditions.

Environment Section: Report dated 6th January 2022 recommended that further information be sought. Report dated 4th August 2022 recommended that clarification of further information be sought.

Water Services: Report dated 17th January 2022 raised no objection.

Area Engineer: report dated 6th January 2022 raised no objection subject to conditions.

3.3. **Prescribed Bodies**

None

3.4. **Third Party Observations**

None

4.0 Planning History

Reference QR25: Application to Kildare County Council to register a Quarry under Section 261 at the subject site. It was decided that a planning application and an EIA were required in respect of the quarry.

ABP.PL 09.232325, Reg. Ref. 07/2970: Permission was granted in 2008 by Kildare County Council, for continued extraction of sand and gravel, processing of aggregate and continued use of plant, machinery and ancillary facilities on a site of 49.1ha. The application was accompanied by an EIS.

The first party appeal to the Board related to conditions only. The Board directed the planning authority to remove conditions 33 and 35, and to amend conditions 2, 6, 16 and 17. Concrete manufacturing at the site was not included as part of the planning application and permission was granted for 25 years from the date of the Order (17th July 2009).

QRA-13-003: In 2012 Kildare County Council under subsection (2)(a)(ii) of section 261A as amended determined that an appropriate assessment was required and was not carried out. **APB.QV 09QV.0258:** In 2013 the Board decided that the development did not require an appropriate assessment and set aside the decision of Kildare County Council.

5.0 Policy Context

5.1. Kildare Development Contribution Scheme 2015-2022

The relevant Development Contribution Scheme is the Kildare Development Contribution Scheme 2015-2022.

Section 8(iii) Commercial Development:

GFA	0-250sqm	251-3,000sqm	>3,000sqm
Rate per sqm €	43.46	54.31	61.55

Section 8(xiv) Miscellaneous Developments

	Built per sqm	Open per ha
Rate €	27.51	15,000

5.2. **Kildare County Development Plan 2023-2029**

The Kildare County Development Plan was adopted in January 2023. Section 15.1.4 Development Contributions states: *The Council, taking into consideration the capital expenditure necessary for the provision of public infrastructure and facilities, will require the payment of financial contributions in accordance with the Development Contributions Scheme. Developers may also be required to carry out works at their own expense to facilitate their development and these will be specified as a condition of their planning permission.*

5.3. **Development Contributions Guidelines for Planning Authorities, 2013**

Development contribution schemes are a central instrument in improving the quality and therefore the competitiveness of local authority areas, thereby establishing an environment in which enterprise can thrive and communities progress. Development contributions provide critical resources to facilitate the funding of essential physical and social infrastructure that support the implementation of development plans of local authorities.

Development contributions provide the only statutory mechanism for capturing planning gain as part of the development management process.

General Development Contribution Schemes: Under section 48 of the Planning and Development Acts, planning authorities must draw up a development contribution scheme in respect of certain public infrastructure and facilities provided by, or on behalf of, the local authority that generally benefit development in the area. All planning permissions granted are subject to the conditions of the development contribution scheme in operation in the area of the planning authority.

5.4. **Other Relevant Documentation**

Circulars PL3/2013, PL18/2013 and PL032018.

5.5. **Natural Heritage Designations**

Not relevant in this instance

5.6. **EIA Screening**

Not relevant in this instance

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The grounds of this first party appeal are summarised below:

Contribution Rates

- There were errors in calculating the development contribution.
- A rate of €54.31 per sqm was applied to the 6 no. structures to be retained. This is based on Section 8(iii) Non Residential Commercial Development.
- The rate of €54.31 per sqm is applicable to buildings ranging from 251sqm – 3,000sqm. A lesser rate of €43.46 is applicable to buildings of less than 250sqm. The lesser rate should have been applied to 3 no. buildings as these buildings have a total floor areas of less than 251sqm, in this regard 76sqm, 150sqm and 152sqm. The correct rate results in a reduction of €4,101.30 and a total contribution of €157,101.42

Reduction for Lack of Burden

- A rate of €15,000 per ha was applied to the yard. This is based on Section 8(xiv) Miscellaneous Developments of the Scheme.
- The development contribution scheme states that for industrial development the apportionment of development contribution is: Roads 71.8%, Surface Water 18.3%, Recreation and Amenity 8.4%, Community 1.5%, Water 0% and Wastewater 0%.
- It is considered that as the development is within and ancillary to an authorised quarry / pit it does not impose certain burdens on the local authority compared

to equivalent types of development and that a reduction to the rate should be applied.

- In this regard, it is noted that the authorised quarry complex manages all surface water within the site and stormwater from adjacent greenfield lands. No processed water is discharged from the quarry complex. This development does not impose a financial burden on the local authority with respect to this aspect, nor does it necessitate capital infrastructure for the handling of surface water in the way that an industrial estate does.
- The applicants contribution should be reduced by 18.3%, which is the apportionment of the development contribution to surface water.
- To charge the applicant for any service of which it does not avail or a charger against matters to which it does not contribute in terms of wear and tear, would result in a clear direct profit to the local authority. This was not envisioned in the legislation or in the formulation and passing of the Development Contribution Scheme.
- The correct total contribution is €128,351.86 (81.7% of €157,101.42)

6.2. Planning Authority Response

The planning authority's response is summarised below:

- It is acknowledged that there the incorrect rate was applied to 3 no. buildings as the floor areas of these buildings are less than 250sqm each. This would reduce the development contributions by €4,049.17.
- The applicants request to have a reduction for charge for surface water is noted, however, the Development Contribution Scheme is in place to fund extensive infrastructure and facilities benefiting development in Kildare that is provided, or that is intended will be provided by or on behalf of Kildare County Council.
- Money collected from the scheme is apportioned through the councils service areas such as water, wastewater, surface water etc. and an element such as surface water cannot be reduced from this charge.

- The contribution applied to be retention and extension of the existing yard per hectare is correct and should not be reduced.
- The submission included a breakdown of revised development contribution of €157,101.42.

6.3. Observations

None

6.4. Further Responses

The applicants response to the Planning Authority's submission is summarised below:

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- It is noted that the planning authority have accepted that there were errors in the calculation of the development contributions applied to certain buildings, based on appropriate rates for different floor areas. This is welcomed by the applicant.
- It is considered that the issue of charges relating to surface water remains and that a reduction of 18.3% should be applied.
- It is also noted that there was an error in the calculation of the development contribution relating to the concrete plant.
- The concrete plant (590.2sqm) was paid for in the original application to Kildare County Council, under Class 8, as it is a structure of the nature of 'plant'. Therefore, the correct development contribution for this building is Miscellaneous Development: Built at a rate of €27.51 per sqm.
- The planning authority applied a rate of €54.31 per sqm which relates to Non-Residential Commercial Development. This is the incorrect rate for this building.
- The correct development contribution for this building is €16,236.40 (€27.51 X 590.2sqm) and not €32,042.90 (€54.32 x 590.2sqm).

7.0 Assessment

7.1. This appeal is made under the provisions of Section 48(10) (b) of the Planning and Development Act, 2000 (as amended), and relates to the consideration of Condition No. 11 only. I have, therefore, confined my assessment to the terms of the financial contribution (Condition 11) and I am satisfied that no other substantial planning issues arise.

7.2. Condition No. 11 required the applicant pay a financial contribution of €161,202.72 to the Planning Authority towards expenditure in respect of public infrastructure and facilities as provided for in the approved Kildare County Council Development Contribution Scheme 2015-2022 in accordance with Section 48 of the Planning and Development Act, 2000 (as amended).

7.3. *Calculation of Development Contribution*

7.3.1. The assessment below is based on the Kildare County Council Development Contribution Scheme 2015 – 2022, which is considered to be the relevant scheme.

7.3.2. Section 8(iii) Commercial Development the Kildare Development Contribution Scheme 2015-2022 requires the following Development Contribution Rates:

GFA	0-250sqm	251-3,000sqm	>3,000sqm
Rate per sqm €	43.46	54.31	61.55

7.3.3. Section 8(xiv) Miscellaneous Developments of the Kildare Development Contribution Scheme 2015-2022 required the following Development Contribution Rates:

	Built per sqm	Open per ha
Rate €	27.51	15,000

7.3.4. Based on the Development Contribution Rates outlined above Condition no. 11 required the applicant to pay the sum of €161,202.72. A breakdown of the figure is provided below and is also included as Appendix 5 of the appeal:

Description	Rate applied	Contribution
Concrete batching plant (590.2sqm)	€54.31 per sqm	€ 32,042.90
Precast floor building (328sqm)	€54.31 per sqm	€17,813.68

Precast concrete manufacturing building (816.2sqm)	€54.31 per sqm	€44,316.96
Block making machine building (150.1sqm)	€54.31 per sqm	€8,146.50
Laboratory / store building (76.3sqm)	€54.31 per sqm	€4,127.56
Storage building (152.8sqm)	€54.31 per sqm	€8,255.12
Total		114,702.72
Yards		
Yard to be retained (2 ha)	€15,000 per ha	€30,000
Yard proposed (1.1ha)	€15,000 per ha	€16,500
Total		46,500.00
Total Development Contributions		€161,202.72

7.3.5. In the appeal the applicant raised concerns that the incorrect rate was applied to the block making machine building (150.1sqm), the laboratory / store building (76.3sqm) and the storage building (152.8sqm). As these buildings are less than 250sqm each, the lesser rate of €43.46 per sqm should have been applied and not the rate of €54.31 per sqm which applies to buildings between 251sqm - 3,000sqm. In response to the appeal the planning authority acknowledges that the incorrect rate was applied to these buildings. I also agree that the incorrect rate was applied to these buildings.

7.3.6. In the response to the planning authority's submission the applicant also notes that the incorrect rate was applied to concrete batching plant (590.2sqm). The planning authority applied a rate of €54.31 per sqm which relates to Non-Residential Commercial Development. The applicant notes that the planning fee for the concrete batching plant, as part of the original planning application to Kildare County Council was paid for under Class 8, as it is a structure of the nature of 'plant'. Therefore, the correct development contribution for this building is Miscellaneous Development: Built at a rate of €27.51 per sqm. Class 8 of the Schedule of Fees for Kildare County Council (available on www.Kildarecoco.ie) notes that Class 8 is for the provision of plant or other structures for storage purposes. It is noted that the classes of development in the schedule of fees relate to the classes of development provided in Schedule 9 of the Planning and Development Regulations. The floor layout plans and elevations of the concrete batching plant are provided on Drawing no. PP-230-00 received with the

application. I agree with the applicant that the incorrect rate of €54.31, which relates to non-residential, was applied to the concrete batching plant and that it should have been categorised as miscellaneous 'Built', at a rate of €27.51 per sqm.

7.3.7. The table below provides a breakdown of the size of the buildings on site, the applicable development contribution rate, the required development contribution and the proposed change from the development contribution applied by the planning authority.

Description	Rate	Contribution	Change
Concrete batching plant (590.2sqm)	€27.51 per sqm	€16,236.40	-€15,806.50
Precast floor building (328sqm)	€54.31 per sqm	€17,813.68	No change
Precast concrete manufacturing building (816.2sqm)	€54.31 per sqm	€44,327.82	No change
Block making machine building (150.1sqm)	€43.46 per sqm	€6,523.35	-€1,623.15
Laboratory / store building (76.3sqm)	€43.64 per sqm	€3,329.73	-€797.83
Storage building (152.8sqm)	€43.64per sqm	€6,668.19	-€1,586.93
Total		€94,899.17	-€19,814.41
Yards			
Yard to be retained (2 ha)	€15,000 per ha	€30,000	No change
Yard proposed (1.1ha)	€15,000 per ha	€16,500	No change
Total		€46,500.00	
Total Development Contributions		€141,399.19	

7.3.8. It is noted that the figures are above are marginally different from both the applicants and the planning authority's figures. However, in my view the correct development contribution is €141,399.19.

7.4. ***Reduction to Rates Applied***

7.4.1. The appeal states that as the development is within and ancillary to an authorised quarry / pit it does not impose certain burdens on the local authority compared to equivalent types of development and that a reduction to the development contribution

rate should be applied. The applicant notes that the Kildare Development Contribution Scheme 2015-2022 provided a breakdown of the apportionment of development contribution for industrial development as follows: Roads 71.8%, Surface Water 18.3%, Recreation and Amenity 8.4%, Community 1.5%, Water 0% and Wastewater 0%.

7.4.2. It is further stated in the appeal and the response to the planning authority's submission that the authorised quarry complex manages all surface water within the site and stormwater from adjacent greenfield lands. No processed water is discharged from the quarry complex. This development does not impose a financial burden on the local authority with respect to surface water, nor does it necessitate capital infrastructure for the handling of surface water in the way that an industrial estate does. Therefore, the applicants contribution should be reduced by 18.3%, which is the apportionment of the development contribution to surface water.

7.4.3. In the response to the appeal the planning authority note the applicants request to have a reduction for charge for surface water, however, it is stated that the Development Contribution Scheme is in place to fund extensive infrastructure and facilities benefiting development in County Kildare that is provided, or that is intended will be provided, by or on behalf of Kildare County Council. Money collected from the scheme is apportioned through the councils service areas such as water, wastewater, surface water etc. and an element such as surface water cannot be reduced from this charge. I agree with the planning authority that an element, such as surface water, cannot be reduced from the development contribution.

7.4.4. Under Section 48 of the Planning and Development Act, 2000 (as amended) all planning permissions granted are subject to the conditions of the development contribution scheme in operation in the area of the planning authority. The Development Contributions Guidelines for Planning Authorities (2013) also states that development contributions provide critical resources to facilitate the funding of essential physical and social infrastructure that support the implementation of development plans of local authorities. The guidelines further state that development contributions provide the only statutory mechanism for capturing planning gain as part of the development management process. In addition, Section 12 (q) of the Kildare

County Council Development Contribution Scheme 2015-2022 states that no exemptions or waivers shall apply to any development subject to retention permission.

- 7.4.5. It is noted that surface water is managed within the subject site and is not reliant on the public network. However, it is my opinion that it is not appropriate to provide a reduction to the financial contribution, as the development contribution of €141,399.19 is in accordance with the provisions of the Kildare County Council Development Contribution Scheme 2015-2022, Section 48 of the Planning and Development Act, 2000 (as amended) and the provisions of the Development Contributions Guidelines for Planning Authorities (2013).

8.0 Recommendation

- 8.1. It is considered that the planning authority incorrectly applied the terms of the Kildare County Council Development Contributions Scheme 2015 – 2022 in the calculation of the amount payable under Condition 11. It is, therefore, recommended that the planning authority be directed to AMEND the amount payable under Condition No. 11 by deleting €161,202.72 and substituting the amount of €141,399.19.

9.0 Reasons and Considerations

- 9.1. Having regard to Section 48 of the Planning and Development Act, 2000 (as amended), the provisions of the Development Contributions Guidelines for Planning Authorities (2013) and the Kildare County Council Development Contributions Scheme 2015-2022, it is concluded that the amount payable is € 141,399.19.

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.

Elaine Power
Senior Planning Inspector

28th February 2024.

Appendix 1 - Form 1
EIA Pre-Screening

An Bord Pleanála Case Reference	315110-22		
Proposed Development Summary	Development Contribution Appeal - Extension to a yard and retention of the existing yard and manufacturing buildings/plant		
Development Address	Lowtown, Robertstown, Naas, Co. Kildare		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)	Yes	No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No			Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
	Threshold	Comment (if relevant)	Conclusion
No			No EIAR or Preliminary Examination required

Yes				Proceed to Q.4
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4. Has Schedule 7A information been submitted?				
No			Preliminary Examination required	
Yes			Screening Determination required	

Inspector: _____ Date: _____