



An
Bord
Pleanála

Inspector's Report

ABP-318859-24

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|-------------------------------------|---|
| Development | Construction of concrete and cement plant within existing quarry |
| Location | Cheeverstown & Whitehall Townlands, Fortunestown, Tallaght, Dublin 24 |
| Planning Authority | South Dublin County Council |
| Planning Authority Reg. Ref. | SD23A/0265 |
| Applicant(s) | Roadstone Limited |
| Type of Application | Permission |
| Planning Authority Decision | Grant subject to 15 no. conditions |
| Type of Appeal | First Party v. Financial Contribution |
| Appellant(s) | Roadstone Limited |
| Observer(s) | None |
| Date of Site Inspection | Not applicable |
| Inspector | Bernard Dee |

1.0 Introduction

- 1.1. This report relates to a first-party appeal against Condition No. 15 of the planning authority decision to grant permission on 18th December 2023 for the development of a new concrete plant within an existing quarry. Condition No. 15 refers to the payment of a development contribution of €816,936.25 in accordance with the South Dublin County Council Development Contribution Scheme 2021-2025. Section 48(10)(b) of the Planning & Development Act, 2000 (as amended) states that an appeal may be brought to the Board where an applicant considers that the terms of the development contribution scheme have not been properly applied.
- 1.2. Accordingly, the description of development and policy provisions and the assessment of the grounds of the First Party appeal below, relate only to aspects of the permitted development which are relevant to the calculation of the financial contribution in this case and also the manner in which the terms of the South Dublin County Council Development Contribution Scheme 2021-2025 were applied by the Planning Authority in this instance. Section 139(1) of the Planning & Development Act, 2000 (as amended) provides for the Board to assess a condition in isolation from the overall permission.

2.0 Site Location and Description

- 2.1. The appeal site, which measures 4.2ha in area, is located at Belgard Quarry which is situated south of the N7 (Naas Road) between Newlands Cross and the Kingswood Interchange. The site is bounded by the R136 Outer Ring Road to the west, Katherine Tynan Road and the LUAS red line runs to the south, Cookstown Road to the east and Newlands Golf Club to the north east.
- 2.2. The overall site currently caters for limestone extraction, blasting, crushing, washing, and screening. The quarry produces a wide range of aggregates, concrete products, asphalt, blocks, and paving products. There are extensive buildings within the landholding such as offices, labs, stores, building materials retail outlet to facilitate the operations.

3.0 Proposed Development

3.1. The development to which this appeal relates is comprised of the following main elements:

- A new concrete plant (7,271m²) with enclosed mixing units;
- 16 no. cement silos (c. 23 metres height);
- Enclosed aggregate storage bins (c. 16.5 metres height);
- Feed conveyor systems;
- 2 no. control rooms;
- A replacement truck wash out facility (1,237m²); and
- Related ancillary works.

The new concrete plant will replace the three existing concrete plants on site, all of which will be decommissioned upon commencement of operation of the new plant.

4.0 Planning Authority Decision

4.1. Decision

Permission for the development to be retained was granted on 11th December 2023 subject to 15 no. conditions and Condition No. 15 which relates to a financial contribution and is the subject of this First Party appeal states the following:

The developer shall pay to the planning authority a financial contribution of €816, 936.25 (eight hundred and sixteen thousand, nine hundred and thirty six euros and twenty five cent), in respect of public infrastructure and facilities benefiting development within the area of the planning authority, that is provided, or intended to be provided by or on behalf of the authority, in accordance with the terms of the Development Contribution Scheme 2021 - 2025, made under Section 48 of the Planning and Development Act 2000 (as amended). The contribution shall be paid prior to commencement of development, or in such phased payments as the planning authority may facilitate. Contributions shall be payable at the rate pertaining to the year in which implementation of the planning permission is commenced as outlined in

the South Dublin County Council Development Contribution Scheme 2021 - 2025.

REASON: The provision of such facilities will facilitate the proposed development. It is considered reasonable that the payment of a contribution be required, in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

5.0 Planning Authority Reports

5.1.1. Planning Reports

- On page 22 of the Planner's Report 'Other Considerations' are noted and include the calculation of contributions with regard to a new concrete plant comprising of 7,271m² of floorspace.
- It is noted that the standard commercial levy rate of €112.57 per m² of floorspace applies in this case.
- The report states that of the 7,271m² of floorspace proposed that 13.86m² qualifies for exemption (reason unspecified) and therefore a levy is applicable to 7,257.14m² of the proposed floorspace.
- $7,257.14\text{m}^2 \times €112.57 = €816,936.25$.

5.1.2. Other Technical Reports

- Roads, Environmental Services, Surface Water, Pollution Control and Public Realm - no objections subject to conditions.

5.1.3. Prescribed Bodies

- Irish Water, Defence Forces, Inland Fisheries - no objections subject to conditions.

5.1.4. Observations

- None received.

6.0 Planning History

6.1. On the Appeal Site

- Ref. SD19A/0223 (referenced by First Party) - relates to a grant of permission on 19th December 2019 for the construction of a concrete plant (715sq.m) with a maximum height of 18 metres; extension to the existing Dry Mortar 'Flomix' plant (302sq.m) with a maximum height of 33.3 metres (Ref. SD16A/0410); truck wash out bays (187sq.m); a water storage tank (35sq.m.); ancillary facilities within a 1.50 hectare application area at the existing quarry. The Planning Authority applied a financial contribution, Condition No. 12, of €25,811.94 under the provisions of the South Dublin County Council Development Contribution Scheme 2016-2020 which was in force at the time the decision was made.
- In addition, there are multiple planning history cases referenced in the Planner's Report on file which I draw the Board's attention to but are of marginal relevance in the assessment of the current appeal.

6.2. In the Vicinity of the Site

- None relevant to this appeal against financial contributions.

7.0 Policy and Context

7.1. County Development Plan

South Dublin County Development Plan 2022 - 2028 is the statutory plan for the area and while there are several mentions of the Development Contribution Scheme, there are no specific policies or objectives set down in relation to same.

7.2. South Dublin County Council Development Contribution Scheme 2021-2025

Section 9 – contributions per m² of commercial development shall be 91.11 per m² and indexation in accordance with the Chartered Surveyors of Ireland Construction Tender Price Index will apply annually on 1st January, effective from 1st January 2022 onwards.

Section 9, Note 2: The floor area of proposed development shall be calculated as the gross floor area (GFA). This means the area ascertained by the internal measurement of the floorspace on each floor of a building (including internal walls and partitions), including mezzanine floors. This area is provided by the applicant on the statutorily prescribed planning application form which is subject to technical verification by the Planning Authority.

Section 11. The following categories of development will be exempted from the requirement to pay development contributions or may pay a reduced rate, as stated, under the Scheme: (xxiii) Ancillary plant rooms (where plant is not core activity/operation) shall be exempt.

7.3. Development Contribution Guidelines 2013

Page 17 - In order to achieve a standard basis on which rates could be determined, broad estimates of the floor area (m²) of anticipated development should be prepared, including the assumptions and any other relevant factors which have shaped the estimates.

7.4. Natural Heritage Designations

There are no designated heritage sites within the vicinity of the appeal site.

7.5. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.0 The Appeal

8.1. Grounds of Appeal

The First Party appeal relates to the financial contribution imposed by Condition No. 15 of the grant of permission in the amount of €816,936.25 and the main grounds of appeal can be summarised as follows:

- The financial contribution sought by the Planning Authority has been miscalculated as it is based on the equation of floorspace with floor area. The proposed development consists of plant and equipment within a footprint area of 7,271m² (minus 13.86m² which is exempted from the contribution by the Planning Authority) which the Planning Authority have mistaken as GFA and have applied the contribution level accordingly.
- Section 9 of the South Dublin County Council DCS 2021-2025 in Note 2 clearly states that commercial contribution rates will only apply to the internally measured area of a building including each floor and mezzanine areas, i.e. the scheme is only applicable to GFA.
- As the proposed development is comprised of concrete plant (silos, conveyor belts, mixing units, etc) there is no GFA proposed with the possible exception of 2 no. control rooms each measuring 13m² GFA (26m² in total).
- Notwithstanding the fact that these 2 no. control rooms are integral to the concrete plant as proposed and are not to be considered buildings as such, were the €112.57 per m² levy to be applied then this would result in a financial contribution requirement of €2,962.82.
- In a previous decision on the site, Ref. SD19A/0223, the Planning Authority concluded in its assessment of the applicable financial contribution that *“concrete plant, truck bays and water storage tank are not assessable”*. The SDCCDS 2016-2020 which was in force at the time of that decision contains the same Note 2 referenced above as is present in the current DCS regarding the fact that a levy can only be applied in respect of the GFA proposed, if any.

- As there is no GFA proposed as part of the development, the Planning Authority have misapplied the terms of the SDCCDS 2021-2025 and the Board is asked to omit Condition No. 15 of the permission relating to the financial contribution imposed by the Planning Authority.
- If the Board feels that the 2 no. control rooms measuring 26m² fall within the definition of GFA then the First Party will accept a financial levy condition in the amount of €2,962.82.

8.2. Planning Authority Response

The Planning Authority response states the following:

'Following a review of the files related to the application in question and the previous applications regarding proposals on this site, it is considered that the application of the Development Contribution Scheme, 2021-2025, was incorrectly calculated. Therefore, and ensuring consistency with previous approvals, South Dublin County Council contends that the full floorspace allocation of application SD23A/0265 should not be considered under the Development Contribution Scheme, and instead a smaller portion, which equates to c.13sqm, should now be considered. Therefore, taking the approach set out in SD19A/0223, a contribution which was paid in full, SDCC proposes that the contribution amount in condition 15 be amended and calculated on the basis of 13sqm.'

8.3. Observations

- None received.

9.0 Assessment

- 9.1. Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise.
- 9.2. The primary planning issue therefore is whether the South Dublin County Development Contribution Scheme 2021-2025 has been applied correctly by the Planning Authority in this case. The issue of AA Screening is also addressed in this assessment.
- 9.3. Financial Contribution
- 9.3.1. The Planning Authority in their response to the First Party appeal state that the provisions of the Development Contribution Scheme 2021-2025 have been incorrectly applied and that only 13m² of the proposed development (which has a measurable floor space) is liable for a financial levy. This would amount to a financial contribution of €1,463.41 (13m² x €112.57).
- 9.3.2. The First Party case is that as the proposed concrete plant does not have buildings where GFA can be calculated, then the Planning Authority have misapplied the DCS 2021-2025 and the financial condition should be omitted entirely. However, if the Board decide that the 2 no. control rooms measuring 26m² in total fall within the definition of GFA, then the First Party will accept a financial levy condition in the amount of €2,962.82.
- 9.3.3. Having regard to the above, to the plans and particulars of the proposed development and having reviewed the Development Contribution Scheme in force, I am of the opinion that the level of financial contribution in this case should be nil. My reasoning for this opinion is set down below.
- 9.3.4. Article 3 of the Planning and Development Regulations 2001 (as amended) state that - "gross floor space" means the area ascertained by the internal measurement of the floor space on each floor of a building (including internal walls and partitions), disregarding any floor space provided for the parking of vehicles by persons occupying or using the building or buildings where such floor space is incidental to the primary purpose of the building.

- 9.3.5. The Planning Authority have conceded that a genuine error in calculating the financial contribution was made when the concrete plant proposed footprint of 7,271m² was mistaken for GFA. I note that Question 12 of the planning application form which relates to the gross floor space of any buildings to be retained, proposed or demolished as part of the application has been crossed out by the applicant indicating that the proposed development does not comprise any gross floor space.
- 9.3.6. In the absence of gross floor space being part of the proposed development, I find that a financial levy is not applicable in this instance. References to the 2 no. control rooms being possibly subject to a financial contribution due to their collective 26m² GFAs, are in my opinion not an issue here as the SDCCDS 2021-2025 in Section 11, (xxiii) states that “*Ancillary plant rooms (where plant is not core activity/operation) shall be exempt*”. I am of the opinion that the 2 no. control rooms fall into this category of exemption and that therefore the proposed development is not liable to any financial contribution in relation to this element of the proposed development.
- 9.3.7. In the interests of clarification, the First Party reference to development permitted under permission Ref. SD19A/0223 not being required to pay a financial contribution is erroneous as Condition 12 of this permission required a financial contribution of €25,811.94 under the provisions of the South Dublin County Council Development Contribution Scheme 2016-2020 which was in force at the time the decision was made. This contribution related to a 302m² extension of the Dry Mortar Flomix Plant building which is a steel framed and clad enclosed structure and this permission was not the subject of a First Party appeal regarding this financial contribution condition.

9.4. AA Screening

- 9.4.1. Having regard to the relatively minor development proposed within an existing unit and the distance from the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

10.0 Recommendation

I recommend therefore that the Planning Authority be instructed by the Board to omit a financial contribution condition from the Final Grant of permission for the reasons and considerations set down below.

11.0 Reasons and Considerations

Having regard to the provisions of the South County Dublin Development Contribution Scheme 2021-2025, and to the limitations placed upon the Board in assessing appeals against financial contributions by the provisions of Section 48(10)(b) of the Planning and Development Act 2000 (as amended), it is considered that the provisions of the Development Contribution Scheme were not correctly applied in relation to the proposed development and that therefore Condition No. 15 should be omitted in its entirety from the grant of permission issued by the Planning Authority in the interests of the proper planning and sustainable development of the area.

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.

Bernard Dee
Planning Inspector

29th May 2024

Appendix 1 - Form 1
EIA Pre-Screening
[EIAR not submitted]

| | | | |
|---|--|------------|--------------------------------|
| An Bord Pleanála Case Reference | ABP-318859-24 | | |
| Proposed Development Summary | Construction of new concrete plant within existing quarry | | |
| Development Address | Cheeverstown and Whitehall Townlands, Fortunestown, Tallagh, Dublin 24 | | |
| 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 | |
| 2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and 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 | | N/A | | No EIAR or Preliminary Examination required |
| Yes | √ | | | Proceed to Q.4 |

| 4. Has Schedule 7A information been submitted? | | |
|--|---|----------------------------------|
| No | √ | Preliminary Examination required |
| Yes | | Screening Determination required |

Inspector: _____

Date: 29th May 2024

Bernard Dee