



An
Bord
Pleanála

Inspector's Report ABP-321387-24

Development

Increase in the intake of materials to the existing licensed soil recovery facility and an extension to the life of the existing facility of 3 years (to December 2029). Environmental Impact Assessment Report and Natura Impact Statement received with application. The proposed development requires a waste licence review from the Environmental Protection Agency.

Location

Halverstown Townland, Kilcullen, Co. Kildare

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

24/60265

Applicant(s)

Kilsaran Concrete Unlimited Company.

Type of Application

Permission.

Planning Authority Decision

Grant Permission with conditions

Type of Appeal	First Party v application of Development Contribution Scheme
Appellant(s)	Kilsaran Concrete Unlimited Company.
Observer(s)	None.
Date of Site Inspection	N/A.
Inspector	Susan McHugh

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1.0 Introduction

- 1.1. This appeal is by the applicant against a financial contribution condition made under Section 48(2)(c) of the 2000 Act, applying to an increase in the total permitted intake of soil and stone and broken rock to the existing licensed soil recovery facility at Halverstown, Kilcullen Co. Kildare.
- 1.2. The applicant has argued that the development contribution has not been correctly applied, as it is not specific, and the permission is for only three years.
- 1.3. The planning authority states that proposed regional road junction upgrade works and future maintenance of approach roads and local road junctions will benefit the development. There are no other issues raised in this appeal so I will address only that of Condition 37, relating to the application of the development contribution scheme.

2.0 Site Location and Description

- 2.1. The appeal site is located in the townland of Halverstown, Co. Kildare, approximately 4.5km to the south of Kilcullen village and approximately 800 west of the M9 motorway.
- 2.2. The site is accessed from the R448 Regional Road (the former N9 National Primary Road).
- 2.3. The site is located within a landholding which comprises the existing backfilling and recovery facility and a concrete block manufacturing facility on an adjoining area to the north with much of the required site infrastructure. Development in the vicinity consists of residential to the south, south east and north and agricultural lands on all other sides.
- 2.4. The appeal site has a stated area of 18ha.

3.0 Proposed Development

- 3.1. Permission is sought for
 - (i) an increase in the total permitted intake of soil and stone and broken rock to the existing licensed soil recovery facility at Halverstown, Kilcullen, Co.

Kildare (Planning Ref: 18/453), from 1.2 million tonnes to 2.06 million tonnes and

- (ii) an extension to the life of the existing facility of 3 years (to December 2029) in order to accommodate the additional soil and stone intake. These works, which are required to implement a revised backfilling and restoration scheme for the former sand and gravel pit will also provide for
 - (i) continued shared use of existing, co-located site facilities, structures and infrastructure (including the site office, staff welfare facilities, weighbridge (with dedicated office), wheelwash, hardstand areas, fuel storage tanks and site access road);
 - (ii) continued soil and stone intake at a rate of up to 300,000 tonnes per annum, of which no more than 95,000 tonnes (per annum) will be managed as waste;
 - (iii) continued separation of any construction and demolition waste (principally concrete, metal, timber, PVC pipework and plastic) inadvertently imported to the facility, prior to removal off-site to authorised waste disposal or recovery facilities;
 - (iv) continued use of a section of the existing concrete block curing shed as a waste inspection and quarantine facility;
 - (v) continued environmental monitoring of noise, dust and groundwater for the duration of the site recovery and restoration activities and for a short period thereafter (and in accordance with current EPA waste licence requirements);
 - (vi) continued temporary stockpiling of topsoil pending its re-use as cover material for final restoration of the site; and
 - (vii) ultimate restoration of the modified final landform to native woodland and grassland habitats.

3.2. An Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) have been prepared in respect of this Planning Application. The proposed development requires a waste licence review from the Environmental Protection Agency.

4.0 Planning Authority Decision

4.1. Decision

Kildare County Council issued a decision to **grant** permission on 7th November 2024. The grant of permission was subject to 39 no. conditions, of relevance to the appeal is condition no 37.

Condition No. 37. 'The Developer shall make a special contribution of **€250,000.00** to the Planning Authority. This contribution is in accordance with the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022 and in accordance with Section 48 (2)(c) of the Planning and Development Act 2000 as amended. The value of the road safety measures is made of the following components:

(a) **€100,000.00** towards the cost of upgrading the nearby Thompson Cross Regional Road Junction which is currently being examined by the KCC Project Team and where additional HGV traffic will be generated by the current development (24-60265).

(b) **€150,000.00** towards the future maintenance of approach roads and local road junctions in the area of the development by the Kildare Newbridge Municipal District Office.

Reason: In the interest of traffic safety.'

4.2. Planning Authority Reports

4.2.1. Planning Reports

With regard to development contributions, calculations dated 7th November 2024 are provided in respect to the calculation of another **condition no 39** as follows;

Rate Bands	Description	Rate per ha	Miscellaneous Rate €15,000 per ha	Area Considered for contribution	Contribution
8.2.3	Land Filling /Reclamation	€15,000	18		€270,000.00
					33% of €270,000.00
				Development Contributions applicable	€89,100.00

Development contribution applied in accordance with Section 8.2.3 Land Filling of €15,000 per hectare & 10.1 Temporary permission Development Contribution applied at 33% of current rate.

4.2.2. Other Technical Reports

- **Transport, Mobility and Open Spaces Department: 1st** Report dated 15/05/2024 recommends no objection subject to conditions.

Condition no. 12 states 'The Developer shall make a Special Financial contribution of €100,000 towards the cost of upgrading the nearby Thompson Cross Junction which is currently being examined by the KCC Project Team and where additional HGV traffic will be generated by the current development. Under Condition no. 13 the Transport/Roads Planning Section also concurs with the condition of the Municipal District Engineer below.

- **2nd** Report dated 30/10/2024 recommends no objection subject to revised conditions.

Condition no. 12 The Developer shall make a special contribution of €250,000 to the Planning Authority. This contribution is in accordance with the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022 and in accordance with Section 48 (2)(c) of the Planning and Development Act 2000 as amended. The value of the road safety measures is made of the following components:

(a) €100,000 towards the cost of upgrading the nearby Thompson Cross Regional Road Junction which is currently being examined by the KCC Project Team and where additional HGV traffic will be generated by the current development (24-60265).

(b) €150,000 towards the future maintenance of approach roads and local road junctions in the area of the development by the Kildare Newbridge Municipal District Office.

Reason: In the interest of Collision Reduction for the additional 860,000 tonnes of material. The maximum laden weight of a four-axle rigid truck with twin tyres and least detrimental suspension is 32 tonnes. This would lead to a minimum increase of 26,875 additional heavy truck journeys on the roads around this development.

- **Municipal District Office:** Report dated 29/04/2024 recommends that the applicant 'make a special development contribution levy to the Kildare/Newbridge Municipal District Office (MDO) of €150,000 to go towards the future maintenance of the roads/junctions in the area of the development'.

It is deemed 'appropriate that the developer contribute to the future maintenance of roads serving the development. The applicant is looking to increase the intake to the development from 1.2million tonnes to 2.06million tonnes, an increase of 860,000 tonnes. The maximum weight laden of a four-axle rigid truck with twin tyres and road friendly suspension is 32 tonnes. This would lead to an increase of 26,875 additional truck journeys on the roads around this development. Given the high level of additional traffic generated as a result of this development and the period of 3 years sought to complete the additional soil and stone intake to the site.'

4.2.3. Conditions

Other financial contribution conditions include:

Condition no. 39: 'The Applicant/Developer to pay to Kildare County Council the sum of €89,100.00 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are

strictly in accordance with Section 34 of the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022.

Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Uisce Éireann.

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

4.3. Prescribed Bodies

None.

4.4. Third Party Observations

None.

5.0 Planning History

PA Reg.Ref.18/453: Permission **granted** 26/10/2018 for inert soil waste recovery facility, ancillary infrastructure and associated site works. The application was accompanied by an Environmental Impact Assessment Report (EIAR).

Condition no 23:

'The applicant/developer to pay Kildare County Council the sum of €173,250.00 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 Contribtuion Scheme adopted by Kildare County Council on 5th November 2015.

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

6.0 Development Contribution Scheme

6.1. Kildare County Council Development Contribution Scheme 2023-2029¹

- 6.1.1. The Kildare County Council Development Contribution Scheme 2023-2029 (KCC DCS) was adopted on the 19th December 2022.
- 6.1.2. Section 5.2 relates to special development contributions and states as follows;
- 6.1.3. *'A special development contribution may be imposed under Section 48(2)(c) where specific exceptional cost, 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 development that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution'.*

6.2. Natural Heritage Designations

The appeal site is not located within or adjacent to any designated sites. The Dunlavin Marshes proposed Natural Heritage Area (Site Code 001772) are located approx. 2.37km to the SE. The Curragh proposed Natural Heritage Area (site Code 000392) is located approx. 3.5km to the north west.

6.3. EIA Screening

See completed Form 1 on file. Under the provisions of section 48(13)(a) the Board shall determine only the matters relating solely to a condition dealing with a special contribution. Preliminary examination and/or EIA, therefore, is not required.

¹ [Development Contribution Scheme 2023-29.pdf](#)

7.0 The Appeal

7.1. Grounds of Appeal

This appeal is by the applicant against a financial contribution condition No. 37 made under Section 48(2)(c) of the 2000 Act.

Rationale for Planning Application

- Planning permission was granted by KCC for the current operation (Planning Ref: 18/453) in December 2018.
- Since that time, the level of demand for recovery capacity generated by ongoing construction and development activity in the surrounding region has been such that the rate of soil waste intake at Halverstown has been at or close to the maximum permitted rate of 300,000 tonnes per annum in 2021 and 2022.
- In view of the existing high level of demand for soil waste recovery capacity at the Halverstown facility, the existing backfilling and restoration scheme has been reviewed in order to optimise soil waste intake and recovery capacity at the existing facility and a revised development scheme prepared to support this project.

Condition 37(a)

- Part (a) of the condition requires the payment of €100,000 towards the cost of upgrading the nearby Thompson Cross Regional Road Junction which is currently being examined by the KCC Project Team.
- Note the inclusion on the public file of a document entitled 'KCC Junction Improvement Programme – Phase 1B Thompson Cross – Feasibility and Options Report' dated 8th May 2024. The introduction to the report is quoted and reads as follows

'Kildare County Council (KCC) have appointment Clandillon Civil Consulting to progress the development of five junction improvement schemes in Co. Kildare. This report is interested in considering the feasibility and options associated with improvements to Thompson Cross. Thompson Cross is located on the R448 west of Kilcullen where the R448 forms a junction with

R418. The L6080 also forms a junction with the R448 a short distance north such that the junction arrangement is that of a right-left staggered junction.'

- Six options have been developed for the scheme. A breakdown of cost estimates for each of the six options is provided and these estimates range from €914,000 to €1,823,111.
- There is no evidence that any progress has been made with the Thompson Cross project since the publication of the feasibility report in May 2024. The project is still very much in the early stages of consideration by Kildare County Council. Given that no contract award has been made it is entirely unreasonable that the applicant should be required to bear the cost of €100,000 towards the construction of an upgrade scheme with an indeterminate cost that may never actually happen.
- The imposition of this condition is inconsistent with the Kildare County Council DCS 2023-2029 which states that '*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*' consequently, request that the Board deleted Condition 37(a).

Condition 37(b)

- 37(b) of the condition requires the payment of €150,000 towards the future maintenance of approach roads and local road junctions in the area.
- The assessment provides no basis for the calculation of a €150,000 financial contribution. It is entirely unclear as to how the amount has been calculated. The works described relate to 'the future maintenance of roads serving the development'. The permission being sought is temporary in nature (an additional 3 no. years) and it is respectfully submitted that the deterioration in road quality associated with truck movements from the site over that period will not amount to €150,000.
- No specific exceptional costs being incurred by the LA in this instance as the works constitute routine maintenance and consequently Condition 37(b) is inconsistent with the terms of the DCS 2023-2029.

- Condition is also inconsistent with Section 48(12)(b) of the Planning and Development Act (as amended) which sets out a refund mechanism where specified works are either not commenced or not completed within a defined period of time. Given that the works are non-specific in nature there is no way to determine
- Submit that Condition no. 39 which seeks the payment of €89,100 is consistent with the terms of the DCS. It is considered a fair and equitable contribution for the development towards the delivery of public infrastructure and facilities within Kildare County Council.
- Submit that an additional charge for ongoing road maintenance works amounts to double taxation. Ask that the Board delete Condition 37(b).

Conclude

- Condition no. 37 of the grant of permission is inconsistent with the terms of the Kildare County Council Development Contribution Scheme 2023-2029 and request that the Board delete the condition in its entirety.

7.2. Planning Authority Response

- 7.2.1. A response to the first party appeal was received from the planning authority on 20th December 2024. The response can be summarised as follows;
- 7.2.2. KCC Roads report revision A dated 30th October 2024, highlighted the following in relation to the requirement for the roads financial condition 37:

“In the interest of Collision Reduction for the additional 860,000 tonnes of material. The maximum laden weight of a four-axle rigid truck with twin tyres and least detrimental suspension is 32 tonnes. This would lead to a minimum increase of 26,875 additional heavy truck journeys on the roads around this development.”

- 7.2.3. The additional HGV traffic generated by the development would have an impact on the structural integrity of the existing local and regional road pavements and the additional HGV turning movements will have an impact at the existing local and regional road junctions including the Thompson Cross Regional Road Junction.
- 7.2.4. Kildare County Council Transport, Mobility & Open Spaces Department have received an options report from the Consultant in relation to the Thompson Cross

Regional Road Junction Upgrade Project, however further work is required in order to progress this to construction stage. This is a project that Kildare County Council will be aiming to deliver in the near future which will benefit the HGV traffic using this development.

- 7.2.5. The special contribution amounts of €100,000 towards the Thompson Cross Regional Road Junction Upgrade Project is a relatively small percentage of the overall project costs and the €150,000 is a reasonable contribution towards the future roads maintenance costs over the timeline of the proposed development where the loading of additional HGV traffic has an impact on the structural integrity of the existing local and regional road pavements.
- 7.2.6. The Kildare County Council Transport, Mobility & Open Spaces Department have no further comments to make on this appeal and recommends that the roads financial condition 37 remains in place which will help to assist the Kildare Newbridge Municipal District Office in dealing with the ongoing road maintenance issues on the approach roads and local road junctions in the vicinity of the development and will help to deliver the Thompson Cross Regional Road Junction Upgrade Project which will benefit the HGV traffic using this development.
- 7.2.7. The Planning Authority confirms its decision.

7.3. Observations

None.

7.4. Further Responses

None received.

8.0 Development Contributions - Assessment

- 8.1.1. The first party appeal is in relation to the incorrect application of the Kildare County Development Plan Development Contribution Scheme (DCS) 2023-2029.
- 8.1.2. Section 48 (2)(c) of the Planning and Development Act, 2000 clearly sets out the special requirements that justify the imposition of special contribution conditions as follows:

“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”.

8.1.3. Accordingly, three essential requirements or characteristics are necessary to justify attachment of a “special contribution” condition. Under s48(2)(c) of the Act, the payment must be required:

- a) In respect of a development,
- b) Specific exceptional costs must be incurred as a result of or in order to facilitate it and,
- c) Such costs cannot be covered by a Development Contribution Scheme made under Section 48 or 49 of the Act.

8.1.4. Under the first test (a) I am of the opinion that a payment is required in respect of a development and meets this test.

8.1.5. Secondly having regard to the test under (b) I am of the view that costs as a result of the development, including the Thompson Cross Regional Road Junction Upgrade Project and maintenance works to the existing road infrastructure will be incurred that will benefit the proposed development.

8.1.6. I am satisfied that the Roads Report has referred to the relevant upgrade project however, this project has not been costed, and it is not listed as a capital project under the DCS. The DCS does not include details of the capital programme for projects as an appendix as in the 2015-2022 DCS.

8.1.7. The PA have also not provided a rational for the calculation of the proportion of the costs attributed to the subject application in any transparent way.

8.1.8. As such I am of the opinion that this project referred to by the PA is an uncoded project and fails to pass the test under (b).

8.1.9. Thirdly whether such costs are already covered by a Development Contribution Scheme I refer to the Kildare County Council Development Contribution Scheme 2023-2029 (Adopted 19th December 2022).

- 8.1.10. The intention of the special contribution condition included in Condition 37 is to provide funding for the Thompson Cross Regional Road Junction Upgrade Project and for future maintenance of approach roads and local road junctions in the area.
- 8.1.11. In relation to future road maintenance of approach roads and local road junctions in the area, I am of the opinion that the road maintenance works are provided for under the General Contribution scheme and also fails to pass the test under (c). I consider that the future maintenance of approach roads and local road junctions in the area should, therefore, not be included for as a special contribution and it fails to meet the essential requirements or characteristics to justify attachment of a 'special contribution' condition.

9.0 AA Screening

- 9.1. Under the provisions of section (13) (a) the Board shall determine only matters relating solely to a condition dealing with a special contribution. As such, the requirements S177U of the Planning and Development Act 2000, as amended, do not apply.

10.0 Recommendation

I conclude that the development contribution scheme has not been applied correctly by the planning authority.

I recommend that condition 37 be REMOVED.

11.0 Reasons and Considerations

Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that condition number 37 relates to an uncoded project, no details have been provided for a specific coded Thompson Cross Regional Road Junction Upgrade Project scheme design, and fails to meet the 'specific exceptional costs test' and furthermore, the intention of the special contribution to provide funding for the future maintenance of approach roads and local road junctions in the area is already provided for under the Kildare County Council's General Development

Contribution Scheme 2023-2029, therefore directs the said Council to remove condition number 37 and the reason therefore.

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.

Susan McHugh
Senior Planning Inspector

31st March 2025

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-321387-24		
Proposed Development Summary	Increase in the intake of materials to the existing licensed soil recovery facility. EIAR and NIS received with application.		
Development Address	Halverstown Townland, Kilcullen, 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	X Soley relates to a condition dealing with a special contribution. 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)?			
Yes			Proceed to Q3.
No			
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			

No			
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
No			

5. Has Schedule 7A information been submitted?		
No		
Yes		Screening Determination required

Inspector: _____ Date: _____