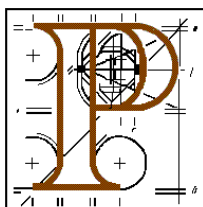


An Bord Pleanála Ref.: RP19.RP2123

An Bord Pleanála



Inspector's Report

Development: Point of detail regarding condition 5 of SU19.0095

Site Address: Cartron, Durrow, Tullamore, Co. Offaly

Planning Application

Planning Authority: Offaly County Council

Planning Authority Reg. Ref.: N/A

Applicants: Hinch Plant Hire

Planning Appeal

Appellant: First Party

Type of Appeal: First Party V Condition 5 (Point of Detail) of
Substitute Consent Permission
SU19.SU0095

Observers: None

Inspector: **Joanna Kelly**

1.0 SITE DESCRIPTION

The appeal site is a quarry located in Cartron, Durrow near Tullamore, County Offaly.

2.0 POINT OF DETAIL

This appeal refers to a point of detail pertaining to Condition 5 of SU19.SU0095 where substitute consent was granted for quarry.

Condition 5 refers to a Section 48 contribution which was to be paid in respect of the development permitted.

“The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in 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 made under section 48 of the Planning and Development Act, 2000 as amended. The contribution shall be paid three months from the date of this order or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provision of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer, or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.”

3.0 TECHNICAL REPORTS

As the appeal relates to a point of detail in respect of a previous appeal there are no technical reports prepared in respect of this appeal. However there is documentation on file from the Planning Authority in relation to the calculation of the development contribution which is referred to hereunder.

4.0 APPEAL GROUNDS

The First Party has referred condition 5 pertaining to a Section 48 contribution on a point of detail to the Board for determination. The submission is summarised as follows:

- Offaly County Council issued a letter in relation to compliance with the order of An Bord Pleanála to which Hinch Plant Hire Ltd. responded with a reasonable offer bearing in mind the

nature of 'development' of some parts of the site covered by the substitute consent decision.

- This was rejected by the Council resulting in this referral for determination.
- There are substantial resources remaining within the substitute consent area, where a significant section of the ground had merely been stripped back to gravel for the purposes of stockpiling and access, uses which normally be applied for under Class 13 development. The Council refuse to discount this area, on the basis that its charges are immaterial of depth of extraction, including no extraction.
- The application area could have been separated according to development class under a section 34 application but the Section 177 legislation does not provide for such separation leading to what appears opportunistic but inappropriate application of the development levy access all areas of this very small site.
- It is intended to apply under Section 34 to extract and process the remaining aggregates within the substitute consent area. If such application is successful, it appears open to the planning authority to levy the same level of charges again on some of the same ground, if the planning authority's logic with regard to depth is applied.

5.0 RESPONSES

5.1 The Planning Authority has responded to the First Party appeal as follows:

- The first development contribution scheme in Offaly only took effect after March 2004. On the basis of taking a reasonable approach to this issue it is considered that development contributions should only apply to post 2004 development.
- The scale of the quarry in 2005 was 3.18 hectares. The area of the quarry recorded in 2011 was 5.31 acres and the applicant submitted an application under section 261(a) for substitute consent for a quarry area of 6.46ha and it would appear from studying the submitted drawings that this was for areas that has been quarried (this included areas which have been restored) but did not include any ancillary open space areas.
- Development contributions should therefore be calculated on the basis of an area of 3.28hectares.

6.0 PLANNING HISTORY

History pertaining to the appeal site:

An Bord Pleanála Ref. QV19.QV0175 (P.A. Ref. EUQY041)

A review of the decision by Offaly County Council under the section 261A process was sought by the applicant. The Board decided to confirm the determinations under section 261A(2)(a)(i) and section 261A(3)(a).

7.0 CONTRIBUTION SCHEME

Copies of the adopted Development Contribution Schemes for Offaly County Council are enclosed as Appendices.

8.0 ASSESSMENT

8.1 Context for point of detail referral

By way of background to this appeal which relates to a point of detail in respect of a section 48 development contribution, a notice was previously issued under the provisions of section 261A of the Planning and Development Acts, as amended, following a review by An Bord Pleanála, on 25th October 2013 instructing the owner/operator of the quarry to apply for substitute consent for the works undertaken on the site and that the application for substitute consent be accompanied by a remedial Environmental Impact Statement. An application for substitute consent accompanied with such documents was lodged by the applicant with An Bord Pleanála on the 2nd May 2014 following the granting by the Board of an extension of the period for the making of the application. An Bord Pleanála granted substitute consent subject to conditions on 29th June 2015.

8.2 Provisions of Condition 5

Condition 5 of this permission requires the payment of a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority. The condition provides that

“The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in 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 made under section 48 of the Planning and Development Act, 2000 as amended. The contribution shall be paid three months from the date of this order or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provision of the Scheme at

the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer, or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.”

The first party appeal submission contends that the terms of the Development Contribution Scheme has not been properly applied in that contributions have been sought in respect of areas where resources have not yet been extracted from. It is also submitted that the applicant intends to lodge a subsequent application to extract from areas already included in the substitute consent area, thus the applicant may be double charged if contributions were to be applied in such a permission.

8.3 Provisions of Planning and Development Act, as amended

Section 48 (11) of the Planning and Development Act, as amended, provides “.....*where an appeal is brought to the Board in respect of a refusal to grant permission under this Part, and where the Board decides to grant permission, it shall, where appropriate, apply as a condition to the permission the provisions of the contribution scheme for the time being in force in the area of the proposed development.*” In this regard, the substitute consent application was granted by An Board Pleanála on 29th June 2015 and as such it is the adopted Offaly County Council, Development Contribution Scheme, 2014-2020 that is the relevant scheme in this instance.

8.4 Calculation of contribution

8.4.1 I note that the Senior Inspector who dealt with the substitute consent file set out that “*for the Board to be consistent it will be required to apply a development contribution in this case for extraction that has previously occurred. However, it is apparent that determining a figure based upon the totality of extraction, for example, cannot reasonably result as it appears that such information is not available.*” I generally concur with this statement however will present the facts of the case as they appear to me based on the documentation/details presented on file and in previous history files and in the context of the relevant legislation for the imposition of such a contribution.

8.4.2 The Council’s calculation of the section 48 contribution as notified to the developer was as follows:

€1,526 per 0.1 hectare x 4.78ha which gives a total of €72,942.80.

The developer indicated to the planning authority that the payment of €24,873.80 was a reasonable offer based on the area of extraction of 1.63 hectares at €1,526 per 0.1 hectare.

Subsequent to this appeal the planning authority has since revised the site area upon which the applicant should pay levies to 3.28 hectares giving rise to a figure of €50,052.80. No explanation as to how the figure of the latter area was arrived at is given.

- 8.4.3 The purpose of the substitute consent legislation was to allow for the regularisation of quarries, which would have required EIA and/or AA but which were not undertaken. Substitute consent permissions, therefore, regularises activities on a site up to the date of when such permission are granted. Therefore, in my opinion, it is very difficult to determine the exact area of land that was being worked and won for materials during period to which the substitute consent permission applies.
- 8.4.4 As stated, the 2014 Development Contribution Scheme is the relevant adopted scheme for the purpose of calculating the contribution as it was in place at the time of the grant of the substitute consent application. As the Board has determined that a section 48 contribution was applicable, the onus is now on the applicant to comply with the financial contribution, which he appears to be seeking to do. Therefore, what needs to be determined is the area of the quarry to which the contribution is applicable. The development contribution scheme sets out that the level of contribution applies in respect of “land use for the winning and working of materials based on site area”. No distinction is made to areas that have or have not been won and therefore the matter of intensification is irrelevant, which would appear to be the argument being presented by the developer.
- 8.4.5 It is considered reasonable that the site area to which contributions apply is the area to which the substitute consent application referred to, in this instance 6.46 hectares. However, it appears that within this area there were previously extracted areas that were undergoing restoration intimating that development was pre 2004 and as such can be reasonably excluded for the purposes of calculating the contribution. An examination of documentation submitted in respect of the substitute consent file indicates that there was an already extracted area of 1.71ha which should be exempt from levies. Therefore, there remains 4.75ha of potential site area that could/have been extracted.
- 8.4.6 I note that the overall site declared by the applicant under section 261 (A) (6) (a), was 5.6ha. The application form indicates that the stated workable area was 0.6ha of the overall site. However supporting documentation dated 5th September 2012 indicates that 3.9 ha., was the operational size.

8.4.7 In general, I consider that it would be impossible to determine exactly the extent of areas that were subject to extraction from 2004 onwards to the date when the substitute consent application was determined. Such areas will invariably be in dispute between the parties as the reality is that less materials may have been extracted despite the extent of overall area that may have been declared. On balance, the site area that the planning authority now indicate, i.e. 3.28ha would appear to be reasonable compromise on the basis that the operational size of the quarry as declared in documentation submitted by the applicant in 2012 was 3.9ha.

8.4.8 I note that the applicant indicates concerns about double charging should a subsequent application be made on the lands in question for further extraction. Whilst I do not wish to pre-empt the making of any application or comment on the application of a Section 48 condition in such a case, I make reference to the current Departmental guidance which specifically sets out that double-charging should not occur.

9.0 Conclusion

It is considered that the Planning Authority has incorrectly applied Offaly County Council's adopted Development Contribution Scheme in that the contribution rate sought should apply to the site area of 3.28ha.

10.0 Recommendation

It is recommended that the Board indicate to the Planning Authority that they have incorrectly applied the terms and conditions of the development contributions scheme in this instance.

The amount to be paid shall be €50,052.80 (fifty thousand and fifty two euros and eighty cent). Timing of payment to be within three months of this order or in such phased payments as the planning authority may facilitate.

REASONS AND CONSIDERATIONS

The principle of payment of a section 48 contribution has been established by virtue of the planning permission under Substitute Consent Permission SU.19.SU0095. Having regard to

(a) the plans and particulars forming the basis for the permission and in particular the site area of 6.46 hectares indicated in the Substitute

consent application for which permission was granted under SU.19.SU0095;

- (b) the extracted areas within the appeal site that could be reasonably be excluded as they were undergoing or had undergone restoration and which are calculated to be in the order of 1.71 hectares;
- (c) the plans and particulars submitted in respect of section 261 (A) (6) (a) application and in particular the declaration that the quarry had an operational size of 3.9 ha.; and
- (d) the general arrangements regarding payment of development contributions and implementation of the Offaly Development Contribution Scheme 2014 which was in force at the time of granting permission SU.19.SU0095;

the Board considered that the terms of the Scheme has not been properly applied.

However, the subsequent revision by the planning authority of the area to which contributions are deemed to be applicable to 3.28 hectares (operational quarry area) is considered reasonable in light of all the information before the Board and as such is the area to which the Section 48 scheme should therefore apply.

Joanna Kelly
Inspectorate
10th August 2016