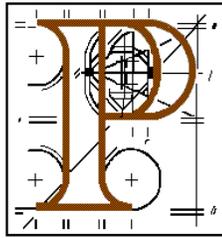


An Bord Pleanála



Inspector's Report

Question: Point of detail regarding financial contribution for a Substitute Consent Approval under PL 26.SU0025 for a Quarry at Ballynamona, Kilmuckridge, Co. Wexford.

Referrer: Wexford County Council

Owner/Occupier: Roadstone Wood Ltd.

Inspector: Kevin Moore

1.0 SITE DESCRIPTION

The existing quarry is a sand and gravel pit located in the townland of Ballynamona, approximately 3.5km south of the village of Kilmuckridge in County Wexford.

2.0 POINT OF DETAIL

The point of detail the subject of this referral to the Board relates to Condition 5 of SU26.SU0025 where substitute consent was granted for the quarry.

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

“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 was 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 within six months of the date of this order or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition 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.

Reason: *It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to this grant of substitute consent.”*

3.0 THE REFERRER'S SUBMISSION

The planning authority states:

“Wexford County Council hereby refers the matter of the proper application of the relevant Development Contribution Scheme further to condition 5 attached to the above Substitute Consent decision.” (i.e. Ref. 26.SU0025)

In support of this referral of the proper application of the Contribution Scheme, the planning authority includes:

- A Planner's assessment of development contributions due under the Council's 2013 Contribution Scheme,
- A letter to the developer outlining the financial contribution due under the Scheme,
- A letter from agents for the developer contending that no contribution is applicable,
- A letter to the developer's agent outlining the Council's intention to refer the matter to the Board,
- A copy of the Substitute Consent decision, and
- A copy of the Wexford County Development Contribution Scheme 2013.

The Council estimates that the amount of contribution due is €1,403,500.

4.0 THE DEVELOPER'S SUBMISSION

The developer submits that the appropriate application of the Council's Development Contribution Scheme yields a demonstrably different result. Reference is made to the Board's decision under Ref. PL 26.245359, alluding to the conclusion by the Board that it was satisfied that the Development Contribution Scheme 2013 does not provide for retrospective payments beyond one year. It is, thus, concluded by the developer that, based on this and as no extraction had occurred at the quarry in the 12-month period prior to the grant of substitute consent, no development contribution is due for payment.

5.0 PLANNING AUTHORITY'S RESPONSE TO DEVELOPER'S SUBMISSION

- 5.1 The planning authority submitted that it believes it has applied the Development Contribution Scheme appropriately. It also asks that the Board considers the determination of the matter in a manner consistent with its decision under ABP Ref. RP.2118.

6.0 ASSESSMENT

- 6.1 I note for the Board my recommendation when considering the Substitute Consent application under ABP Ref. PL 26.SU0025. In my recommendation to grant substitute consent, I recommended the attachment of a condition relating to the developer making a development contribution. Condition 3 of that recommendation stated:

"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. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions 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 the Board to determine the proper application of the terms of the Scheme.

Reason: *It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission."*

- 6.2 I note, however, that this condition did not form part of the Board's decision and rather Condition 5 of the Substitute Consent replaced it and it reads:

“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 was 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 within six months of the date of this order or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition 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.

Reason: *It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to this grant of substitute consent.”*

- 6.3 The Board will note that the former permits the matter, in default of an agreement between the planning authority and the developer on details of the application of the terms of the Development Contribution Scheme, to be referred to the Board to determine the proper application of the terms of the Scheme. It will, however, be further noted that the latter condition does not allow for this. Rather, Condition 5 of the Substitute Consent permits only the agreement on the application of any indexation required by the condition to be referred to the Board to determine.
- 6.4 As the point of detail referred to the Board relates to the matter of the proper application of the relevant Development Contribution Scheme, i.e. solely on the assessment of the development contribution that is due and separate from any issue arising from the matter of indexation that has been applied, it is apparent that the Board is in no position to consider the wider issue of the disagreement between the planning authority and the developer on details of the application of the terms of the Development Contribution Scheme.

6.5 It is clear from Condition 5 what is permissible to refer to the Board in default of an agreement, i.e. the application of any indexation. The Board expressly excluded consideration by it of the matter of the proper application of the relevant Development Contribution Scheme.

7.0 RECOMMENDATION

I recommend that the Board returns the application on the point of detail to the planning authority because there is no provision under Condition 5 of Substitute Consent 26.SU0025 that allows for the referral of such a matter to the Board in this instance.

Kevin Moore

Senior Planning Inspector

September, 2016.