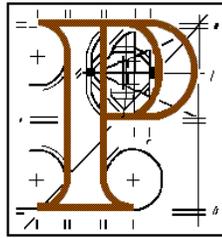


# An Bord Pleanála



## 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**

- 1.1 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**

- 2.1 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.
- 2.2 Condition 5 refers to a Section 48 contribution which was to be paid in respect of the development permitted. This condition was revised following a section 146A amendment and it now 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 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 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. 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.*

**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.”*

2.3 Wexford County Council has determined that a financial contribution of €1,403,500 is required to be made, based upon the extraction undertaken that was applicable to the Substitute Consent land area. Roadstone Wood Ltd. submits that no extraction has occurred in the 12 month period prior to the grant of Substitute Consent and that Wexford County Council’s Development Contribution Scheme does not provide for retrospective payments beyond one year.

### **3.0 THE REFERRER’S SUBMISSION**

3.1 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.

3.2 The Council estimates that the amount of contribution due is €1,403,500. It is submitted that this is based upon the extraction undertaken for which the Substitute Consent effectively grants planning permission to retain. It is further submitted that a point of detail referral decision on another quarry in County Wexford, Ref. RP2118, has confirmed that this approach is appropriate and that it is also appropriate to use the 2013 Development Contribution Scheme in the calculation of the required amount due.

3.3 The Council's estimation is as follows:

Total area of extraction relating to Substitute Consent = 20.05 ha approx., i.e. 200,500m<sup>2</sup>

Average depth of extraction = 20m.

$200,500 \times 20 = 4,010,000 \text{ m}^3$

2013 Development Contribution Scheme requires a contribution of €0.35 per cubic metre (€0.30 Roads & €0.05 Community)

Contribution Due –  $4,010,000\text{m}^3 \times €0.35 = €1,403,500$

#### **4.0 THE DEVELOPER'S SUBMISSION**

4.1 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. The Council considers that the determination should be consistent with the determination by the Board under ABP Ref. RP.2118.

## 6.0 FURTHER SUBMISSIONS

6.1 Following a judicial review to dismiss the referral made to the Board in relation to a financial contribution required to be made by Roadstone Limited to the planning authority under the terms of Condition 5 of ABP Ref. 26.SU0025 and to the making of a section 146A amendment amending Decision Order 26.SU.0025, the parties were invited to make any further general submissions/observations. Submissions were received as follows:

- Wexford County Council reiterated the points made in its original referral to the Board.
- Roadstone Wood Ltd. submitted as follows:
  - The Council's 2013 Development Contribution Scheme was referenced, whereby it states for the *Extractive Industry (Quarries) Development charges will be due on the 1<sup>st</sup> April each year based on the previous years' activity.*
  - From quarry records, no extraction occurred at the site from the relevant area in the 12 month period, 9<sup>th</sup> December 2014 to 9<sup>th</sup> December 2015, prior to the grant of substitute consent.
  - As the Scheme does not provide for retrospective payments beyond one year, no development contribution is due for payment.

- The Board is again asked to rely on a previous decision under ABP Ref. PL 26.245359.

6.2 These responses were cross-circulated and Roadstone Wood Ltd. made a further response which included the following:

- Nothing contained in the Council's correspondence addresses the point directly in issue, nor does it take away from Roadstone's stated position.
- The relevance of ABP Ref. RP.2118 is not accepted, as it only addresses which Development Contribution Scheme ought to apply rather than how it ought to be interpreted and applied.
- No element of that case contradicts or undermines the position adopted by the Board in its recent decision under ABP Ref. PL 26.245359 at Drumgold, Enniscorthy, County Wexford. The latter case addresses the rationale for the manner of interpreting and applying the Development Contribution Scheme. (Extracts from the Inspector's Report and the Board's Decision are provided in support).
- In the circumstances where the Scheme relates to a year where no quarrying takes place, no payments are due for that period.
- It is concluded that, as the Development Contribution Scheme does not provide for retrospective Payments beyond one year, no development contribution is due for payment because no extraction occurred in the 12 month period prior to the grant of substitute consent.

## 7.0 ASSESSMENT

7.1 I note that the issue before the Board is associated with the Wexford County Council Development Contribution Scheme of 2013. Under that Scheme, the following applied to Quarries:

**“Extractive Industry (Quarries)**

*Development charges will be due on the 1st of April each year based on the previous years’ activity. Hardstanding areas and processing areas will be charged appropriately. No charge will apply to infill/landfill.*

<i>Extractive Industry (Quarries)</i>	<i>€</i>
<i>Water</i>	<i>0.00</i>
<i>Waste Water and Drainage</i>	<i>0.00</i>
<i>Roads</i>	<i>30c (€0.30) per cubic metre per annum</i>
<i>Recreation &amp; Community</i>	<i>5c (€0.05) per cubic metre per annum</i>
<b><i>Total</i></b>	<b><i>35c (€0.35) per cubic metre per annum”</i></b>

7.2 The current Wexford County Council Development Contribution Scheme is dated 2018. Under this Scheme, the following applies to Quarries:

**“Extractive Industry (Quarries)**

*Development charges will be due on the 1st of April each year based on the previous 12 months’ activity. Hardstanding areas and processing areas will be charged appropriately. No charge will apply to infill/landfill.*

*Planning contributions for applications for retention of quarries will be payable within 2 months of the date of the final grant of permission. Planning contributions for planning applications for a proposed quarry, or proposed extended quarry, will be calculated based on total abstraction. Phased payments based on annual abstraction levels may be considered.*

<b><i>Extractive Industry (Quarries)</i></b>	<i>Per Cubic Metre - €</i>
<i>Roads</i>	<i>0.30</i>
<i>Recreation &amp; Community</i>	<i>0.30</i>
<b><i>Total</i></b>	<b><i>€0.60 per Cubic Metre</i></b>

- 7.3 It is noted that, while there are some additional provisions and an increase in the total development charges for quarries under the 2018 Scheme, such charges remain to be due on the 1<sup>st</sup> April each year based on the previous years' activity.
- 7.4 Having regard to the wording contained in both Schemes, it appears that, rather than a single development contribution being paid to the planning authority following the grant of planning permission based upon what is intended to be extracted, or was extracted (in the case of a retention permission application), a quarry operator would be required to pay a contribution annually based upon the previous year's extraction. This is clearly the determinant for all calculations relating to all types of planning applications for quarries, whether for permission or retention.
- 7.5 It is the submission of the quarry owner/operator that it did not undertake any quarry activity for the 12 months prior to the Board making its decision on the Substitute Consent application. The planning authority is not disputing this submission. I have no information to determine that the quarry owner/operator was extracting quarry materials at this time or any reason to refute the owner/occupier's submission. It would, therefore, appear that the owner/occupier of the quarry is not required to pay any development contribution to the planning authority as there was no previous excavation undertaken for the 12 month period prior to the Board's decision to grant the Substitute Consent application.
- 7.6 Further to the above which sets out my conclusions on this point of detail, I wish to draw the attention of the Board to its decision under ABP Ref. 26. RP.2118 relating to a development contribution for a quarry development at Courtown, County Wexford. In its decision, the Board determined that a development contribution, under Wexford County Council's Development Contribution Scheme

2013, was required to be paid for quarry extraction relating to a development granted substitute consent. I note that the dispute in that instance focused on the Development Contribution Scheme used for the purposes of calculating the amount due. It remains clear, however, that the 2013 Development Contribution Scheme made by Wexford County Council requires development charges for quarries to be based on the previous 12 months activity and there is no information to suggest that there was any quarrying activity at the Kilmuckridge quarry in the 12 month period prior to the Board making its decision on the Substitute Consent application.

- 7.7 In addition to the above, I note the decision of the Board under Appeal Ref. PL 26.245359, referred to by the owner/occupier of the quarry. This appeal related to the attachment of two conditions requiring development contributions for quarrying at Drumgold, Enniscorthy, County Wexford. This application related to the retention of a quarry. In the reasons and considerations given with this decision, it was stated by the Board:

*“Having regard to the terms of the Wexford County Council Development Contribution Scheme 2013, which provides in the case of extractive industry for an annual payment on the 1<sup>st</sup> of April of each year, based on the level of extractive activity of the previous year, the Board is satisfied that the Scheme does not provide for retrospective payments beyond one year.”*

It is my submission that this acknowledges the manner in which a development contribution should be calculated under Wexford County Council’s Development Contribution Scheme 2013, i.e. that this is “based on the level of extractive activity of the previous year.” As there was no extractive activity in the year before the Board’s decision on the Substitute Consent application, no payment of a development charge is required.

- 7.8 Finally, it is my submission that the same outcome would result if the current 2018 Wexford County Council Development Contribution was to apply to the application now before the Board, i.e. where no extractive activity in the year before the Board’s decision on the Substitute Consent application had occurred.

## 8.0 RECOMMENDATION

I recommend as follows:

**WHEREAS** by order dated the 9<sup>th</sup> day of December, 2015 and by an amendment made to this order dated the 13<sup>th</sup> day of July, 2017, An Bord Pleanála, under substitute consent reference number 26.SU.0025, granted substitute consent for a quarry at Ballynamona, Kilmuckridge, County Wexford:

**AND WHEREAS** condition number 5 attached to the said substitute consent required the developer to 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 was to be paid within six months of the date of the Board's order or in such phased payments as the planning authority may have facilitated and was to be subject to any applicable indexation provisions of the Scheme at the time of payment, and the condition required that details of the application of the terms of the Scheme were to be agreed between the planning authority and the developer or, in default of agreement, the matter was to be determined by An Bord Pleanála:

**AND WHEREAS** the developer and the planning authority failed to agree on the said details of the application of the terms of the Scheme in compliance with the terms of the said condition and the matter was referred by Wexford County Council to An Bord Pleanála on the 9<sup>th</sup> day of October, 2017 for determination:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, and

based on the Reasons and Considerations set out below, hereby determines that no development contribution is required to be paid.

### **REASONS AND CONSIDERATIONS**

The Board considered that the determination of the financial contribution in this case should be related to the date of granting of substitute consent and that the terms of the Wexford County Council Development Contribution Scheme 2013 should apply. Accordingly, the Board accepts that the terms of the Scheme require development charges to be due on the 1<sup>st</sup> of April each year based on the previous year's activity and that no quarrying activity occurred in the 12 month period prior to the Board's decision on the Substitute Consent application.

### **MATTERS CONSIDERED**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

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Kevin Moore

Senior Planning Inspector

April, 2018.