



An  
Bord  
Pleanála

Board Direction  
ABP-312940-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 23/05/2023.

The Board decided, as set out in the following Order.

**WHEREAS** by Order dated the 21<sup>st</sup> day of November, 2008, An Bord Pleanála, under appeal reference number PL 01.228507, granted subject to conditions a permission to Liam Tedford care of CAD Architectural Design of 1A Southcourt, Wexford Business Park, Carlow for housing development comprising of 198 dwelling units consisting of 178 number three-bedroom semi-detached two-storey houses, 18 number two-storey three-bedroom terraced townhouses, a two-storey building comprising of a crèche on the ground floor with two number two-bedroom apartments over, site entrance, foul water pumping station and all associated site works and services at Tullow Road, Carlow (as revised by further public notices received by the planning authority on the 16<sup>th</sup> day of June, 2007 and the 30<sup>th</sup> day of January, 2008):

**AND WHEREAS** condition number 12 attached to the said permission 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. The contribution was to 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, and the condition required that details of the application of the terms of the Scheme were to be agreed between the developer and the planning authority 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 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 the developer to An Bord Pleanála on the 3<sup>rd</sup> day of April, 2020 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 -

**(a) Is there a provision for the payment of a special contribution for water?**

The condition required the payment to the planning authority of a financial contribution in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000 and did not include any requirements for the payment of a special contribution for water within the meaning of Section 48(2)(c) of the Act.

**(b) Is there a provision for the payment of a special contribution for wastewater?**

The condition required the payment to the planning authority of a financial contribution in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000 and did not include any requirements for the payment of a special contribution for wastewater within the meaning of Section 48(2)(c) of the Act.

**(c) Is there provision for the payment of a special contribution towards flood works?**

The condition required the payment to the planning authority of a financial contribution in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000 and did not include any requirements for the payment of a special contribution for flood works within the meaning of Section 48(2)(c) of the Act.

**(d) Is there a provision for the payment of a land use levy?**

Under the applicable Development Contribution Scheme (2) a per acre Land Use contribution is applicable, in addition to the contributions under Development Contribution Scheme (1). Both Scheme (1) and Scheme (2) are applicable to the site. No additional special levies under Scheme (2), in addition to the per acre contribution, are applicable.

**(e) Is indexation outside the provisions of section 48 of the Planning and Development Act 2000, as amended?**

When considering matters referred to it for determination under section 34(5) of the Planning and Development Act 2000, as amended, the Board is constrained to consider only the condition the subject of disagreement between the developer and the planning authority in relation to the proposed development. Where a planning authority makes a development contribution scheme under section 48 of the Act the Board has no function in assessing the reasonableness or otherwise of the provisions of that scheme. In the present case the adopted scheme states that it shall be indexed in accordance with the House Building Cost Index from a base year of 1st May 2008. The Board has no function in determining if this provision is in accordance with section 48 of the Act.

## Reasons and Considerations

The Board granted permission for 175 units at Tullow Road, Carlow, County Carlow on the 21<sup>st</sup> day of November 2008. The applicable development contribution scheme at that time was the Carlow County Council Development Contribution Scheme 2003 and the Board's order referred solely to a requirement to make a contribution under that scheme. Having regard to the matters referred to the Board for determination under section 34(5) of the Planning and Development Act 2000, as amended, the Board determines the questions as set out above.

Board Member: Patricia Calleary Date: 23/05/2023  
Patricia Calleary