

Planning and Development Acts 2000 to 2021

Planning Authority: Donegal County Council

Planning Register Reference Number: 20/51194

Appeal by Railway Road Trading Limited care of John Spain Associates of 39 Fitzwilliam Place, Dublin in relation to the inclusion of special contribution condition number 27 by Donegal County Council in its decision made on the 22nd day of July, 2021.

Proposed Development: Demolition of all existing buildings on site and construction of retail development on site of approximately 2.53 hectares. The development with a total gross floor area (gfa) of 6,184 square metres will comprise an anchor supermarket, including off licence use, with a gfa of 2,787 square metres (net sales area of circa 1,763 square metres), eight number retail units (for class 1, shop use) with a cumulative gfa of 3,282 square metres and one number café/restaurant unit with a gfa of 115 square metres the development will reach a maximum height of circa 8.8 metres. The development incorporates one number free standing totem sign and associated signage zones for each unit. The development will provide 201 number car parking spaces and 33 number cycle parking spaces. A new vehicular access is proposed to railway road, including associated road improvements and associated internal access roads. The development includes a service yard, ESB substation, plant for each unit at roof level,

landscaped areas, pedestrian facilities, lighting, boundary treatments and all other associated site development and infrastructural works; all at Milltown, Donegal Town, County Donegal. The site consists of the former Timoney's Picture Framing/Moulding Factories and adjacent lands to the north adjoining Railway Road, The site is principally bound to the north by Railway Road, open lands to the east, a laneway, open lands and the River Eske to the south, the Magee Factory to the south-west, an existing dwelling and its attendant grounds to the west, and Donegal Co-op Livestock Mart to the north-west.

Decision

The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended by section 30 of the Planning and Development Act, 2010, based on the reasons and considerations under, directs the said Council, under section 48 (13) of the 2000 Act, to AMEND condition number 27 so that it shall be as follows for the reason stated.

27. The developer shall pay the sum of €18,145 (eighteen thousand one hundred and forty five euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, in respect of public infrastructure works to be carried out along Railway Road. This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of 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 considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

Reasons and Considerations

The Board considered that a financial contribution under the provisions of Section 48(2)(c) of the Planning and Development Act, 2000 is warranted and justified in this instance as the works in question seek to improve connectivity between the subject site and the town centre site and to generally improve the public realm on the streets linking the two sites.

However, the Board decided to revise the amount downwards on the basis that:-

- (a) the applicant is being requested to contribute towards works to be carried out on the Lough Eske Road which is located to the north of the subject site and as such would not improve the connectivity of the site with the town centre area. Donegal County Council's response to the grounds of appeal clearly states that the rationale for the imposition of the special development charge is based on the requirement and objective to improve connectivity between the site area and the town centre. As the proposed works to be undertaken on the Lough Eske Road would not serve this objective, the Board considered that any financial contribution in respect of these works to be undertaken should be set aside for the purposes of calculating the contribution amount;
- (b) furthermore, while the Board acknowledged that works to be carried out at Water Street, New Row and Castle Street may well prove beneficial to both the town centre and the subject site in terms of improving connectivity and enhancing links between the site and the town centre, the planning authority has failed to provide the basis for the calculation of the cost of these works and as such any financial contribution under

the provisions of Section 48(2)(c) would fail to meet the requirements set out in Section 7.12 of the Development Management Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in 2007.

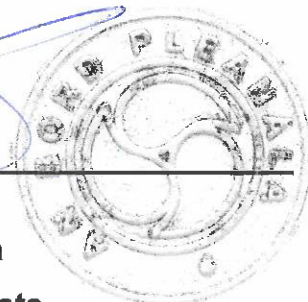
Matters Considered

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.



Paul Hyde

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**



Dated this *24th* day of *MARCH* 2022.