



An
Bord
Pleanála

Inspector's Report PL19.247027

Development	Upgrade to Birr Water Supply Scheme
Location	Seefin, Birr, Co. Offaly
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	16/145
Applicant(s)	Irish Water
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First Party against Financial Contribution
Appellant(s)	Irish Water
Observer(s)	None on File
Date of Site Inspection	Site Not Inspected
Inspector	Sarah Moran

1.0 Site Location and Description

1.1. The subject site is an existing water treatment facility located on the southern side of Birr, Co. Offaly. The site has a stated area of 1 ha and is accessed via Wood Lane to the west. The existing plant comprises a reservoir on the western side of the site, a two storey treatment plant building, and a sludge lagoon and tank structures on the eastern side of the site. There are residential developments to the north and south and open agricultural lands to the east of the site.

2.0 Proposed Development

2.1. The proposed development involves:

- Refurbishment of the existing two storey treatment building and associated concrete tank structures;
- Demolition of the existing open sludge lagoon;
- Construction of a new water treatment plant process building (stated GFA 660 sq.m.), to be located in the footprint of the existing sludge lagoon;
- New tank structures;
- New sludge treatment and storage structures;
- Underground watermains and services connections;
- New ESB substation kiosk;
- Improvements to existing boundaries, landscaping and associated site works.

The development is part of a larger programme currently being undertaken by Irish Water to upgrade the overall Birr Water Supply Scheme.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 Offaly County Council granted permission on 8th July 2016 subject to 9 no. conditions. The conditions imposed are all considered to be standard for this type of development.

3.2. Planning Authority Reports

- 3.2.1. The planning report on file dated 11th July 2016 recommends permission subject to conditions. Attached AA Screening report dated 30th June 2016 concludes that there is no potential for significant effects on European sites with regard to their conservation objectives and AA is not required.
- 3.2.2. Other Technical Reports. Offaly County Council Area Engineer 16th June 2016; Central Fire Station Tullamore 15th June 2016; Offaly County Council Roads Section 22nd June 2016; Offaly County Council Environment & Water Services 23rd June 2016. All no objection subject to requirements / conditions.

3.3. Prescribed Bodies

- 3.3.1 OPW submission dated 26th May 2016. The following points are noted:
- The development should not interfere with drainage works / flood relief works maintained by the OPW such as channels, embankments, walls, etc.
 - OPW request that a 10m wide strip be retained adjacent to the channel to permit access for maintenance.
- 3.3.2 HSE submission dated 8th June 2016. No objection.
- 3.3.3 Irish Water submission dated 1st July 2016, states no objection.

3.4. Third Party Observations

- 3.4.1 There were no third party submissions to the PA.

4.0 Planning History

4.1 **BR1205.** Permission granted to Kiolpa Group for a 12m antennae support structure, containerised equipment, security fence and access track, to form part of the cellular digital communications network.

5.0 Policy Context

5.1. Development Plan

5.1.1 The site is zoned for 'Public, Community and Education' use under the current Birr Town and Environs Development Plan 2010-2016 (extended until 2020).

5.2. Natural Heritage Designations

5.2.1 The AA screening carried out by the PA and the applicant identified the following Natura 2000 sites within a 15 km radius:

Site Code	Site Name
000216	River Shannon Callows SAC
000412	Slieve Bloom Mountains SAC
000566	All Saints Bog and Esker SAC
000641	Ballyduff / Clonfinane Bog SAC
000647	Kilcarren-Firville Bog SAC
000919	Ridge Road, SW of Rapemills SAC
001683	Liskeenan Fen SAC
002147	Lisduff fen SAC
002353	Redwood Bog SAC
000585	Sharavogue Bog SAC
002236	Island Fen SAC
0004086	River Little Brosna Callows SPA
0004096	Middle Shannon Callows SPA

0004103	All Saints Bog SPA
0004137	Dovegrove Callows SPA
0004160	Slieve Bloom Mountains SPA

6.0 The Appeal

6.1. Grounds of First Party Appeal against Financial Contribution

6.1.1 The appeal relates to condition no 8 of the permission, which required a financial contribution of €9,240.00. The main points made may be summarised as follows:

- Irish Water was established as a government initiative on 1st January 2014. It took over the water and maintenance programmes of the 34 (now 31) County and City Councils.
- Irish Water was established as a public water utility (Water Sector Reform Implementation Strategy, DoECLG, 12th October 2012) to improve the efficiency and effectiveness of water services delivery, provide access to new funding sources and improve strategic planning and accountability. The government decided in April 2012 that Irish Water should be established as an independent state owned company within the Bord Gáis Group.
- The financial contribution condition is seeking to levy one arm of the state, Irish Water, which has a role in providing public infrastructure in the form of water services, to enable another arm of the state, Offaly County Council, to provide public infrastructure other than water services.
- The development contribution was determined for the stated total floor area of 660 sq.m. at a general rate of €14 per sq.m. (level of contribution for Residential & Industrial / Commercial development) for the entire floor area of the water treatment plant building. This equates to €9,240.
- It is submitted that the Development Contribution Scheme should only apply to the administrative buildings. The area within the new water treatment plant to be used for administration is stated as 150 sq.m., a floor plan indicating same is

provided. The remaining area comprises water treatment facilities, chemical storage and plant rooms.

- The development contribution in respect of the administrative floor area at the €14 rate would therefore be €2,100.00.

6.2. Planning Authority Response

6.2.1 The following points are noted:

- The proposed development involves treatment facilities that are ancillary to the water treatment plant designed to upgrade the Birr water supply. Irish Water, as a commercial semi-state company, will be charging the public for this upgraded system. Consequently, the development contributions should be applied to the full floor area. The Board is requested to uphold the levy as charged.

7.0 Assessment

7.1 The sole issue under review in this appeal is the issue of a financial contribution under section 48 of the Planning and Development Act 2000 (as amended). Section 48(10) of the Act provides that an applicant can only appeal a condition requiring a development contribution in accordance with a Development Contribution Scheme where the applicant considers that the Scheme has not been properly applied. Therefore, the Board's sole remit is not to adjudicate on the merits of the Scheme but to consider whether it has been properly applied. Section 48(10)(c) provides:

Notwithstanding section 34(11), where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of a planning authority is brought by any other person under section 37, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal, provided that the person who takes the appeal in accordance with paragraph (b) furnishes to the planning authority security for payment of the full amount of the contribution as specified in the condition.

In addition, section 48(13)(a) provides:

Notwithstanding sections 37 and 139, where an appeal received by the Board after the commencement of this section relates solely to a condition dealing with a special contribution, and no appeal is brought by any other person under section 37 of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance, but shall determine only the matters under appeal.

- 7.2 Condition no. 8 of the relevant permission requires a section 48 development contribution of €9,240, in accordance with the Offaly County Council Development Contribution Scheme 2014-2020. Table 1 of the Scheme sets out charges for 'Residential & Industrial / Commercial Development'. A charge of €14.00 per sq.m. applies for commercial / industrial development. The PA has applied this rate to the entire stated floor area of the new plant building, i.e. 660 sq.m., resulting in a total charge of €9,240.00. There is no charge for the refurbished area of the existing plant building, or for the footprint of new tanks or other structures on the overall site.
- 7.3 Section 48(3)(c) of the Act provides that a Contribution Scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme. Section 2.5 of the relevant Scheme sets out exemptions and reductions. Full or partial exemptions are allowed for specific circumstances, e.g. development by voluntary organisations, social housing, schools, broadband infrastructure, renewable energy development. However, there is no provision for development by Irish Water or under any other circumstances pertaining to this case.
- 7.4 Section 48(10)(b) of the Act provides that a development contribution condition may be appealed to the Board where the applicant considers that the terms of the Scheme have not been properly applied. Case law has established that the remit of the Board's function in an appeal under section 48(10) is extremely limited. The Board has no entitlement to consider or review the merits of the Scheme under which the contribution is required. Its remit is confined solely to the question of whether or not the terms of the relevant Scheme have been properly applied and there is no scope for consideration of matters outside the specific terms of the

Scheme. Ref. the High Court case 'Cork City Council and An Bord Pleanála and O'Flynn Construction Limited'.

7.5 A similar issue arose in a recent case before the Board, ref, PL.06S.246765, which related to an application by Irish Water to South Dublin County Council to replace an existing open treated water reservoir at Ballyboden Water Works. The development involved a substantial increase in the production capacity of the plant and included a new disinfection plant, various tanks, pipes and other site works. Condition no. 16 of the permission required a financial contribution of €375,000 in respect of public infrastructure and facilities benefitting development within the area of the planning authority, in accordance with the terms of the relevant section 48 Development Contribution Scheme. The permission was the subject of a third party appeal and the applicant appealed condition no. 16 and condition no. 3 relating to an agreement with Irish Fisheries. The grounds of appeal for condition no. 16 were similar to those raised in relation to the subject case. In that case, the terms of the relevant Development Contribution Scheme provided for an exemption for certain categories of development including "an infrastructural facility". The Board decided that the development came within the scope of that exemption and directed the PA to remove condition no. 16 and the reason therefor.

7.6 In this case, the relevant Development Contribution Scheme does not include any exemption or reduction which would apply to the proposed development. Section 2.1 of the Scheme lists the "public infrastructure and facilities" provided by the PA under the scheme, including roads, recreational and community facilities, telecommunications infrastructure and the provision of school sites. It does not include any water services or related matters, as these are now provided by Irish Water. The terms of the Scheme do not make any specific provision for any exemption for Irish Water. As discussed above, the Board does not have any scope to consider matters outside the terms of the Scheme. The applicant / appellant has not quoted any other relevant legislation in support of its case. I accept the point that

Irish Water is a commercial, semi-state body that charges the public for its services. It is considered reasonable that Irish Water should make a contribution in respect of public infrastructure and facilities benefiting the development in the area of the PA. The PA has applied the relevant charge for 'Residential & Industrial / Commercial Development' to the new water treatment plant building only, i.e. 660sq.m., and not to any other new structures at the site, which is a moderate interpretation of the terms of the Scheme. I am therefore satisfied that the development contributions have been calculated correctly in accordance with the terms of the Scheme and that the original figure of €9,240.00 is correct.

8.0 Recommendation

8.1 Having regard to the above assessment, it is considered that the Development Contribution Scheme has been correctly applied in this instance. I therefore recommend that the Board uphold the decision of the Offaly County Council in respect of condition no. 8, for the reasons and considerations set out below.

9.0 Reasons and Considerations

The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered, based on the reasons and considerations set out below, that the terms of the Offaly County Council Development Contribution Scheme 2014-2020 for the area had been properly applied in respect of condition number 8. The charge of €9,240.00 has been applied according to the contributions set out in Table 1 of the Scheme for industrial / commercial development. The charge has been applied to the stated area of the new water treatment plant of 660 sq.m., which is considered reasonable. Section 2.5 of the Scheme, relating to exemptions and reductions, does not provide for any reduction in contribution charges in relation to development by Irish Water. Under section 48(10)(b) of the Planning and Development Act 2000, the statutory function of the Board is limited to consideration of whether the terms of the development contribution scheme have or

have not been properly applied in respect of any condition laid down by the planning authority.

Sarah Moran
Senior Planning Inspector

24th October 2016