



An
Bord
Pleanála

Inspector's Report ABP-304842-19

Development	The construction of 83 no. dwellings and creche on a site area of 2.6ha
Location	Site South of Station Road, Dunboyne, Co. Meath
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	RA180561
Applicant(s)	Merville Homes Ltd.
Type of Application	Permission
Planning Authority Decision	Grant permission (30 no. conditions)
Type of Appeal	First Party
Appellant(s)	Merville Homes Ltd.
Inspector	Conor McGrath

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1.0 Site Location and Description

- 1.1. The appeal site comprises an area of 2.6ha, located south of Station Road on the eastern side of the settlement of Dunboyne, Co. Meath. The site comprises part of two larger fields under grazing, separated by a hedgerow running north-south. Loughsallagh Stream runs west-east to the south of the site, which extends to intersect this stream at two points.
- 1.2. The entrance to Dunboyne Railway Station car park from Station road is located almost directly northwest of the appeal site. Station Road is provided with a footpath on the opposite side to the site and the 50kph zone commences along the frontage of the site. There are a number of detached houses on the northern side of Station Road, while lands extending north from the road are otherwise undeveloped.

2.0 Proposed Development

- 2.1. The development for which the planning authority decided to grant permission comprises 99 no. residential units – made up of 51 no. houses and 48 no. apartments and creche, equating to a density of 38 units / ha gross or 44 units / ha net. The application originally comprised 83 no. residential units which was increased following a request for further information by the planning authority.
- 2.2. A section of a new distributor road (Dunboyne Eastern Distributor Road), running south for approx. 90m from Station Road is to be provided as part of the development. This will facilitate vehicular access to the site. The development will connect to mains water and sewerage services. Surface water will discharge to the stream to the south, following on-site attenuation.

3.0 Planning Authority Decision

3.1. Decision

Meath County Council decided to grant permission for the proposed development subject to 30 no. conditions, including the following:

No. 24: The Developer shall pay the sum of €990,000 as a special contribution under Section 48(2)(c) toward the cost of the provision of the Dunboyne Distributor Road.

3.2. Planning Authority Reports

3.2.1. **Planning Reports:** Stage 2 AA not required. The development is acceptable in principle on these lands. Densities on the site should be increased given the proximity of the site to the railway. Following receipt of further information, a grant of permission was recommended.

3.2.2. Other Technical Reports

- Housing: Recommend the provision of on-site units to comply with Part V.
- Water Services: Following receipt of further information, the development was noted to broadly meet the surface water requirements of the section. Irish Water has no objection subject to conditions. Conditions recommended.
- Transportation: The application proposes the first 90m of the proposed Dunboyne Eastern Distributor Road (Southern Section). This road will be development driven, with the northern section completed after 2020. Conditions recommended, following submission of further information, including the payment of a special levy of €990,000 toward the cost of Dunboyne Distributor Road.
- Public Lighting (Transportation): No public lighting plan submitted. Conditions recommended.
- Environment (Flooding): The development is situated in Flood Zone C, at low risk of flooding. No objection subject to conditions
- Environment: Adequate refuse storage facilities should be provided. A construction environmental monitoring plan and a waste management plan should be submitted. Other construction management conditions identified.

3.2.3. Prescribed Bodies

NTA: Higher density units should be located closest to public transport. Pedestrian and cycle access to Station Road should be provided. The internal layout should

provide for connectivity to adjoining lands. Revisions to design of the junction with Station Road are required. Cycle facilities should be revised in accordance with relevant guidelines.

Inland Fisheries Ireland: Salmonid water constraints apply in this area.

Construction management measures were identified.

Irish Water: Wayleave agreement for the foul sewer connection and watermain diversion agreement required.

4.0 Planning History

There does not appear to be any recent relevant planning history on this site.

ABP-304517-19: Pre-application consultation has taken place in respect of a residential scheme on lands on the northern side of Station Road.

5.0 Policy and Context

5.1. Development Plan

5.1.1. Meath County Development Plan 2013-2019

Dunboyne is identified as a *Large Growth Town II*, in the second tier of the Settlement Strategy, described as “Smaller in scale than Growth Town I but strong active growth towns, economically vibrant with high quality transport links to larger towns/city”.

The subject lands are zoned as Phase 1 residential lands, A2: To provide for new residential communities with ancillary community facilities, neighbourhood facilities and employment uses as considered appropriate for the status of the centre in the Settlement Hierarchy.

The indicative line of a Major Distributor Road is shown running north south through the lands (see appended zoning map extract).

The County Plan identifies Additional Policies & Objectives for Local Area Plans. In respect of the Dunboyne / Clonee / Pace LAP, these include:

Strategic Policy SP 1: To operate an Order of Priority for the release of residential lands in compliance with the requirements of CS OBJ 6 of the County Development Plan as follows:

- i) The lands identified with an A2 'New Residential' land use zoning objective corresponds with the requirements of Table 2.4 Housing Allocation & Zoned Land Requirements in Volume I of this County Development Plan and are available for residential development within the life of this Development Plan.
- ii) The lands identified with an A2 'New Residential' land use zoning objective but qualified as 'Residential Phase II (Post 2019)' are not available for residential development within the life of this Development Plan.

5.1.2. **Dunboyne / Clonee / Pace LAP 2009-2015**

This remains the relevant LAP for the area. It was amended in 2015 to ensure consistency with the Meath County Development Plan 2013 – 2019.

The plan identifies the subject site as Phase 1 A2 residential lands.

The LAP notes that these lands were part of the (non-statutory) Integrated Action Area Plan for Land East of the Railway Line, Dunboyne 2006. It notes that revisions to IAAP the would be required, to include provision for the extension of the Eastern Distributor Road through the newly zoned lands to the Rooske Road.

In terms of the Land Use and Transport Strategy, section 3.4 notes that the development of the IAAP and additional lands will be subject to the provision of the associated infrastructure, including the Eastern Distributor Road set out in the IAAP.

Section 5.3 Road and Vehicular Transportation, identifies the following policies:

- MOV POL 8: To facilitate the development of the Dunboyne Eastern Distributor Road in conjunction with the development of the A2 (New Residential) zoned lands to the east and south of the railway line in Dunboyne, to include

arrangements for the delivery of a rail overpass at the south and north these lands.

5.1.3. **Meath County Development Contribution Scheme 2016–2021 (amended Oct 2018)**

The appeal site is identified as being located within the area of the S.49 Navan to Dublin Railway Line – Phase 1 – Clonsilla to Dunboyne (Pace), supplementary development contribution scheme.

Appendix A identifies the range of Class 2 Roads and Public Transportation Infrastructure projects which may be funded from the scheme. This does not include, or otherwise refer to, the Dunboyne Distributor Road.

5.2. **National Policy**

Development Management, Guidelines for Planning Authorities 2007

Para 7.12 notes that a condition requiring a special contribution must be amenable to implementation under the terms of section 48(12); therefore it is essential that the basis for the calculation of the contribution should be explained in the planning decision.

This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. Circumstances which might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it. Where the benefit deriving from the particular infrastructure or facility is more widespread (e.g. extends to other lands in the vicinity) consideration should be given to adopting a revised development contribution scheme or, as provided for in the Planning Act, adopting a separate development contribution scheme for the relevant geographical area.

5.3. Natural Heritage Designations

There are no sites designated for nature conservation purposes in the vicinity of the appeal site. The closest sites is the Rye Water Valley / Carton SAC (001398), approx. 5.5km southwest of the site.

6.0 The Appeal

6.1. Grounds of Appeal

The first party make the following points in their appeal against condition no. 24 of the planning authority decision to grant permission:

- A contribution under Section 48(2)(c) must satisfy the following criteria:
 - a) it must be payable in respect a particular development,
 - b) specific exceptional costs are incurred as a result of or in order to facilitate that development, and
 - c) these costs are not covered by a scheme made under this section.
- The proposed development includes construction of part of this distributor road to serve the development at the developer's expense.
- This should be regarded as a sufficient contribution to the cost of the road and the contribution sought is excessive.
- The road to be constructed by the first party will benefit zoned lands to the south.
- The Meath County Development Contribution Scheme does not list or contain any details relating to Dunboyne Distributor Road.
- The act requires that the basis of calculation be set out, including the scope of works, costs involved and basis of apportionment. The planning authority have not provided any detail in this regard.
- The costs and benefits of the road are more widespread than this site and the planning authority should adopt a revised contribution Scheme rather than applying special contributions. No scheme has been prepared.
- There is no evidence that these costs are exceptional.

- The condition should be omitted or significantly modified along with valid reasons for its imposition.

6.2. Planning Authority Response

In response to the first party appeal, the planning authority state:

- The estimated costs for the Dunboyne Distributor road are based on the costs to complete similar roads / infrastructure in Co. Meath.
- The developer is required to pay a contribution of the total costs, based on the percentage of zoned lands in the environs that will benefit from the road.
- The board should have regard to planning reports on the case and are requested to impose condition no. 24 in accordance with the planning authority decision.

6.3. Further Responses

The first party make the following comments on the planning authority appeal response:

- Although the applicant is constructing part of the road, which will open up lands to the south, the planning authority are seeking a special contribution for the road.
- The required contribution is therefore excessive.
- The planning authority have not provided any further information on the method of calculating the contribution, as required under the Act.
- This should indicate the nature and scope of works, the expenditure involved and basis of apportionment to this development.
- Planning authority reports do not provide this information and the planning authority have failed in their obligations in this regard.
- There is no evidence to support the attachment of this condition.
- The appeal site comprises 2.9% of the residentially zoned lands in Dunboyne.
- The contribution equates to €380,769 per hectare.
- Based on c. 75ha of lands to the north and south to be served by the distributor road, and a road length of approx. 2.8km, the construction cost would equate to approx. €28.5m, or €10.19m per km, which is very expensive.

- This road is amenable to inclusion in a contribution scheme under s.49.

7.0 Assessment

- 7.1. This is a first party appeal against condition no. 24 of the planning authority decision to grant permission, requiring the payment of a special contribution under Section 48(2)(c). No appeal has been brought by any other person against the planning authority decision in this case. In accordance with Section 48(13), this report therefore confines itself to the consideration of the condition under appeal and does not consider the application de novo.
- 7.2. Section 48(2)(c) of the Act provides for the inclusion of a special contribution condition in a grant of permission in respect of a particular development where specific exceptional costs not covered by a Scheme or Supplementary Scheme are incurred by a local authority in respect of public infrastructure and facilities which benefit the proposed development. The relevant criteria for payment of a special contribution are therefore;
- a) it must be payable in respect a particular development,
 - b) specific exceptional costs are incurred as a result of or in order to facilitate that development, and
 - c) these costs are not covered by a scheme made under this section.
- 7.3. As noted in the Development Management Guidelines, compliance with S.48(12) - referring to refund of contributions paid - requires that the basis for the calculation of the contribution should be clearly explained
- 7.3.1. A) The Eastern Dunboyne Distributor Road was identified as a specific policy objective of the 2009 Dunboyne LAP, which noted that development of these lands was subject to its provision. This policy was not amended or removed in the 2013 amendments to the LAP. In this regard, the distributor road was a foreseeable requirement for development in this area. In their response to the appeal, the planning authority indicate that the road will benefit a wider area of zoned lands and

the subject development is required to pay a percentage of the road construction costs based on its proportion of zoned lands benefitting from the road.

Based on the planning authority appeal response I conclude that this special contribution is payable not only in respect of this particular development but rather in respect of all and any development on benefitting zoned lands in this area.

- 7.3.2. B) As noted above, the subject road has been a long-term objective of the development plan / Local Area Plan for this area. In accordance with the planning authority response, the costs are apportioned on the basis of the percentage of lands benefitting from the road. In this regard, I do not consider that the works can be regarded as exceptional costs insofar as they could have been reasonably foreseen and are capable of incorporation within the terms of a development contribution scheme formulated in accordance with this section of the Act.

The basis for calculation of the special contribution payable has not been clearly set out by the planning authority and the appeal response does not provide sufficient clarity in this regard. In particular, the overall length of the road, construction costs identified for apportionment, or the area of benefitting zoned lands taken into consideration have not been identified.

It is not clear that the contribution sought will directly facilitate or benefit the development. The proposed development includes the construction of approx. 90m of the proposed Distributor Road, which is required to facilitate access to the development. It is not apparent that the remainder of the road, and its associated construction costs, are clearly or directly required to facilitate this development or are properly attributable to the development. It is also not clear, based on the planning authority response, whether the cost of constructing this initial section of the distributor road has been accounted for in the calculation of contributions. Any double counting of costs should be avoided in such a scenario.

- 7.3.3. C) The costs involved, although not covered by a scheme made under this section, are nevertheless appropriate for apportionment under such a scheme and, indeed appear to have been formulated and applied by the planning authority as if the road construction costs did fall to be so considered.

Having regard to the foregoing, I conclude that condition no. 24 would not meet the requirements, or come within the scope of, S.48(2)(c) and that this condition should therefore be omitted.

8.0 Recommendation

- 8.1. That the planning authority be directed to omit condition no. 24 of the decision to grant permission.

9.0 Reasons and Considerations

The Board, based on the reasons and considerations hereunder, directs the said Council under section 48 (13) of the Planning and Development Act, 2000 – 2010 to REMOVE condition number 24 and the reason therefor.

It is not considered that the special contribution condition (number 24) would come within the scope of Section 48 (2) (c) of the Planning and Development Act 2000 - 2018, in the absence of any evidence that specific exceptional costs would be incurred by the planning authority in providing public infrastructure and facilities directly as a result of, or in order to facilitate that particular development, and such contribution would, therefore, be inappropriate.

Furthermore, it is considered that appropriate requirements to pay such contributions could properly be included within a revised development contribution scheme or, as provided for in the Act, within a separate development contribution scheme for the relevant geographical area.

Conor McGrath
Planning Inspector
17/09/2019