



An
Bord
Pleanála

Inspector's Report ABP-304917-19

Development	Construction of 98 houses also a 2 storey creche with 20 no. children places and ancillary carparking,
Location	Sevitsland, Betaghstown, Ministown Townlands, Bettystown, Meath.
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	LB181385
Applicant(s)	Bandon Properties Ltd.,
Type of Application	Permission
Planning Authority Decision	Permission
Type of Appeal	First Party against Contributions
Appellant(s)	Bandon Properties Ltd.,
Observer(s)	None
Date of Site Inspection	Not visited
Inspector	Angela Brereton

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	5
3.1. Decision	5
3.2. Planning Authority Reports	5
3.3. Other Technical Reports	10
3.4. Prescribed Bodies	11
3.5. Third Party Observations	11
4.0 Planning History.....	12
5.0 Policy Context.....	13
5.1. National Guidelines	13
5.2. Meath County Development Plan 2013 – 2019.....	14
5.3. East Meath Local Area Plan 2014-2020.....	15
5.4. Development Contributions - Guidelines for Planning Authorities 2013	16
5.5. Development Management Guidelines for Planning Authorities 2007	17
5.6. Natural Heritage Designations	17
6.0 The Appeal	17
6.1. Grounds of Appeal	17
6.2. Planning Authority Response	19
6.3. Applicant Response	20
7.0 Assessment	22
7.1. Regard to Development Contributions	22
7.2. Regard to Condition no. 26	23

7.3. Regard to Conditions 27, 28 and 29..... 27

7.4. Conclusion 30

8.0 Recommendation..... 30

9.0 Reasons and Considerations..... 30

1.0 Site Location and Description

1.1. The subject site is located on the south western edge of Bettystown, Co. Meath. The site is accessed via Narrowways Road. There is existing residential development to the north and west of the site. The site is bounded by a play park and Local Authority housing (Shepherds Lodge) to the NW and housing developments known as Woodside to the NW and 'Ardmore' to the SE. The land to the south of the site is agricultural and is outside the development boundaries of Bettystown.

2.0 Proposed Development

2.1. This is to consist of 98no. housing units comprising the following:

- 44no. two storey 3-bed semi-detached dwellings with optional attic conversion and sunroom space;
- 2no. two storey 3-bed detached dwellings with optional attic conversion and sunroom space;
- 10no. two storey 4-bed semi-detached dwellings with optional attic conversion and sunroom space;
- 2no. two storey 4-bed detached dwellings with optional attic conversion and sunroom space;
- 40no. apartment units and 2no. 1bed apartment units in each block.

Permission is also sought for a 2 storey creche with 20no. children places and ancillary carparking, an ESB Substation for the housing Scheme, drainage works, water connections, provision of an access to the public road from the Narrowways Road, pedestrian links to adjoining lands, landscaping and boundary treatments, and all associated site works all on a site of 2.95ha.

2.2. Documents submitted with the application include the following:

- Design Statement
- Planning Statement
- Schedule of Architectural/ Planning Drawings
- Traffic and Transport Assessment Report

- Flood Risk Assessment Report
- Civil Engineering and Planning Drainage Drawings
- Road Safety Audit
- Outline Construction Environmental Management Plan
- Landscape drawings and boundary details
- Tree Survey and Report
- AA Screening
- Desktop Archaeological Assessment
- Childcare Facility Form
- Part V Proposal
- Letters of consent from Meath County Council and from adjoining landholder.
- Irish Water pre-connection letter
- Public Notices

3.0 Planning Authority Decision

3.1. Decision

On the 19th of June 2019 Meath County Council granted permission for the proposed development subject to 31no. conditions. Broadly, these generally concern design and layout, infrastructural (roads and drainage), archaeology, development contributions, and construction management.

Condition nos. 26, 27,28 and 29 are the subject of this appeal and concern S.48 development contributions.

3.2. Planning Authority Reports

3.2.1. Planner's Report

The Planner had regard to the locational context of the site, planning history and policy, to the inter departmental reports and the submissions made. Their Assessment included the following:

- They had regard to the proposed development and considered that the design and layout represents an improvement on that previously permitted.
- They note the differences in layout between this and the previously approved scheme.
- The net density of the proposed development is 35dph, which is in accordance with Section 5.11 of the Sustainable Residential Development in Urban Areas Guidelines 2009.
- They have regard to the breakdown/mix of unit type and design and layout including amenity space for the apartments and houses.
- They note some issues with the distribution and linkages to public open space.
- They have no concerns regarding the creche, although consider there is a need for revisions to the boundary treatment.
- They have regard to existing road status and committed transport proposals and note the comments and recommendations of the Council's Transportation Department and recommend F.I be sought.
- They note that the proposal does not meet the requirements of the Council's Water Services Section with respect to the orderly collection, treatment and disposal of surface water and that they recommend F.I be sought.
- They also note the F.I sought by Irish Water in respect of water supply and wastewater treatment and disposal and recommend that this be sought.
- They note the PA's Screening for AA and conclude that the proposed development (entire project), by itself or in combination with other plans and developments in the vicinity, would not be likely to have a significant effect on European Sites. In light of this, they consider that a Stage 2 AA (NIS) is not required in this instance.

- They reviewed the Site Specific Flood Risk Assessment submitted and have regard to the Environment Section's comments on Flooding and recommend that these be included as part of the F.I request.
- They have regard to the Archaeological comments submitted and note recommendations including a condition relative to pre-testing.
- They note proposals for Part V and that this can be appropriately conditioned.
- Section 9.0 provides that Development Contributions will be based on the Council's Scheme 2016-2021 (as amended).

Further Information request

These included the following (note 39no. items requested):

- Revisions to design and layout of the scheme in a revised Site Layout Plan.
- Proposed measures concerning traffic and road safety including regard to the problems in the Road Safety Audit.
- Linkages and open space and revisions to boundary treatment.
- Details as to how adjacent lands in the vicinity of the future development access junction with the Future Train Station link road would integrate with the proposed development.
- Also, measures that would preclude the potential for inappropriate traffic routing through the proposed development to access the Train Station in the future.
- Submit a DMURS Statement demonstrating that street design measures have been provided.
- Point no.26 included that a special levy of €1,090,000 to be applied to the development as a contribution towards the costs of providing the Future Train Station Link Road.
- Drainage measures, and details including compliance with SuDS and surface water attenuation.
- To carry out a detailed drainage assessment in the local area.
- Compliance with the Council's and Irish Water drainage recommendations.

Further Information response

Fewer Harrington & Partners Architects, Planners & Project Managers response on behalf of the Applicant's includes the following:

- A response has been provided to each of the issues raised and revised drawings including a Site Layout Plan have been submitted in response to the Council's F.I request.
- Details are given of redesign for some of the units.
- Landscaping drawings incorporating boundary treatment including for the creche have been submitted.
- They refer to the report and drawings prepared by Garland Consultancy in response to the infrastructural (roads and drainage) issues raised.
- They provide information on bicycle storage facilities.
- In response to point no. 26 relative to the special levy they refer to the report prepared by Fehily Timoney & Company attached.

Planner's response

The Planner had regard to the F.I submitted and their response included the following:

Design and Layout

- They refer to details and the revisions submitted and provide an assessment relative to each of the items submitted.
- They consider that the applicant has submitted sufficient detail to ensure that the proposal is on balance acceptable in terms of design and layout standards.
- They note some concerns regarding boundary treatment and open space and consider that it is preferable to condition a comprehensive landscaping and boundary treatment scheme.

Access and Traffic

- They note the infrastructural details submitted in response to the F.I by Garland Consultancy.

- They provide that the Applicant has demonstrated that all the road safety problems (1-10) as identified in the Road Safety Audit of November 2018 have been addressed.
- The Applicant has altered the site layout to set back of the proposed development boundary to allow for further flexibility in terms of alignment and positioning of levels associated with any Future Train Station Link Road.
- The Applicant has submitted a DMURS Statement which appears to outline and confirm conformity with the street design principles of DMURS.
- They make recommendations relative to bicycle storage.
- The Applicant has submitted a site plan drawing which extends a pedestrian footpath to the southern boundary of the proposed development which can in the future provide linkage to the Future Train Station Link Road.
- They recommend the inclusion of a condition regarding the payment of a special levy of €1,090,000 as a contribution towards the costs of providing the Future Train Station Link Road.
- They note the recommendations of the Transportation Department and recommend the inclusion of conditions to reflect these issues.

Services

- They note that Water Services consider that the proposal as per the F.I submitted broadly meets their requirements with respect to the orderly collection, treatment and disposal of surface water. They also note the Council's and Irish Water's recommendations and recommend conditions.
- They note F.I submitted by Garland Consultancy and note that the Environment Section has no objections.

Development Contributions

- They provide a breakdown relative to the application of section 48 Development Contributions.
- They provide that a Cash Bond/deposit should be applied.

- While they note the reply of Fehily Timoney & Company they are satisfied that the application of a special contribution under section 48(2)(c) is warranted and provide details relative to this issue.

Conclusion

- They have regard to planning policy, the residential pattern of development in the area, the suitability of the site on zoned land and conclude that subject to compliance with recommended conditions the proposed development would not seriously injure the visual amenities of the area or the residential amenities of the properties in the vicinity, would not be likely to have significant effects on the environment and would therefore be in accordance with the proper planning and sustainable development of the area.

3.3. Other Technical Reports

Transportation Department

They have regard to the Existing Road Status, Committed Transport Proposals, and consider the Traffic Assessment relative to the proposed development. This includes regard to issues raised in the Stage 1 Road Safety Audit and the need for a DMURS Statement demonstrating that street design measures have been provided to reinforce a self regulating 30km/h speed environment and a defining of street hierarchy. Regard is also had to the need for swept path analysis, pedestrian and cyclist connectivity, adequate parking including for the creche and the need to submit a public lighting scheme. They provide a conclusion and recommendations that F.I be submitted.

Water Services

The development as originally proposed did not meet the requirements of Meath Co.Co. Water Services Section with respect to the orderly collection, treatment and disposal of surface water. They request that F.I be submitted relative to a number of issues.

Broadband Officer

It is recommended that the development comply with conditions relative to the provision of Broadband Infrastructure.

3.4. **Prescribed Bodies**

Irish Water

They recommended F.I on a number of drainage related issues, including a revised water main layout design.

Department of Culture, Heritage and the Gaeltacht

They had regard to the Archaeological Heritage Desktop Report submitted and the proposed mitigation measures outlined. They recommended a condition re: pre-development testing.

3.5. **Third Party Observations**

Submissions received from local residents including a petition from the residents of The View, Woodside have been noted and in the context of the Planner's Report. These include in summary regard to the following:

- Roads, Access and Traffic – Congestion and Road Safety issues.
- Lack of infrastructure in place to serve the development.
- Insufficient parking to serve the creche.
- The train station in Bettystown should be provided as the one in Laytown is over subscribed (parking issues etc).
- Impact on the residential amenities of existing residents – loss of privacy, building height, overlooking etc.
- Out of character with the pattern of development in the area.
- Boundary treatment.
- Concerns about pedestrian linkages within and connections to and from the site.

- The proposed walkway would create unnecessary security issues for their homes and properties.
- Lack of reference to an existing right of way and the access and traffic issues to the commercial agri-business to the south.
- Drainage and Flooding issues

4.0 Planning History

The Planner's Report includes the following Permissions granted subject to conditions by the Council:

- Reg.Ref. SA/60515 – Permission granted to Empire Homes Ltd (20/09/07) for a Residential Scheme on a site of c. 3.9ha located west of the Narrowways Road and south of Woodside Residential Development, in close proximity to the town centre and approx. midway between the town centre and future railway station for: 1) 113no. mixed dwelling units and creche (290 sq.m); 2) Existing right of way to Narrowways Road to be used as a distributor road constructed and open to the public; 3) the construction of c. 0.29 km of 7.5mwide distributor road with 1.8m grass verge and 1.5m footpath to its northern edge and 108m grass verge and 3.0m footpath and cyclepath to the southern edge including the provision of a new 17.5m roundabout to the Narrowways Road with 4 access arms; 4) parking spaces; 5) bin stores; 6) hard and soft landscaping; 7) other associated site works; 8) construction of 290m of foul sewer along Narrowways Road to the junction of Easthams Road to serve the development and surrounding lands.
- Reg.Ref./11131 – Empire Homes Ltd. – Extended until 19/09/17

Extension of Duration of permission of planning SA/60514.

This permission for a 112no. unit residential development was granted under ABP ref. PL17.222820 (Reg.Ref.SA/60514) and expired on the 19th of September 2017 (following EoD under Reg. Ref. SA/111131). This permission was never enacted.

The permitted development incorporated the east-west link road connecting the town centre to the proposed Train Station to the SW of the site. The link road was to provide primary access to the site and whilst the purported right of way access to

Narrowways was proposed for construction and temporary access only but conditioned out by virtue of Condition no. 19 of the Board's permission which stated:

All construction access to the site shall be from the south-eastern corner only and along the line of the proposed new distributor road.

Reason: *In the interest of traffic safety and amenity.*

5.0 Policy Context

5.1. National Guidelines

Project Ireland 2040 – National Planning Framework

This aims to provide a broad ranging guide to development and investment over the coming years and seeks to empower national, regional and spatial planning in economic, environmental and social terms to 2040. In conjunction the National Development Plan seeks to provide a ten-year strategy for public investment.

They seek to deliver a greater proportion of residential development within existing built-up areas of cities, towns and villages to provide urban and rural regeneration.

Section 28 Ministerial Guidelines

The following list of section 28 Ministerial Guidelines includes those considered to be of relevance to the proposed development. Specific policies and objectives are referenced within the assessment where appropriate.

- Regional Planning Guidelines for the Greater Dublin Area 2010-2022
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated Urban Design Manual) 2009
- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (DHPLG, 2018)
- Design Manual for Urban Roads and Streets 2019
- The Planning System and Flood Risk Management 2009 (including the associated Technical Appendices).

5.2. Meath County Development Plan 2013 – 2019

Table 2.1 provides that Bettystown is included in the Small Towns category in the County Meath Urban Settlement Hierarchy. It is within the Bettystown/Laytown/Mornington East greater area. Section 2.3.3 notes that a Local Area Plan for East Meath was adopted by MCC in 2014.

Public Transport

Section 6.8 of Chapter 6 refers:

TRAN POL 8: To work with the NTA and Iarnóid Éireann to continue to improve facilities at existing stations and to seek the provision of a railway station at Bettystown with associated park and ride facilities.

TRAN POL 9: To actively seek to utilise Section 49 of the Planning and Development Acts 2000-2012 to secure contributions from developers towards the capital costs of providing and/or upgrading of strategic public transport infrastructure services or projects in the County.

TRAN OBJ 2: To facilitate and encourage the upgrading of existing railway stations, and protect as required lands required for the upgrading of existing railway lines or stations or the provision of new railway stations throughout the County. Any such proposals for developments in Bettystown and south of Drogheda, will have to ensure that there are no adverse effects on the integrity of SPAs.

Development Contributions

Chapter 11 provides Development Management Guidelines & Standards. This includes: *A Development Contributions Scheme is in place for County Meath. In circumstances where additional specific infrastructure for an area is required, Meath County Council may bring forward a special contribution scheme.*

Chapter 12 provides for Implementation & Monitoring. Section 12.4.3 includes regard to Development Contributions i.e: *Meath County Council may, when granting planning permission, attach conditions requiring the payment of contribution(s) in respect of public infrastructure and facilities, benefiting the development. Details of such contributions must be set out in a Development Contribution Scheme. Meath Local Authorities Development Contributions Scheme 2010-2015 was adopted in 2009 and is available to view on Meath County Council's website.*

5.3. East Meath Local Area Plan 2014-2020

This LAP has been prepared to provide a statutory framework for the future growth and development of the above towns and village in a sustainable and equitable manner and is consistent with the policies and objectives contained in the MCDP 2013-2019, including the Core Strategy. This is concerned with consolidating development in towns and villages. It is based on building strong urban centres while protecting the rural hinterlands. The plan also emphasises the need to protect the built heritage, unique landscape, natural heritage and biodiversity of the county for their intrinsic value and as a resource for the tourist economy of the future. The designation of Bettystown-Laytown-Mornington East as a Small Town and Donacarney-Mornington as a Village is reinforced in the CDP settlement strategy with the towns and villages being targeted for consolidated growth.

Zoning

The site is within the Map 2 area within the LAP development boundaries of Bettystown. It is shown zoned A2 – New Residential.

There is an indicative pedestrian cycleway to the north of the site.

There is a Strategic Road Objective (Indicative only) to the south of the site to link to the future train station.

Community infrastructure

Section 4.5 has regard to Community Infrastructure and Policy CI POL 4 seeks: *To utilise the Council's powers under the Development Contribution Scheme to fund investment in community facilities, which will form a basis for the improvement of existing facilities and the funding of new community facilities.*

Section 4.6 has regard to Recreation and Open Space and Policy ROS POL 8 is as follows: *To seek opportunities to improve the quality and capacity of existing recreation and amenity facilities, through initiatives with both the public and private sector (sports governing bodies, local community partnerships and private development proposals) and where appropriate, the Council will use its powers under Section 48 of the Planning Act (as amended) to require development levies to achieve the enhancement of these facilities and the provision of new facilities.*

Transportation & Movement

Section 4.8 includes the following relevant policies and objectives:

TM OBJ 2: To facilitate the provision of an east-west road linking Bettystown Town Centre to the proposed new rail station to the west. The location of the route is indicative and will be influenced by further environmental surveys.

TM OBJ 6: To facilitate the provision of a link road between Narrowway and the new east west link road (TM OBJ 2). The location of these routes is indicative and will be influenced by further environmental surveys.

TM OBJ 7: To assess the feasibility of eliminating parking from Bettystown Beach.

Public Transport Policies and Objectives include:

TM POL 14: To work with the NTA and IE to continue to improve facilities at existing stations and to seek provision of a railway station at Bettystown with associated park and ride facilities. (Refer to Meath CDP 2013-2019 TRANS POL 8).

TM OBJ 28: To seek the provision of a railway station at Bettystown with associated 'park and ride' facilities. No development which would prejudice the achievement of this objective will be permitted in this area. Proposals for this site will be in accordance with an approved Framework Plan and subject to the necessary physical infrastructure.

5.4. Development Contributions - Guidelines for Planning Authorities 2013

The Minister for the Environment, Community and Local Government has issued these guidelines under section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines in performance of their functions under the Planning Acts.

The primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, without which development could not proceed. Development contributions have enabled much essential public infrastructure to be funded since 2000 in combination with other sources of, mainly exchequer, funding. Discussion is had of the concept of the General Development Scheme, Special Contributions and Supplementary Contributions Schemes.

This also provides that Planning authorities should ensure that the necessary monitoring and control procedures are in place to prevent double charging.

Special Development Contributions may be imposed under section 48(2)(c) of the Planning and Development Act 2000 as amended where specific exceptional costs are not covered by the general contributions scheme.

Section 49 provides for the *Supplementary Development Contributions Scheme* to facilitate a particular public infrastructure service or project which is provided by a local authority or private developer.

These are discussed further in the context of the Assessment below.

5.5. Development Management Guidelines for Planning Authorities 2007

Section 7.12 has regard to development contribution conditions (sections 48 and 49 of the Planning Act). This also provides details relative to appeal of the three categories of conditions for development contributions i.e General as covered by the Section 48 Development Contributions Scheme, Special Contribution as covered by Section 48(2)(c) and Supplementary as covered by Section 49.

5.6. Natural Heritage Designations

The site is c.1.20km SW of the nearest Natura site, the Boyne Coast and Estuary SAC (001957) and c.1.5kms NW of the River Nanny Estuary and Shore SPA (004158) and c.2.6kms to the SW of the Boyne Estuary SPA (004080).

6.0 The Appeal

6.1. Grounds of Appeal

Future Analytics have submitted a First Party Appeal on behalf of the Applicants against Financial Contributions under Section 48 of the Planning and Development Acts 2000-2019.

The Board is invited to omit condition 26 in its entirety and to amend conditions 27,28 and 29 on the following Grounds of Appeal:

- The Meath County Council Development Contributions Scheme 2016-2021 includes the Bettystown Distributor/Link Road as a project that is funded from Development Contributions and therefore the Special Contribution for the link road under Condition 26 of the permission is in effect double charging.
- The application of a Special Contributions in Condition 26 is *ultra vires* as it does not provide for specific exceptional costs incurred by Meath Co. Co. in respect of public infrastructure and facilities which directly benefit the proposed development. The contribution is not expedient for the purposes of or in connection with the development and is not considered a necessary part of the development.
- The planning authority have misapplied the Development Contribution Scheme by over estimation of floor space for the purposes of the pro-rata calculation of costs imposed on development under conditions 27, 28 and 29.
- The application of the Council's development levies would make the implementation of the residential development financially unviable.

They provide a discussion relative to all these issues under the above headings. They have regard to the legislative provisions in the Planning and Development Act 2000-2019, and to planning policies and objectives including the East Meath LAP 2014-2020. Also, to the Development Contributions Guidelines for Planning Authorities, Department of the Environment, Community and Local Government, January 2013, the Development Management Guidelines for Planning Authorities 2007 and the current Meath County Council Development Contributions Scheme. Note is also had of Precedent cases, relative to previous Board decisions concerning S48 conditions.

- Overall it is contended that the Council has overcharged the development by €61,162 by miscalculation of the levy under the Council's Contribution Scheme.
- It is submitted that the Planning Authority have levied development contributions that are excessively high and would not provide any direct benefit to the residential development, to such an extent that it renders the

development unviable, and as such entirely contrary to Ministerial Guidance and Government Policy.

- They invite the Board to find that the Council have misapplied the provisions of the statutory contributions scheme and have effectively double charged the developer by way of Special Levy for infrastructure already captured by the scheme the inclusion of condition no. 26 is unjustifiable and should be omitted.
- The Council has also misapplied the provisions of its Contribution Scheme through miscalculation of nett residential floor area on a pro-rata basis. Overall the Council have overcharged the develop. approx. €1.150m; a financial burden which if allowed to stand would render the scheme unviable and unimplementable.
- The Council's application of Financial Conditions in this decision are contrary to their Development Contributions Scheme 2016-2021 and to all the afore mentioned guidelines and the LAP.
- They seek that the Board omit condition 26 and amend conditions 27, 28 and 29 as reasoned in this submission.

6.2. Planning Authority Response

Meath County Council's response to the First Party Grounds of Appeal against Development Contributions in Condition nos. 26, 27, 28 and 29 includes the following:

- They advise that the estimated costs for the Future Train Station Link Road are based on 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 infrastructure.
- The PA are not aware of any funding in respect of the infrastructure concerned. The proposal will have an impact on existing infrastructure and the developer should be requested to make a contribution to the rehabilitation

costs of the existing road network in the area. Therefore Section 48(2)(c) should be applied.

- The section of road to be upgraded is not covered by the DCS and does not constitute a part of any infrastructure project or service under the current Meath DCS under Section 48 or Supplementary DCS under Section 49 of the Act.
- The calculations in respect of condition nos. 27, 28 and 29 are based on the 'optional' additional floor area for each of the units permitted.
- The Board is requested to uphold the Council's decision to include condition nos. 26, 27, 28 and 29.

6.3. Applicant Response

Future Analytics response on behalf of the Applicants includes regard to the Council's response and notes the following:

Condition no.26

- They have reviewed the submission prepared by the Council and submit that the PA does not present a sufficient evidence base for sustaining their claims in respect of the contribution sought in its decision.
- The Financial Contributions set out in the Council's decision are neither fair nor reasonable and would render the scheme unfeasible if allowed to stand.
- They query that the PA have sought €1.09m from the developer for the reason of it being a 'Specific Exceptional Cost' and yet are unable to present the Board with a single credible figure for its calculation.
- 'The total costs' have not been clarified or justified.
- The recommendation of the Council's Transportation Department to attach a financial contribution was based on fundamentally and factually incorrect analysis.
- It is not supported by policy objectives in the East Meath LAP. This does not state that a Future Link Road is to be delivered in conjunction with the development of residentially zoned lands.

- There is no doubt that the east-west link road is not a specific exceptional cost, which is not covered by the general contribution scheme.
- There is no benefit for the scheme in contributing to a road that has no specific time span relative to when it or the train station will be built.
- The site does not have a direct connection to the indicative link road alignment and is segregated by lands in separate ownership.
- No Special Development Contribution was required for the previously permitted development – SA/605514 refers.
- They consider that the costing is excessive and that there are no plans as to when the road link to the train station will be constructed.
- The long-term requirement for east west link road has been clearly foreseeable, is included under the general contribution scheme and cannot be considered exceptional.
- They refer to the Board's decision in PL17.239908 as a precedent case and consider that this demonstrates the Council's use of a Special contribution was invalid.
- They consider that it is clear under the terms of the Council's adopted scheme Link Roads in Bettystown are considered to fall under General Development Contributions and not Special Contributions.
- The Council has failed to provide the Board with any evidence supporting their case that Condition 26 is not justified and should be omitted in its entirety.

Conditions 27, 28 and 29

- The Council's decision has been misapplied relative to the Development Contribution scheme by reason of applying a Gross Floor Space calculation to 58 house units in the development.
- The Council has conceded that they have applied the level in full to 'optional' (i.e. non-existent) floor space.
- They provide that their planning appeal statement, set out in detail in tabular form, proves that the Council has overcharged the developer by €61,162 by miscalculation of the levy under the Council's Contribution Scheme.

Conclusion

- The Council have not taken the opportunity to respond to the Applicant's appeal in a constructive manner.
- The PA have failed to produce any evidence or rationale to support the level of contributions levied.
- The Council has overcharged the development by €1.150m; a financial burden if allowed to stand would render the scheme unviable and unimplementable.
- They also note the need for the proposed development in the current housing crisis.
- They provide that the Council's application of the Financial Contributions is contrary to planning policies and guidelines.
- They seek the Board to omit condition 26 and amend conditions 27, 28 and 29 as reasoned in their submission.

7.0 Assessment

7.1. Regard to Development Contributions

- 7.1.1. Section 48 of the Planning and Development Act 2000, (as amended) details the methodology and guiding principles by which Development Contributions Schemes should be arrived at. The wording of S.48(10)(b) of the 2000 Act states that *'an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the Planning authority'*. The wording of this section is restrictive in so far as it limits consideration of such appeals to the application of the terms of the adopted development contribution scheme and the powers of the Board to consider other matters.
- 7.1.2. Section 48 (13)(a) includes: *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. Therefore, the application is not being considered 'de novo' and issue in question in this case is solely in regard to the application of the Special Development Contribution and whether it is deemed to be applicable and justifiable in this case.

7.1.3. This appeal is against the development contributions included in the Council's permission (Reg.Ref. LB181385) relative to the subject application. The First Party consider that these have not been properly applied. They seek to omit condition 26 (special development contribution) which they consider unjustifiable and to amend i.e reduce the general contributions requested as per conditions 27, 28 and 29. They consider that the Council's application of Financial Conditions are contrary to the Meath County Council Development Contributions Scheme 2016-2021, the Development Contributions Guidelines for Planning Authorities (2013), the Development Management Guidelines for Planning Authorities (2007) and the East Meath Local Area Plan 2014-2020.

7.1.4. Therefore, this appeal is not being considered 'de novo' and regard is had to these development contribution conditions and to the documentation submitted and the relevant planning legislation, policies and objectives and guidelines in this Assessment below.

7.2. Regard to Condition no. 26

7.2.1. This is included in the context of Section 48(2)(c) of the Planning and Development Act 2000 (as amended), where the wording states that: *A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.*

7.2.2. Regard is also had to Section 48(12) which notes that where payment of a special condition is required in accordance with Section 48(2)(c) the following provisions shall apply: (a) *the condition shall specify the particular works carried out, or proposed to be carried out, by the local authority to which the contribution relates.* Section 48(12)(b) provides in summary, regard to the time periods for the carrying

out the works by the local authority and refers to the possibility of a refund if the works are not carried out.

7.2.3. The Development Contributions Guidelines for Planning Authorities 2013 notes that:

A special development contribution may be imposed under section 48(2)(c) where specific exceptional costs, which are not covered by the general contribution scheme, are incurred by a local authority in the provision of public infrastructure or facilities which benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services. The particular works should be specified in the condition. Only developments that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution.

7.2.4. It is noted that Section 7.1.2 of the Meath County Development Contributions Scheme 2016-2021 includes relative to Residential Development: *Where the Planning Authority deems that additional public infrastructure is required to facilitate the development a Special Development Contribution may apply.*

7.2.5. The Council's Transportation Department notes that the Zoning & Objectives Map (Map no.2 Bettystown) of the East Meath Local Area Plan (LAP) 2014-2020 indicates a strategic roads objective to the south of the proposed development site. This consists of a link distributor road that would connect to the R150 to the proposed Future Train Station. This proposed Future Link Road is to be delivered in conjunction with the development of zoned residential land also identified in the LAP Zonings and Objectives Map. They advise that the applicant should be requested to pay a special levy of €1.09m as a contribution towards the costs of providing the Future Train Station Link Road. The Applicant was made aware of this in item no.26 of the Council's Further Information request i.e: *A special levy of c. €1,090,000 will be applied to the development as a contribution towards the costs of providing the Future Train Station Link Road.*

7.2.6. In response the Applicant's agents refer to the report prepared to Fehily Timoney & Company submitted with their F.I. response, which has been submitted to address this item. They refer to planning policy and objectives (as noted in the Policy Section above) including TRAN POL 9 of the Meath CDP: *To actively seek to utilise Section 49 of the Planning and Development Acts 2000-2011 to secure contributions from*

developers towards the capital costs for providing/upgrading of public transport provision in the county.

- 7.2.7. It is noted that while provision of a railway station at Bettystown is included in the long term public transport strategy for the county, no specific proposals are provided in the plan, however engagement with stakeholders forms part of planning policy in County Meath. Section 4.3 of the Council's Development Contributions Scheme 2016-2021 (as amended) refers to Supplementary Development Contributions under Section 49 of the Planning and Development Act 2000-2019. This includes that projects that may be included in such a scheme include public transport infrastructure. However, it is noted that provision of a link road or any other associated infrastructure requirements for the proposed railway station at Bettystown is not included by the Council in the Supplementary Development Contributions Scheme.
- 7.2.8. Appendix A of the Council's Development Contributions Scheme refers to a Range of Projects which may be funded from Development Contributions for the period 2016-2021. Class 2- Roads and Public Transport Infrastructure includes: 'Bettystown Distributor/Link Roads'. Therefore, the First Party submit that it is clear under the terms of the Council's adopted scheme Link Roads in Bettystown are considered to fall under the General Development Contributions and not Special Contributions. Therefore, applying a Section 48(2)(c) Special Contribution condition in this instance is in duplication of the General Contribution Scheme and does not conform to the Council's own Policy.
- 7.2.9. Regard is had to Planning Policy in the East Meath LAP and it is noted that a number of LAP objectives are linked to the strategic provision of a railway station at Bettystown. These (a) seek provision of two link roads to connect to the train station and (b) consideration for provision of car parking facilities around the train station using access from the link road to eliminate car parking at Bettystown Beach. The LAP indicates that a framework will be prepared, however, no such framework has been adopted. There are no specific plans relative to the provision or timetable of delivery for the link road.
- 7.2.10. The Planning Authority noted that the distributor link road to the proposed future Train Station (an Objective of the CDP) is to be provided by developers of the

adjacent zoned lands. A previous planning permission for the site included the distributor road along the boundary of the site to the Narrowways road but this has been excluded in the current application. They recommended that the applicant should therefore be requested to pay a special levy of €1,090,000 as a contribution towards the costs of providing the distributor road between the Narrowways and the site of the future Train Station.

- 7.2.11. The First Party contend that the application of a Special Contribution under section 48(2)(c) for infrastructure to support the railway station does not conform with planning policy and would contravene TRAN POL 9 of the Meath CDP. They consider that this condition would duplicate the contributions already set out in the adopted Meath County Development Contributions Scheme and they submit that a Special Contributions Condition for a future railway station link road cannot be applied to the proposed development.
- 7.2.12. The Planning Authority provides that they are not aware of any funding (State or otherwise) in respect of the infrastructure concerned. They consider that the proposal will have an impact on the existing infrastructure and that the developer should be requested to make a contribution to the rehabilitation costs of the road network and therefore Section 48 is applied. They also note that the sections of roads to be upgraded are not included in the DCS and in this regard the public infrastructure concerned does not constitute a part of any infrastructure, facility, project or service under the current DCS under section 48 or the Supplementary DCS under section 49 of the Act. While aspirational in the longer term there are no definite plans of when the train station is to be built.
- 7.2.13. Regard is had to the previous permission granted on this site for 113 dwelling units, Reg.Ref. SA/605514 and subsequently PL17.222820 refer. It is noted that a Special Contribution was not then included in the conditions of the Board's permission. Condition no.27 referred to Section 48 of the Planning and Development Act 2000 (as amended). The First Party provide that they have reviewed the recent grants of permission for Bettystown and can find no precedent for applying a Special Contribution on the subject site.
- 7.2.14. They also refer to the Board's decision in Ref. P17.239908 and consider that the finding was that the Council's use of a Special Contribution was invalid as a

precedent. The Inspector's Report noted that Appendix A of the Meath County Development Contributions Scheme specified the 'Range of Products which may be funded from development contributions. This included Class 1 Water Services 'Kells Sewerage' is specified. In this case the Board found that the works were already covered by the Meath County Council General Contributions Scheme. *Section 48(2)(c) financial contribution conditions may be applied only to exceptional costs not covered by such a scheme.* (A copy of this decision is included in the Appendix to this Report).

7.2.15. The Council's response notes that the estimated costs for the Future Train Station Link Road are based on 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 infrastructure. A breakdown of costings or such zoned lands is not included. As noted in the Policy Section above Section 4.8 of the East Meath LAP relates to Transportation & Movement and includes: *Lands will continue to be reserved for the provision of a new railway station at Bettystown with associated park and ride facilities. The Planning Authority acknowledge that to provide a train station at this location is a long term objective and as such LAP will retain this land use zoning objective.* However, it is noted that the LAP does not state that a Future Link Road is to be delivered in conjunction with the development of zoned residential land, nor that it is to be provided by the developers of adjacent zoned lands.

7.2.16. The First Party provide that the residential site does not have a direct connection to the indicative link road and it is segregated by lands in separate ownership. The Applicant's response to the F.I noted that the portion of land that connects to the Future Train Station Link Road through the proposed distributor road, is not within their ownership. It is considered that the payment of this special contribution has not been costed or justified and that Condition 26 should be omitted.

7.3. **Regard to Conditions 27, 28 and 29**

7.3.1. These are all considered under the Meath County Development Contributions Scheme 2016-2021 (Section 48 of the Planning and Development Act 2000 (as amended)). In summary these are as follows:

- Condition no. 27 requires that the developer shall pay a development contribution of €373,590 to the Council for public roads and public infrastructure.
- Condition no. 28 requires that the developer shall pay a development contribution of €270,728 to the Council in the provision and extension of social infrastructure.
- Condition no. 29 requires that the developer shall pay a development contribution of €33,844 to the Council towards expenditure in the provision of surface water drainage infrastructure.

7.3.2. The First Party consider that these have been misapplied and should be reduced as a Gross Floor Space calculation to 58 houses has been applied. They consider that the Council has conceded that they applied the levy in full to 'optional' (i.e. non-existent) floor space. They note that the statutory notices and architectural drawings, included capacity for 'optional attic conversion and sunroom space'. This potential expansion space is not nett floor space for the purposes of development. They provide that an attic is clearly not floor space and that it only becomes floor space if and when it were converted at some point in the future (or potentially never) in compliance with the requirements of the planning regulations. They note that all house types in this scheme are below 100sq.m floor area threshold if 'optional attic conversion and sunroom space' is excluded. They provide that the levies as noted in their appeal statement, set out in detail in tabular form, they contend that the Council has overcharged the developer by €61,162 (Table 2 refers) by miscalculations of the levy under the Council's Contribution Scheme. They provide that the application of Meath County Council's development levies would make the implementation of the residential development financially unviable.

7.3.3. Regard is had to Section 7 of the Meath County Development Contribution Scheme 2016-2021 (as amended). This provides a Schedule of Charges – Meath County Council – effective from 1st of January 2016. Appendix B provides a Breakdown of Development Contributions also effective from 1st of January 2016. The Planner's Report noted that development contributions are based on the Meath County Development Contributions Scheme 2016-2021 (as amended). They note the allocation of contributions (as per the Table above) and that a summary contribution

of €678,162 is applicable based on 98no. units of varying GFA and a 204sq.m GFA commercial building (creche).

Table 2: Calculation of Levy overcharge (as reproduced from First Party Appeal)

Condition	Category	Meath calculation	Revised calculation (house size 100sq.m)	Difference
27	Public roads and public transport	€373,590	€339,350	€34,240
28	Social infrastructure	€270,728	€246,800	€23,928
29	Surface water drainage	€33,844	€30,850	€2,994
Total		€678,162	€617,000	€61,162

7.3.4. The Planning Authority response provides that these conditions are based on the 'optional' additional floor area for each of the units permitted. The plans submitted for the houses indicate an 'optional' floor space for an attic and sunroom. This is also referred to in the description of development as per the Public Notices. Also, these floor areas are shown hatched on the drawings. Therefore, I would consider that the intent to provide this accommodation is there and has been permitted by the Council.

7.3.5. The planning application (section 12) provides that the gross floor area of the 98no. residential units is: 11438.73sqm, 1 no. creche: 204sqm; 1no. substation: 19.27sqm. It is noted that the Council's F.I request (item no. 5) originally requested that unit no. 98 be removed. However, this unit was revised as per the F.I submitted. Permission was granted for 98no. units – Condition no.2 refers.

7.3.6. Regard is also had to Table 5.2 in Section 5 of the Planning Statement submitted with the application, which provides a breakdown by floor area of the 98no. mixed residential units submitted. The Tables provided on each of the drawings (house

types submitted as part of the F.I) showing the varying house types and the breakdown of floor areas appears to generally comply with this schedule. It is noted that a number of these units are in excess of 100sq.m. However, there are ambiguities and no subsequent definitive schedule of floor areas has been submitted in either the F.I submitted or in the First Party Appeal. It is also of note that a distinction between 'nett' and 'gross' floor area' is not made in the Council's Development Contributions Scheme. Therefore, as it is not included in the wording of the scheme the application of such would not be applicable. In this instance relative to Condition nos. 27, 28 and 29 it has not been demonstrated in the documentation submitted that the Council's Development Contributions Scheme has not been properly applied.

7.4. Conclusion

- 7.4.1. Having regard to these issues I would consider that the Council's breakdown of the General Development Contributions should apply as per Condition nos. 27, 28 and 29. However, as discussed above, I would consider that the special contribution condition as per Condition no. 26 should be omitted.

8.0 Recommendation

- 8.1. I recommend that Condition no. 26 be omitted and that Conditions nos. 27, 28 and 29 be retained.

9.0 Reasons and Considerations

The Board considers that the Meath County Development Contributions Scheme 2016-2021 (as amended) is the applicable contribution scheme in this case. The Board concluded that a special contribution in respect of infrastructural works towards the cost of the provision of the Future Train Station Link Road does not fall within the scope of the provisions for special contributions set out in Section 48(2)(c) of the Planning and Development Act 2000 (as amended), being works which do not comprise specific exceptional costs and which could be considered to be provided for in the Development Contribution Scheme adopted by the planning authority. This condition is, therefore deemed invalid.

The Board considered that condition numbers 27,28 and 29 had been properly applied and should be retained.

Angela Brereton
Planning Inspector

21st October 2019