



An
Bord
Pleanála

Inspector's Report ABP-304996-19

Question	Point of detail relating to the application of Financial Contributions on Reg.Ref. 12/5109 as Extended: To construct 22 no dwellings and associated works
Location	Glenmore Wood, Pettitswood, Mullingar, Co Westmeath
Declaration	
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	125109
Applicant for Declaration	Andrews Construction Ltd
Planning Authority Decision	Grant Permission with Conditions
Referral Type	Point of Detail Referral
Referred by	Andrews Construction Ltd
Owner/ Occupier	Andrews Construction Ltd.
Observer(s)	None
Date of Site Inspection	Not required
Inspector	Angela Brereton

1.0 Introduction

- 1.1. This case is a referral under section 34(5) of the Planning and Development Act 2000, as amended. It was received by the Board from The Planning Partnership on behalf of Andrews Construction Ltd and concerns a point of detail relative to the payment of a supplementary development contribution as per Condition 14 which was attached to a grant of planning permission issued by Westmeath County Council (Reg.Ref.12/5109 refers) and An Bord Pleánala (Ref. PL29M.241681 refers).

2.0 Site Location and Description

- 2.1. The site is in the suburban area of Mullingar to the west of junction 15 (Mullingar East) of the N4 and to the south of the R392. It is at Glenmore Wood, Pettiswood, Mullingar, Co. Westmeath. The site has permission for housing and there is an area of open space to the south. The surrounding lands are occupied by housing of recent construction.

3.0 Background

- 3.1. Regard is had to the Background and Planning History which is relevant to this case and to the subject site. Planning application Reg.Ref. 12/5109 was originally granted permission by the Council on the 6th of February 2013 subject to 16 no. conditions. This permission was for 22no. dwellings and all associated site development works. Subsequently a First Party Appeal against Conditions nos. 14 and 15 (development contributions) was submitted to the Board Ref. PL25M.241681 refers.
- 3.2. The Board decided (decision dated the 13th of June 2013) to amend these contribution conditions as follows:

Condition no.14:

The developer shall pay to the planning authority a financial contribution of €100,182 (one hundred thousand, one hundred and eighty-two euro) in respect of the Mullingar Main Drainage Project in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the

planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any 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 the Board to determine.

Reason: *It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.*

Condition no.15:

The developer shall pay to the planning authority a financial contribution of €37,839 (thirty seven thousand, eight hundred and thirty-nine euro) in respect of the Clonmore Link Road Project in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any 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 the Board to determine.

Reason: *It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.*

It is of note that the Board's Reasons and Considerations included the following:

The proposed development is subject to the requirement for financial contributions under the supplementary contribution schemes adopted by the planning authority under section 49 of the Planning and Development Acts 2010 for the Mullingar Main Drainage project and the Clonmore Link Road project irrespective of whether or not a previous permission in relation to the site was granted. It would be reasonable to exclude the existing open space on the site from the area of the development for the

purposes of the said schemes, but not the proposed open space or the space required to properly level the site, the provision of which are integral to the proposed development.

- 3.3. The applicant applied for an Extension of Duration for permission of Reg.Ref. 12/5109 in 2018 where work had not commenced (importantly and significantly) and was granted an extension for 5 years from the 24th of April 2018 to the 12th of June 2023. (Appendix 2 of the Referrer's Case refers).

4.0 Referrer's Case

- 4.1. A Referral has been submitted by the Planning Partnership on behalf of the Applicants Andrews Construction Ltd., relating to the application of a financial contribution condition on File Reg.Ref. 12/5109 as extended. They make this referral under Section 34(5) of the Planning and Development Act 2000 (as amended).
- 4.2. They provide that Condition no. 14 of this permission as extended is the condition under dispute i.e:

Prior to the commencement of the development or as otherwise agreed with the Planning Authority, the developer shall pay the sum of €115,900.43 to the Planning Authority as a contribution, in accordance with the Council's Supplementary Development Contribution Scheme pursuant to Section 49 of the Planning & Development Act 2000, in respect of public infrastructure (Mullingar Main Drainage) that will benefit the development to which planning permission relates when carried out.

The contribution payable will be based on the contribution rate applicable at the time of payment and not the rate in existence when permission is granted. The amount of the development contribution will be updated annually on the 1st of January in accordance with changes in the Wholesale Price Index (Building and Construction), (Capital Goods).

Reason: It is considered reasonable that the development shall contribute toward the expenditure incurred by Westmeath County Council in respect of the provision of public infrastructure that will benefit the development herein permitted in accordance with the terms of Supplementary Development Contributions Scheme – Mullingar

Main Drainage in accordance with Section 49 of the Planning and Development Act 2000.

- 4.3. The applicant / referrer made a 'Prior to Commencement – Compliance Submission' on the 25th of May 2018. In this submission they provide that they made representation to the Planning Authority as to the applicability or otherwise of the *Mullingar Main Drainage Supplementary Scheme* as referred to under Condition no.14 and as stated and contained in Appendix 3 of this Referral. They refer in particular to Section 2.1.1 (relevant to Condition no. 14) of their submission.
- 4.4. They provide that the Council did not address the issues they raised relevant to Condition no. 14. As there is no formal agreement from the planning authority in this instance and the Referrer is unable to close house sales with prospective purchasing solicitors in the absence of correspondence to conform compliance with conditions of permission and particularly with reference to the completed status of the *Mullingar Main Drainage Scheme* and its associated contributions scheme.
- 4.5. Their submission includes the following:
- At the time of compliance 25th May 2018 and at the time of payment of all other outstanding contributions the said Scheme was not in force and could not appropriately be applied by the Council.
 - They submit that they have followed due process in relation to compliance with planning conditions but that a clear direction for resolution of this issue has not been forthcoming from the Planning Authority. For this reason they seek a referral to the Board to adjudicate appropriately on this matter and in a timely manner to allow the proper and appropriate supply of housing as in compliance with permission granted.
 - They further submit that if the same application was made on this site today, that no contribution would be levied or applicable in association with the *Mullingar Main Drainage Project*.
 - The planning condition clearly states that: *The contribution will be based on the contribution rate applicable at the time of payment and not the rate in existence when permission is granted.*

- They submit that as the project has been completed and the associated development contribution scheme is no longer in place then it follows that the rate applicable at the time of payment is €0.00. They do not consider it reasonable for the Local Authority to insist on collecting a contribution for a project that has been completed and is no longer applicable.

4.6. They ask the Board to review the issues presented in this Referral and provide a reasoned assessment and definitive resolution in light of the circumstances prevailing, the longevity and delays associated with this issue and give priority in consideration of the delivery of much needed housing supply.

5.0 Planning Authority Response

5.1. This can be summarised as follows:

- Condition no. 14 (An Bord Pleanála Ref. PL25M.241681) has not been complied with.
- It is the Planning Authority's position that the supplementary levies associated with the *Mullingar Main Drainage Scheme* fall due to be paid having regard to Department of the Environment, Community & Local Government Circular Letter PS 21-2013 (they attach a copy). They provide that their position for the necessity to discharge this levy has been made clear to the developer on a number of occasions.

5.2. Documentation submitted includes regard to a Memorandum from the Council dated 11th of April 2019 which states the reduced level of payment i.e €75,136.22 applicable relative to Condition no. 14. A letter from the Council to Andrews Construction Ltd, dated 5th of October 2018, acknowledges receipt of payment relevant to Condition nos. 2 and 15. This notes that no payment has been received in relation to condition 14 (Mullingar Main Drainage). The Council does not accept that no monies are due under this condition and provide that the levy has been reduced to the current applicable rate for permissions where it applies.

5.3. A letter from the Council dated 14th of May 2019, notes: *that a sum of €75,067.21 remains outstanding and should now be paid without further delay.* They provided that no compliance letters will issue until this has been paid. This is reiterated in a

further letter from the Council dated the 10th of July 2019 which provides that Condition no. 14 has not been complied with.

6.0 Policy Context

6.1. Westmeath County Development Plan 2014-2020

Drainage

Section 9.7.3 refers to Wastewater Capital Schemes

The Midlands Regional Planning Guidelines 2010-2022 list the following as priority wastewater scheme investments:

Mullingar Sewerage Scheme

Westmeath Sludge Management Scheme

The Mullingar Main Drainage Scheme has been completed. The above schemes and others across the county are required to address pollution issues and to meet statutory environmental or Public Health requirements and the requirements of the Shannon and Eastern River Basin Management Plans.

Development Contributions

Section 14.12.1 refers to implementation of the Council's General Development Contribution Scheme made under Section 48 of the Planning and Development Acts 2000-2010 as amended.

Section 14.12.2 refers to *Supplementary Development Contributions Schemes*.

The Planning Authority will wherever appropriate, require by condition, payment of a contribution in respect of any public infrastructure service or project, in accordance with a Supplementary Development Contribution Scheme made under Section 49 (2) of the Planning and Development Acts 2000- 2010 as amended.

(a.) Specified in a scheme made by the Planning Authority.

(b.) Provided or carried out, as may be appropriate, by a Planning Authority or pursuant to an agreement entered into by a Local Authority, any other person.

(c.) That will benefit the development to which the permission relates when carried out.

Section 14.12.3 refers to *Special Contributions* under Section 48 (2)(c) of the Planning and Development Acts 2000-2010 as amended.

6.2. Mullingar Local Area Plan 2014-2020

Development Contributions

Section 1.11 refers to Monitoring, Review & Implementation. This includes:

In order to support the implementation of the Local Area Plan, the Council will apply Section 48 and 49 of the Planning and Development Acts 2000 as amended of the Development Contribution Scheme to enable funding for public infrastructure benefiting development in the area of the plan.

Section 9.26 refers to Implementation of Planning Permission

Section 9.26.1 refers to the S48 Development Contributions Scheme.

Section 9.26.2 to Section 49 Supplementary Development Contributions Schemes (note wording as per Section 14.12.2 of the Westmeath CDP 2014-2020 above).

Section 9.26.3 to Special Contributions under Section 48(2)(c) of the Planning and Development Acts 2000 (as amended).

6.3. Westmeath Development Contributions Scheme 2013-2010

This notes that the Planning & Development Act 2000 (as amended) provides for three types of development contributions that may be attached as conditions to a planning permission under the Act. These are general development contributions, special development contributions and supplementary development contributions. It provides that General and Supplementary contributions must be based on a Scheme adopted by the Elected Members for their functional area.

Section 6.0 refers to the Level of Contributions and notes that following the creation of Irish Water and the issue of Circular PS21/2013, planning permissions granted after 1st of January 2014 have not contained charges in respect of water and waste water infrastructure. This Section includes that taking various factors relative to the

decline in development and the economy into account that the contributions proposed in Table 1, which represent a 25% reduction on current charges, are considered appropriate.

Section 8.0 provides for Payment of Contributions: *The Contributions under the Scheme shall be payable prior to the commencement of development or as otherwise agreed by the Council.*

Section 10 refers to Appeals to An Bord Pleanála and notes that: *an appeal may be brought where an applicant for permission considers that the terms of the adopted contribution scheme have not been properly applied in respect of any condition laid down by the Planning Authority.*

Section 13 refers to Supplementary Development Contributions Scheme.

Appendix 1 is an indicative List of projects that may be considered for funding under the Development Contribution Scheme. This notes that this list is not exhaustive and may be subject to change.

6.4. Supplementary Development Contributions Scheme for Mullingar Main Drainage Scheme – Planning and Development Acts 2000-2012 (adopted June 2013)

This is additional to the general scheme and provides for specific contributions for the Mullingar Main Drainage Scheme.

There was a requirement for a major investment in drainage facilities for Mullingar Town to provide for an upgrade (increase in capacity) of the treatment plant and an upgrade and extension of the sewer network. This work has now been completed but the Council is still required to fund a contribution of approx. 34% of the overall cost, amounting to some €17m in accordance with Departmental Water Pricing Policy.

This Scheme applies to Mullingar as defined by land zoned at the time a decision is made on a planning application and is payable in respect of all development that connects to the public sewerage system.

Section 2.3 provides that the basis for determining the contributions to be paid in respect of the *Mullingar Main Drainage Scheme* is calculated having regard to the required cost recovery to Westmeath County Council.

Section 2.9 refers to the Duration of the Scheme. This includes:

While the Planning & Development Acts 2000-2006 does not specify the lifetime of a Supplementary Development Contribution Scheme the Department of Environment and Local Government recommends that it should be adopted for a specific period. In that regard it has been agreed by the Council Members that the scheme be adopted for a maximum period of up to 31st December 2020.

The Scheme may be reviewed in the interim having regard to circumstances prevailing at the time and a new scheme may be adopted in advance of the 31st December 2020.

6.5. 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.

Section 49 of the Act provides for the drawing up of a supplementary development contribution scheme to facilitate a particular public infrastructure service or project which is provided by a local authority or a private developer on behalf of and pursuant to an agreement with a local authority (e.g. through Public Private Partnership), and which will directly benefit the development on which the development contribution is imposed.

Chapter 2 provides Key Messages for Supporting Economic Development. This includes: *Development contributions are not cash-cows: there is an important balance to be struck between the funding of public infrastructure and the need to encourage economic activity and promote sustainable development patterns. It is essential that development contribution schemes do not impede job creation or facilitate unsustainable development patterns.*

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

Section 34(5) provides: *The conditions under subsection (1) may provide that points of detail relating to a grant of permission may be agreed between the planning authority and F262 [the person carrying out the development; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination].*

The legal basis for a supplementary development contribution scheme is set out in Section 49 of the Planning and Development Act 2000, as amended. This allows a planning authority to attach a condition to a planning permission for development that will benefit from a specified public infrastructure service or project, requiring payment of a financial contribution in respect of it in line with a supplementary development contribution scheme made by the authority. A public infrastructure service or project is defined in Section 49 (7) to include the “*provision of new surface water sewers and ancillary infrastructure.*”

The public infrastructure project or service can be provided by another person, pursuant to an agreement with the Local Authority.

The supplementary development contribution scheme must specify the particular public infrastructure service or project and the area within the functional area of the authority to which it relates and must set out the basis on which the contributions have been determined.

The legislation allows for different rates of contribution to be applied to different classes or descriptions of development. It also allows for exemptions for specified classes of development.

7.2. Circular Letter PS 21/2013

This refers to *Transfer of water service functions to Irish Water: planning issues*. It notes that Irish Water is prescribed as a statutory consultee for the purpose of plans under the Planning and Development Acts, the Regulations, development and local area plans etc. These amendments came into effect on the 1st of January 2014 in

relation to any such plans on hands. This includes applications for permission under section 34 (article 28 of the Regulations).

Section 3 refers specifically to the application of Development Contributions in respect of water services infrastructure prior to and post 1st of January 2014.

8.0 Assessment

8.1. Regard to Point of Detail Referral

- 8.1.1. Prior to addressing the issues arising, I note that this case relates to a point of detail referral under section 34(5) of the Planning and Development Act 2000, as amended, and is not an appeal under section 48(10). 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.
- 8.1.2. Section 34(5) of the Planning and Development Act 2000(as amended) states that *"the conditions under subsection (1) may provide that points of detail relating to a grant of permission may be agreed between the planning authority and the person carrying out the development; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination"*.
- 8.1.3. The point of detail arises in relation to condition no. 14 of permission Reg.Ref. 12/5109 as amended relevant to Contributions Appeal in Ref. PL25M.241681. It is noted that the parent permission was subsequently extended under Reg.Ref. 12/5109 for a period of 5 years up to 12th of June 2023. This condition relates to the application of the Council's Supplementary Development Contribution scheme, *pursuant to Section 49* of the Planning & Development Act 2000, in respect of public infrastructure (*Mullingar Main Drainage Scheme*) upon which the referrer and the planning authority did not reach agreement. The First Party submit that the *Mullingar*

Main Drainage Scheme has been completed and that the Supplementary Development Contributions Scheme associated with the project is no longer in existence and is therefore not applicable. The Planning Authority submit that the supplementary levies have to be paid having regard to Department of the Environment, Community & Local Government Circular Letter PS21/2013 and that this has been made clear to the developer on a number of occasions.

- 8.1.4. In default of such agreement, the matter of the proper application of the terms of the scheme has therefore been referred to the Board for determination. Accordingly, the Board, in this case, is limited solely to determining the issues arising in the point of detail and relative to the payment of financial contribution Condition no.14.

8.2. Application of the Contribution Schemes

- 8.2.1. The General Development Contributions Scheme 2013-2020 is applicable (Section 48 of the Planning and Development Act 2000 (as amended) refers. It also provides for Special Development Contributions (Section 48(2)(c) refers) and Supplementary Development Contributions (Section 49).

- 8.2.2. Section 13 refers specifically to Supplementary Development Contributions Scheme 2013-2020:

There is one current Supplementary Development Contribution Scheme that applies but only in the area covered by the Mullingar Local Area Plan 2014-2020:

Clonmore Link Road & Robinstown Link Roads, Mullingar.

Therefore, the current Scheme does not refer to the *Mullingar Main Drainage Project*. Also, of note is that Section 9.7.3 of the Westmeath County Development Plan 2013-2020 refers to Wastewater Capital Schemes and states that:

The Mullingar Main Drainage Scheme has been completed. The First Party contend that there is no basis for the inclusion of this condition relative to current times.

- 8.2.3. The Referrer stated relevant to Condition no.14 in Section 2.1.1 of their *Prior to Commencement – Compliance Submission* on the 25th of May 2018 (Appendix 3 relates): *The referred condition consistent with all financial contribution conditions, is applicable at the time of payment rather than at the time the permission was granted.*

In this instance the Mullingar Main Drainage Supplementary Scheme is no longer in force and where general wastewater contributions are sought directly by Irish Water.

- 8.2.4. Westmeath County Council responded to the *Prior to Commencement Compliance Submission* on the 27th of July 2018 (Appendix 4 of Referrer's Submission) relative to outstanding contributions charges, including as per Condition no.14. The Referrer provides that the Council did not directly address the dispute raised in relation to Condition no.14 apart from stating that an invoice had been issued and that an amount remained outstanding.
- 8.2.5. However, as submitted, regard is had to the *Supplementary Development Contribution Scheme for Mullingar Main Drainage – Planning and Development Acts 2000-2012 (adopted June 2013)*. Section 2.9 refers to the Duration of the Scheme and as quoted in the Policy Section above this Scheme is adopted for a maximum period up to the 31st of December 2020. This also allows for a review of the Scheme having regard to the circumstances prevailing at the time and provides that a new scheme may be adopted in advance of the 31st of December 2020.
- 8.2.6. Provision is made in the legislation for public consultation in relation to a proposed Section 49 scheme. The Editorial Notes (E172) accompanying Section 49 of the Planning and Development Act 2000 (as amended) include: *Making or amending a supplementary development contribution scheme is a reserved function of local authorities as provided by Local Government Act 2001 (37/2001), ss. 131, 131A and sch. 14A part 3 item 72 as inserted (1.06.2014) by Local Government Reform Act 2014 (1/2014), s. 41(4) and sch. 3, S.I. No. 214 of 2014.*
- 8.2.7. It is noted that no documentation has been submitted to show that the Supplementary Development Contributions for this scheme have ceased or that any such resolution has been passed by Westmeath County Council. For example, the Metro North Development Contribution ceased following a resolution by Fingal County Council.

8.3. Regard to Circular Letter PS 21/2013

- 8.3.1. It is the Planning Authority's position that the supplementary levies associated with the Mullingar Main Drainage Scheme fall due to be paid having regard to the above which refers to the *Transfer of water service functions to Irish Water: Planning*

issues. A copy of this Circular is included in their response to the Point of Detail raised.

8.3.2. Section 3 refers to Development Contributions. This includes that prior to the 1st of January 2014 in respect to section 34 of the Planning Act, *the portion in respect of water services infrastructure, must be paid to the planning authority in accordance with the terms of the permission.* It also notes that after 1st of January 2014 planning authorities, when granting permission in respect of water services infrastructure will instead be levied by Irish Water. *New development contribution schemes made by planning authorities after 1st of January 2014 should not contain charges in respect of water services infrastructure.*

8.3.3. It is noted that Condition no.14 refers to Supplementary Development Contributions and the amount payable was amended by the Board and the date of their decision (PL25M.241681 refers) was the 13th day of June 2013. The grant of the original Council permission Reg.Ref. 12/5109 for the said development was the 6th of February 2013. Therefore, the grant of the original permission (albeit subsequently extended by the Council in 2018) was prior to the 1st of January 2014. As noted in Section 3 of the Circular above the development contribution in respect of water service infrastructure must therefore be paid in accordance with the terms of the permission.

8.4. **Regard to Level of Development Contribution**

8.4.1. There are some variations given in the level of the Development Contribution applicable in Condition no.14. That included in the Referral refers to the amount levied in the original permission Reg.Ref. 12/5109 i.e €115,900.43. As noted, this was subsequently the subject of a First Party Appeal and was amended by the Board (Ref. PL25M.24181 refers) to €100,182.

8.4.2. The Inspector's Report notes the method of calculation in Section 11 – Recommendation, relative to Mullingar Main Drainage: *Site area as stated on the application forms is 1.2845ha, less the 0.1742ha of existing open space according to the applicant's measurements, gives an area of the development equating to 1.1103ha. The rate for greenfield development of €90,230 per ha should be applied. €90,230 X 1.1103ha yields a sum of €100,182.*

8.4.3. Section 2.3 of the Supplementary Development Contributions Scheme for Mullingar Main Drainage Scheme – Planning and Development Acts 2000-2012 (adopted June 2013) provides the Basis for Determination of Contributions. This includes that:

Taking the above development projections and the required Council contribution to the scheme into account and taking account of the prevailing economic environment, it is considered that the charge should be set at €67,672 per Hectare of €5.03per m². This represents a 25% reduction on the current charge.

This is reiterated in Section 2.4 which provides the Level of Contributions i.e: *The level of contributions to be paid under the Scheme, except where an Exemption applies (see Para. 2.6.4) is €67,672 per hectare for new development.*

8.5. It is noted that a Memorandum from the Council dated the 11th of April 2019 states relative to Condition no. 14: *An amount of €100,182 was conditioned and invoiced in relation to condition 14. This was based on a charge of €90,230 per hectare at the time and an area of 1.1103ha. However, the current charge is only €67,672 per hectare. Therefore, the amount invoiced should have been €75,136.22 (67672 x 1.1103).* This is based on a 25% reduction as per Section 6.0 of the Council's current General Development Contributions Scheme 2013-2020.

8.5.1. Further subsequent correspondence from the Council refers to a sum of €75,067.21 outstanding relative to this Condition. It is not explained in the documentation submitted as to this minor reduction. The Board may consider that in accordance with the Section 2.3 of the *Supplementary Development Contributions Scheme for Mullingar Main Drainage Scheme – Planning and Development Acts 2000-2012 (adopted June 2013)* the applicable reduced rate for Condition no.14 is €75,136.22. However, I consider that as €75,067.21 is provided as the applicable amount for compliance relative to this condition by the Council that this minor reduction is acceptable.

8.6. **Conclusion**

8.6.1. Regard has been had to the planning history, to the documentation submitted, to the provisions of the legislation and guidelines including the Council's Development Contributions Scheme 2013-2020, the Supplementary Development Contributions Scheme 2013 and Circular Letter PS21/2013 referred to above. Taking the issues

raised into consideration, I would conclude that Condition no.14 is applicable and that the amount stated as per the Board decision Ref. PL29M.241681 should be reduced as noted above.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS by order dated the 13th of June 2013 made by An Bord Pleanála, under register reference number PL25M.241681 relative to amendments to development contributions conditions nos. 14 and 15 and by Westmeath County Council under register reference 12/5109 dated the 6th of February 2013, permission was granted subject to conditions to Andrews Construction Limited care of the Planning Partnership for the Construction of 22no. dwellings along with all other site development works at Glenmore Wood, Petitswood, Mullingar, Co. Westmeath. An extension of Duration of Permission was subsequently granted, (Register Reference 12/5109 refers) on the 24th of April 2018 to extend the permission until the 12th of June 2023.

AND WHEREAS Condition no.14 of the permission register reference PL25M.241681 required the applicant to pay Westmeath County Council €100,182 being the appropriate contribution to be applied to this development in accordance with the Supplementary Development Contributions Scheme *Mullingar Main Drainage Scheme* made under section 49 of the Planning and Development Act 2000 as amended:

AND WHEREAS the developer and the planning authority failed to agree as to whether this contribution should be paid, and as to the amount of the contribution to be paid pursuant to condition 14, and on application of the terms of the relevant Development Contribution Scheme in compliance with the terms of this condition and the matter was referred by Andrews

Construction Limited on the 24th day of July 2019, to the Board for determination:

NOW THEREFORE An Bord Pleánala, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, and based on the Reasons and Considerations set out below, hereby determines that the supplementary development contribution condition relative to the *Mullingar Main Drainage Scheme* cannot be removed retrospectively. The amount payable under condition no.14 of Register Reference 12/5109 and as amended by Register Reference PL25M.241681 and as per the extension of duration permission of 12/5109 is as determined and reduced by Westmeath County Council to €75,067.21 in respect of public infrastructure benefitting the development that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Supplementary Development Contribution Scheme for *Mullingar Main Drainage Scheme* made under section 49 of the Planning and Development Act 2000, as amended.

Reasons and Considerations

Having regard to:

- (a) Sections 34(5) and 49 of the Planning and Development Act 2000, as amended,
- (b) The Westmeath County Council Development Contributions Scheme 2013 -2020 (adopted June 2013),
- (c) The Supplementary Development Contributions Scheme for Mullingar Main Drainage Scheme – Planning and Development Acts 2000-2012 (adopted June 2013),

(d) Circular Letter PS21/2013 *Transfer of water service functions to Irish Water: planning issues* of the Department of the Environment, Community and Local Government (December 2013),

(e) The submissions on file, and the planning history of the site,

The Board considered it appropriate that the Supplementary Development Contribution in Condition no. 14 be amended so that it be reduced in line with the reductions provided by Westmeath County Council in their response to this point of detail referral.

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 and observations received by it in accordance with statutory provisions.

Angela Brereton
Planning Inspector

15th of November 2019