



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306256-19

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<b>Development</b>	Point of detail regarding financial contributions conditions No. 7 & 8 of Planning Reference W2013111 (ABP Ref: PL26.243875)
<b>Location</b>	Mulgannon, Wexford
<b>Planning Authority</b>	Wexford County Council
<b>Planning Authority Reg. Ref.</b>	W2013111
<b>An Bord Pleanála Reg Ref.</b>	ABP PL26.243875
<b>Applicant(s)</b>	Adamar Properties Limited
<b>Referrer</b>	Adamar Properties Limited
<b>Date of Site Inspection</b>	30 <sup>th</sup> April 2020
<b>Inspector</b>	Mary Crowley

# Contents

<b>1.0 Introduction.....</b>	<b>3</b>
<b>2.0 Site Location and Description .....</b>	<b>3</b>
<b>3.0 Proposed Development.....</b>	<b>3</b>
<b>4.0 Planning History .....</b>	<b>3</b>
<b>5.0 Referrers Case .....</b>	<b>6</b>
<b>6.0 Planning Authority’s Response.....</b>	<b>8</b>
<b>7.0 Policy Context.....</b>	<b>8</b>
7.2. Development Plan.....	8
7.4. Wexford County Council Development Contribution Scheme 2018 .....	8
<b>8.0 Legislative Context.....</b>	<b>9</b>
<b>9.0 Assessment.....</b>	<b>10</b>
<b>10.0 Recommendation .....</b>	<b>Error! Bookmark not defined.</b>

## 1.0 Introduction

- 1.1. A dispute has arisen between Wexford County Council and Adamar Development Ltd in relation to Contribution Conditions No 7 and 8 of a decision made by An Bord Pleanála to grant permission subject to conditions under case reference PL26.243875 (Reg Ref 2013111) on the 27<sup>th</sup> January 2015.

## 2.0 Site Location and Description

- 2.1. The subject site is located within the townland of Mulgannon, to the south of Wexford town and is dissected by Mulgannon Road; a cul de sac. The subject site is split in two, located on either side of the roadway. The more western portion adjoins Wexford Golf Club. The general area is characterised by ribbon development, with detached dwellings of varying heights and styles on individual plots, fronting onto Mulgannon Road. It was observed on day of site inspection that the northern end of this roadway, nearest its junction with Hillcrest, is in better condition; is wider, has better sightlines and a stretch of footpath. As one travels south towards its end and nearest the site itself, its condition deteriorates substantially. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

## 3.0 Proposed Development

- 3.1. Permission was granted by An Bord Pleanála for the installation of new road footpaths, services and associated site works, together with the proposed alterations to existing road to improve traffic safety and outline permission for 10 no. dwelling together with associated site works and ancillary services (PL26.243875 (Reg Ref 2013111) refers).

## 4.0 Planning History

- 4.1. **ABP PL26.243875 (Reg Ref W2013111)** – Wexford County Council refused permission for the development of a road, footpaths, services and associated site works, alterations to existing road, outline permission for 10 no. houses, associated site works and ancillary services at Mulgannon as *the access road serving the site*

was substandard and the proposed development would endanger public safety by reason of traffic hazard and obstruction of road users. On the 27<sup>th</sup> January 2015 An Bord Pleanála granted permission subject to 8 no conditions. Conditions of relevance to this determination are as follows:

7. *The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of the provision of footpaths and lighting to link with existing facilities on Mulgannon Road. The amount of the contribution shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board for determination. The contribution shall be paid prior to the installation of new road, footpaths and services and associated site works, and alterations to existing road, or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.*

**Reason:** *It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.*

8. *The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the installation of new road, footpaths and services and associated site works, and alterations to existing road, 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.*

**Reason:** *It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.*

4.2. **Reg Ref W2013111E** – Wexford County Council refused an extension of duration of planning permission to Reg Ref W2013111 (ABP PL26.243875) on the 4<sup>th</sup> December 2019 for the following reason:

1. *It is considered that it is outside of the scope of what the law permits to extend the appropriate period of a grant of an outline permission as an application for a Section 42 extension of duration of permission cannot be extended in accordance with Section 36(3)(c) of the Planning and Development Act, 2000 (as amended).*

4.3. **Reg Ref W2013111EE** – The applicant Adamar Properties Ltd made a further application for a 5-year extension of duration of planning permission. The cover letter attached to same set out the following by way of clarification as to what was being sought:

*Further to receipt of the Councils decision dated 4<sup>th</sup> December 2019 there appears to have been a misunderstanding of our request for an Extension of Duration in relation to the previously approved Outline Permission W2013111. The Outline Permission part (B) for the proposed erection of 10 No fully serviced dwelling houses together with all associated site works and ancillary site services on site has withered and therefore is no longer pertinent to this Grant of Permission and [the] client is seeking an Extension of Duration to Part (A) only for the proposed new road, footpaths and services and associated site works, together with the proposed alterations to existing road to improve traffic safety.*

4.4. It is further stated in the accompanying application form that *the development has not yet commenced as the applicant has yet to reach an agreement with the Planning Authority on both the calculation of financial contributions and method of upgrade to the Mulgannon Road as required by Condition No 7 & 8 of Planning Reference*

W2013111. Further time is required to reach an agreement with the Planning Authority.

4.5. No decision on this extension of duration has issued to date.

## 5.0 Referrers Case

5.1. A referral made in accordance with Section 34(5) of the Planning and Development Act 2000 (as amended) was submitted by Fehily Timoney & Company on behalf of Adamar Developments Ltd and may be summarised as follows:

### ▪ **Background**

- An application was submitted to WCC on Monday 16<sup>th</sup> December 2013 for permission for a new road, alteration to existing road and associated site works and outline permission for 10 no new dwellings. WCC refused permission. A first party appeal was subsequently lodged with An Bord Pleanála against this refusal under Reg Ref PL26.243845. The application was granted permission on 27<sup>th</sup> January 2015 with 8 no conditions.
- Two of the conditions (No 7 & 8) attached required the developer to pay a financial contribution to the Planning Authority for the provision of public infrastructure, footpaths and lighting outside of the subject site of the Mulgannon Road. In addition to Condition No 7 the Board attached a development contribution condition (Condition No 8) under Section 48 of the Planning and Development Act 2000 (as amended) for the upgrade of the public infrastructure and facilities benefiting the development.
- The applicant submitted a compliance submission and proposals to Wexford County Council on 29<sup>th</sup> May 2017 in relation to Condition No 7 and 8. This compliance submission was accompanied by a technical report and lighting drawing and is outlined in full in Appendix 3. The submission was prepared following discussions with WCC where the developer was advised that WCC were not prepared to carry out the works required to upgrade Mulgannon Road as per An Bord Pleanála as same would require a potential Compulsory Purchase Order (CPO). WCC considered that road widening through use of CPO was not deemed optimal along the Mulgannon Road as there are various buildings, walls, electricity poles and other structures which would require purchase for demolition.

- On 18<sup>th</sup> May 2018 Wexford County Council deemed that the proposals submitted for compliance did not adequately address Condition No 7.
- On the 10<sup>th</sup> December 2019 an application to extend the duration of the above referenced planning permission was made to WCC. At time of submission this application was pending.
- **Referral**
- The applicant now wishes to commence work on site and advance in agreement with An Bord Pleanála and Wexford County Council a compliance submission to satisfy Condition No 7 and 8 of Planning Reference W2013111 (PL26.243875).
- The applicants sole responsibility with regard to discharging Condition No 7 & 8 relates to the lodgement of financial contributions to facilitate WCC to complete the necessary works to upgrade the Mulgannon Road. WCC have been unwilling to comply with the An Bord Pleanála requirements as dictated in Condition No 7 & 8 as they do not wish to progress with undertaking a CPO or consider alternative measures as proposed by the applicant. Indicative costings have been prepared by McGrath Construction Consultants to give an indication of the costings of the alternative measures that have been proposed by the applicant. Appendix 4 refers.
- The Board is requested to decide on the monetary amount of financial contributions that the applicant is required to provide in respect of the provision of footpaths, lighting and public infrastructure and facilities on the Mulgannon Road.

5.2. If the Board does not consider the above strategy to be appropriate in complying with Condition No 7 & 8 of the consent the developer is happy to make the necessary development contribution that is deemed required by An Bord Pleanála.

5.3. The submission was accompanied by the following:

- An Bord Pleanála Order PL20.243875
- Correspondence from Wexford County Council in relation to Condition No 7 of W2013111
- Compliance Submission to Wexford County Council for Conditions No 7 & 8 of Reg Ref W2013111
- Indicative Costing for Upgrade of Mulgannon Road

## 6.0 Planning Authority's Response

- 6.1. A copy of the referral was circulated to Wexford County Council on 7th January 2020. Following on from this a letter was issued on 4<sup>th</sup> February 2020 seeking:
- 1) Copy of decision in relation to extension of duration
  - 2) Comments on the grounds of the referral
- 6.2. In a further letter issued on 28<sup>th</sup> May 2020 An Bord Pleanála referred to previous correspondence and requested comments on the grounds of the referral in relation to the financial contribution No 7 and 8.
- 6.3. No response or comment to any of the above correspondence in relation to the grounds of the referral has been received to date.
- 6.4. With regard to the application for extension of duration Wexford County Council in their submission dated 7<sup>th</sup> February 2010 state that *the decision in relation to Extension of Duration which was lodged on 10 December 2019, is currently pending*. As stated above no decision on this extension of duration has issued to date.

## 7.0 Policy Context

### 7.1.1. Development Contributions Guidelines for Planning Authorities (2013)

- 7.1.2. It is stated that the primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, without which development could not proceed.

### 7.2. Development Plan

- 7.3. The operative plan for the area is the Wexford Town & Environs Development Plan 2009-2015 (as extended). The site is zoned Residential Medium Density.

### 7.4. Wexford County Council Development Contribution Scheme 2018

- 7.5. The above scheme is in places since 14<sup>th</sup> October 2013. Development contributions shall be paid in respect of the following classes of public infrastructure and facilities for development in the Wexford County Council Planning Authority Area.



## 8.0 Legislative Context

### 8.1.1. Section 34(5) of the Planning and Development Act, 2000, as amended

#### 8.1.2. The relevant section of the Act states:

*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. Section 48 Development Contributions

**Section 48(1)** - *A planning authority may, when granting a permission under section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).*

**Section 48(2)(a)** - *Subject to paragraph (c), the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section, and a planning authority may make one or more schemes in respect of different parts of its functional area.*

*(b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.*

*(c) 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.*

**Section 48(3)(a)** - *A scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme.*

*(b) In stating the basis for determining the contributions in accordance with paragraph (a), the scheme shall indicate the contribution to be paid in respect*

*of the different classes of public infrastructure and facilities which are provided or to be provided by any local authority and the planning authority shall have regard to the actual estimated cost of providing the classes of public infrastructure and facilities, except that any benefit which accrues in respect of existing development may not be included in any such determination.*

*(c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.*

**Section (12)** - *Where payment of a special contribution is required in accordance with subsection (2) (c), the following provisions shall apply—*

*(a) the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates,*

*(b) where the works in question—*

*(i) are not commenced within 5 years of the date of payment to the authority of the contribution,*

*(ii) have commenced, but have not been completed within 7 years of the date of payment to the authority of the contribution, or*

*(iii) where the local authority decides not to proceed with the proposed works or part thereof.*

*the contribution shall, subject to paragraph (c), be refunded to the applicant together with any interest that may have accrued over the period while held by the local authority,*

*(c) where under subparagraph (ii) or (iii) of paragraph (b), any local authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion to those proposed works which have not been carried out.*

## **9.0 Assessment**

9.1. As documented above the applicant, Adamar Properties Limited, has sought agreement from Wexford County Council since May 2017 in relation to Condition No 7 and 8 (financial contributions) of the decision issued by An Bord Pleanála (ABP PL26.243875 (Reg Ref W2013111) refers) in January 2015. Further details of this

decision and the full wording of both conditions is provided in Section 4.1 above. In May 2018 Wexford County Council deemed that the proposals submitted for compliance did not adequately address Condition No 7. To progress a compliance submission, the applicant requests the Board to determine the following:

- 1) **Condition No 7** - The monetary amount of financial contributions the applicant is required to provide under Section 48(2)(c) of the Planning and Development Act 2000 (as amended), in respect of the provision and lighting to link with existing facilities in Mulgannon Road and
- 2) **Condition No 8** - The monetary financial contributions that the applicant is required to provide under Section 48 of the Planning and Development Act 2000 (as amended), in respect of public infrastructure and facilities benefitting development in the area in accordance with the terms of the development Contribution Scheme.

9.2. It is noted that in late 2019 the applicant sought a 5 year extension of time for the road aspect of this permission comprising the “*proposed new road, footpaths and services and associated site works, together with the proposed alterations to existing road to improve traffic safety*”. As documented above no decision on this extension of duration has issued to date.

9.3. I have considered the previous Inspectors report pertaining to the permitted development and note that the main issue in the consideration of the scheme related to traffic safety and that the *site is located on a public road that is deficient in terms of footpath, cycle ways and lighting*. As noted in the Inspectors report and observed on day of my site inspection improvements to pedestrian footpaths, the provision of adequate facilities for cyclists and public lighting to link with existing facilities on Mulgannon Road is essential at this location to facilitate this development.

9.4. Accordingly Condition No 7 requires the payment of a contribution for provision of footpaths and lighting to link the site to the existing footpath and lighting on the Mulgannon Road. In this regard I refer to the report of Atkins (December 2016) where some clarity is given on the location and length of road in question. The applicant states that the section of road subject to this review extends from the farmhouse south of Hillcrest to the access junction of the proposed development which consists of approximately 400m of road length. Figure 1 of the Atkins report refers. The applicant submits that this is the extent of works that should be deemed reasonable for

construction in terms of the provision of pedestrian facilities and lighting which will benefit the proposed development. In this context the applicant considered it reasonable that Wexford County Council would bear the cost of extending the public lighting provision as far as the southern extent of existing footpath adjacent to the farmhouse. There is no statement on the referral file indicating that Wexford County Council are in agreement or otherwise with the submitted length of road pertaining to Condition No 7 save for general comments from the Senior Executive Engineer discussed below.

9.5. I have had regard to the lengthy correspondence pertaining to this case that has been made available with the referral file. I refer in particular to correspondence from the Wexford County Council Senior Planner to the Senior Executive Engineer for Wexford dated 4<sup>th</sup> December 2017. It is stated that *this footpath cannot be provided without obtaining front garden boundaries of the properties*. It is further stated that the applicants have identified an alternative option. This alternative option prepared by Atkins demonstrated how upgrade works to Mulgannon Road through the installation of lighting and pedestrian priority zones could be implemented without impacting on third party lands. In their response dated 17<sup>th</sup> April 2018 the Senior Executive Engineer for Wexford states that *this proposal as submitted does not adequately address the condition outlined in PL23.243875*. The report further states that *in order to comply with the condition of the planning the following would be required on the upper section of Mulgannon Road which currently is of inadequate width for road widening and provision of footpaths:*

- *Acquisition of land from adjacent properties both sides of the road to provide for min 5.5m road and min 1.5m footpath both sides with associated works and services*
- *Construction of new boundaries or payment in lieu of works*
- *Alterations of services*
- *Progress CPO etc if lands not acquired by agreement.*

9.6. While it is not explicitly stated, reference to the “upper section” of Mulgannon Road in this correspondence would appear to suggest that works are required further north from those outlined in Figure 1 of the Atkins report in order to comply with the requirements of Condition No 7 in providing *footpaths and lighting to link with existing*

*facilities on Mulgannon Road.* The Senior Executive Engineer report concluded that the development of additional housing as proposed in PL26.243875 would be premature until such upgrade works are completed. In correspondence to the applicant in May 2018 Wexford County Council advised the applicant that following review and discussion of the details by the Area Engineer & Road Engineer, the proposed as submitted does not adequately address Condition No 7 as outlined in PL26.243875.

- 9.7. Having regard to the nature of the permitted scheme and conditions attached by the Board the responsibility is on the Planning Authority in the first instance to progress matters in terms of agreeing the extent of works necessary to comply with Condition No 7 together with the amount of contribution required. However, to date the Planning Authority has not been forthcoming in its engagement with the applicant or the Board in trying to reach agreement on the details of Condition No 7. While I note the comments from the applicant that Wexford County Council do not wish to pursue a CPO this position has not been clarified by the local authority.
- 9.8. The difficulty therefore is that there does not appear to be any agreement on either the extent of works required nor the amount of contribution to be paid save for the statement in 2018 that the *proposal as submitted does not adequately address the condition outlined in PL23.243875.* Seeking a financial contribution without appropriate engagement from the Local Authority in this case is not satisfactory and does not in my view adhere to the criteria of the scheme. I therefore recommend that the special financial contribution to be paid is €41,803.61 (forty-one thousand, eight hundred and three euro and sixty one cent) as set out in Appendix 4 of the applicants referral. This is a reasonable contribution in the circumstances. If the works in question are not commenced within 5 years, or completed within 7 years of the receipt of payment, or where the authority decides not to proceed with the proposed works or part of works, the applicant shall be refunded the special contribution levy
- 9.9. With regard to Condition No 8 a development contribution is required to be paid in accordance with the terms of the Wexford County Council Development Contribution Scheme 2018. Given that the scheme relates to outline permission and that the contribution rate set out in the scheme refers to metres squared and not units the amount to be paid cannot be determined until permission on foot of outline is determined.

9.10. For clarity and completeness I have had due regard to the provisions of the Habitats Directive and conclude that having regard to the source-pathway-receptor model along with the nature of the proposed development I would not consider that an NIS or Appropriate Assessment is necessary in this case

## 10.0 Conclusion

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

**WHEREAS** Condition No 7 and 8 of An Bord Pleanála decision PL26.243875 (Reg Ref 2013111) required that prior to the commencement of development the developer to pay to the planning authority a *special contribution under Section 48(2)(c) of the Planning and Development Act, as amended, in respect of the provision of footpath and lighting to link with existing facilities on Mulgannon Road* (Condition No 7) and a *financial contribution in respect of public infrastructure and facilities benefiting development in the area* of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Act 2000 (Condition No 8 refers). In the event of a default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**AND WHEREAS** the developer and the planning authority failed to agree on the amount of development contribution to be paid in accordance with Condition 7 and 8

**AND WHEREAS** the matter was referred by the developer to An Bord Pleanála on the 23<sup>rd</sup> December 2019 for determination:

**AND WHEREAS** the Board is satisfied that the matter at issue is the amount of development contribution to be paid

**AND WHEREAS** the Board had particular regard to the provisions of Section 34(5) of the Planning and Development Act 2000, as amended, the Development Contributions Guidelines for Planning Authorities (2013) and the Wexford County Council Development Contribution Scheme 2013 in place from 14th October, 2013

**NOW THEREFORE** An Bord Pleanála, 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 Condition 7 on foot of this referral results in a charge of €41,803.61 (forty-one thousand, eight hundred and three euro and sixty one cent) and that Condition 8 cannot be determined until permission on foot of outline is determined.

### **Reasons and Considerations**

Having regard to:

- a) Section 34(5) of the Planning and Development Act 2000, as amended,
- b) The provisions of the Wexford Town & Environs Development Plan 2009 – 2015 (as extended) and the Wexford County Council Development Contribution Scheme 2018
- c) Section 48 of the Planning and Development Act 2000 (as amended),
- d) the submissions on file, and the planning history of the site

The Board considered that, in the absence of agreement from the Local Authority, that the special financial contribution offered by the applicant, Adamar Properties Limited for Condition No 7 was reasonable in this instance. The Board also determined that given the contribution rate set out in the Wexford County Council Development Contribution Scheme 2018 refers to metres squared and not units the amount to be paid under Condition No 8 cannot be determined until permission on foot of outline is determined.

### **MATTERS CONSIDERED**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

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**Mary Crowley**

**Senior Planning Inspector**

**30<sup>th</sup> July 2020**