



An
Bord
Pleanála

Inspector's Report ABP307037-20

Development	198 houses
Location	Tullow Road, Carlow, County Carlow.
Planning Authority	Carlow County Council
Planning Authority Reg. Ref.	06/1177
Applicant(s)	Liam Tedford
Type of Application	Point of Detail
Type of Appeal	Referral of Point of Detail
Referrer	Milltown New Homes Ltd
Observer(s)	None
Date of Site Inspection	None
Inspector	Hugh Mannion

1.0 Introduction

1.1. This case relates to a point of detail of a condition imposed by the Board in relation to a grant of planning permission for housing development near Carlow town, County Carlow under PL01.228507 in November 2008. Condition 12 required the payment of a development contribution to the planning authority by the developer and allowed for referral back to the Board in the event of a dispute. This case is referred to the Board for determination under section 34(5) of the Planning and Development Act 2000 to 2020.

2.0 Site Location and Description

2.1. The appeal site is located on the south-eastern fringe of Carlow town, to the north of the Burrin River and east of the N80, County Carlow.

3.0 Ground for Referral

- The permission was granted under PL01.228507 and condition 12 of that decision required the payment of a contribution by the developer towards expenditure incurred by the planning authority on services facilitating the proposed development. The lifetime of that permission was subsequently extended by the planning authority and development had commenced by April 2020.
- The applicable scheme was then the 2003 scheme and in 2008 the planning authority sought contributions as follows.

Water	€247,427
Wastewater	€329,905
Special levy water	€175,000
Special levy Wastewater	€175,000
Roads	€113,405

Community Recreation	€82,476
Landuse levy	€443,522
Special Flooding Levy	€40,000

- These figures are not in accordance with the Development Contribution Scheme. Special contributions are outside the scope of the Development Contribution Scheme and should not be charged under condition 12 of the planning permission.
- The special contribution for water (€175,000) refers to the Carlow North Regional Water Supply Scheme Stage 2 but the Carlow County Council Contribution Scheme refers to a different scheme – the Central Regional Supply Scheme.
- The special contribution for wastewater (€175,000) is a reference to the Kernanstown Serviced Land Initiative, the Carlow surface water drainage scheme and the extension to Mortarstown WWTP. The Carlow Contribution Scheme does not refer to the Serviced Land Initiative, to the Carlow Surface Water Drainage Scheme or to the extension to the Mortarstown WWTP.
- The special flooding levy (€40,000) is not mentioned in the Carlow Contribution Scheme.
- There is no mention of a land use levy (charged at €443,522) in the scheme.
- The scheme refers to the Carlow LAP land only and applies a charge per/acre.

The specific questions referred to the Board are;

- a) Is there a provision for the payment of a special contribution for water?
- b) Is there a provision for the payment of a special contribution for wastewater?
- c) Is there a provision for the payment of a special contribution land use levy?
- d) Is there provision for the payment of a special contribution towards flood works?

- e) The charges applicable under (2) of the scheme are limited to the per acre charge.
- f) Is indexation outside the provision of section 48 of the Planning and Development Act 2000 as amended.

3.1. Planning Authority's Response.

- The Board imposed condition 12 under PL01.228507 requiring the payment of a development contribution.
- The contributions sought were in accordance with the 2003 Carlow County Council Development Contribution scheme. In addition, section 48(2) allows for the imposition of special contribution in respect of costs in respect of particular development where specific exceptional costs are incurred which benefit a proposed development.
- The Carlow County Council multiannual capital programme 2006-2010 includes provision for the Carlow North Regional Water Supply Scheme and the Carlow Town and Environs Surface Water Drainage Scheme. Funding from special development contributions are included in the capital programme.
- The charges imposed by the planning authority are special development contributions which are properly charged in additional to the per acre charge.
- The Board's condition allows for the indexation of charges which has been included in the sums levied.
- The parts of the Carlow North Regional Water Supply Scheme specifically undertaken to facilitate this development included the provision of a new watermain from Brownshill cross to Walls Forge and then along the N80 to the Tullow road roundabout at an approximate cost of €750,000. Other works which will benefit the general area include an additional drinking water source at the Well Field, an upgrade of the Sion Cross water treatment plant (€1.2 million), and an additional €1.5min district metering and network upgrade.

- Surface water pumping station/upgrade works carried out as part of the Kernanstown serviced land initiative cost €150,000 which benefitted the proposed development in the context of an overall capital programme of €21 million.
- The development was connected to water/wastewater services for nominal costs prior to 1st January 2014 establishment of Irish Water.
- The applicant indicated a willingness to carry out road improvement schemes by way of further information submission made in June 2007 and January 2008 and referenced in the Board's decisions and these works have not been completed as of June 2020.

3.2. Referrer's Response to PA

- Condition 12 was applied in accordance with Section 48.
- Section 48(2)(c) makes provision for special contributions not covered by the ordinary scheme.
- The planning authority relies on the multiannual capital programme to justify the amounts sought but this programme was published 3 years after the adoption of the 2003 contribution scheme.
- There are five separate parts to the adopted scheme and only one of these is applicable to this development and that it the per acre charge.
- The indexation element of the scheme is outside the scope of Section 48.
- The house building index is not an appropriate basis for indexation of infrastructure works.
- The planning authority carried out works which were included in the application that is a matter for the Council since it did not await the developer's carrying out of the works.

4.0 Planning History

Under PL01.228507 permission was granted for a development as submitted to the planning authority which comprised a housing development of 198 dwelling units, (178 no 3 bed semidetached two storey houses, 18 no two storey 3 bed terraced

town houses), a two storey building comprising of a crèche on the ground floor with 2 no 2 bed apartments over, site entrance, foul water pumping station and all associated site works and services. It was also proposed to connect to the public water mains and the public foul sewer, all at Carlow, County Carlow.

5.0 **Appropriate Assessment**

5.1. This case does not comprise a planning consent and, therefore, appropriate assessment is not applicable.

6.0 **EIA Screening**

6.1. This case does not comprise a planning consent and, therefore, EIA is not applicable.

7.0 **Assessment**

7.1. **Background.**

7.2. The Board granted planning permission for 198 houses (reduced by condition number 2 omitting units 104 and 105, 122 and 123, numbers 99 to 102 (4 houses) numbers 117 to 120 (4 houses), and numbers 1 to 6 (6 houses) and granted permission for 184 units (172 houses and 2 apartments) at Tullow Road, Carlow, County Carlow under PL01.228507 on the 21st of November 2008. That permission included a contribution condition number 12 as follows.

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. 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. 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 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.

7.3. The referrer states that the lifetime of that permission was extended twice by the planning authority under reference numbers 13/296 and 18/440, the planning authority does not dispute this, and the development was under construction in April 2020.

7.4. **Questions referred.**

7.5. The developer has referred a number of questions to the Board for determination in relation to the amounts payable under condition 12 of the permission under PL01.228507. These questions are;

- a) Is there a provision for the payment of a special contribution for water?
- b) Is there a provision for the payment of a special contribution for wastewater?
- c) Is there a provision for the payment of a special contribution land use levy?
- d) Is there provision for the payment of a special contribution towards flood works?
- e) Are the charges applicable under (2) of the scheme limited to the per acre charge?
- f) Is indexation outside the provision of section 48 of the Planning and Development Act 2000 as amended?

7.6. **Board Decision in PL01.228507.**

7.7. The Board granted the planning permission in this case on the 21st November 2008 and the grant attached a standard development contribution condition (condition 12) and did not attach any provision for a special development contribution. Therefore, the planning authority is constrained to levy a standard development contribution only on the basis of the development contribution scheme in place at that date. It

follows that no special development contribution may be levied on the developer on foot of the grant of permission under PL01.228507.

- 7.8. The application site was outside the Carlow Town Council boundary illustrated on the Carlow Town Council Environs LAP zoning map of June 2008. Therefore, the site was within the area of the County Development Plan and the applicable contribution scheme was the Carlow County Council contribution scheme 2003. That scheme stated that it was applicable to grants of permission on applications received on or after 1st May 2003 – the application determined under PL01.228507 was lodged with the planning authority on the 16th July 2007. Carlow County Council Development contribution scheme (see copy attached) provided as follows.
- 7.9. The contribution scheme provided for contribution as follows.

Works	Rate per unit
Water	€1,200
Wastewater	€1,600
Roads	€550
Community/Recreation/Parks/Leisure	126m ² /€400 Next 60m ² /€10.75 €21.50/m ² thereafter.
Creche 196m² classed as commercial development	
Water	€10
Wastewater	€10
Roads	€10
Community/Recreation/Parks/Leisure	€3

7.27. Analysis.

- 7.28. The planning acts make provision for three forms of development contributions by developers to planning authorities in respect of works carried out by the planning authority which facilitate proposed development. Section 48(1) provides that a planning authority may require the payment of a contribution by a developer in respect of the cost of providing public infrastructure and facilities within the administrative area of the planning authority in accordance with a scheme made under section 48(2)(a). That scheme should set out the basis for the determination of the amounts payable and a condition requiring payment of a contribution may be imposed on foot of the scheme. The Board in its decision imposed condition 12 under this provision.
- 7.29. In addition to the development contribution scheme the planning authority may, in accordance with section 48(2)(c), require the payment of a special contribution which is in addition to the terms of the development contribution scheme where specific exceptional costs not covered by the development contribution scheme are incurred by the planning authority in respect of public infrastructure and facilities which benefit the proposed development. The Board in its decision did not impose a condition under section 48(2)(c).
- 7.30. Section 49 allows for the making of supplementary development contribution schemes. This type of scheme is not an issue in this case, and I will not refer to it further.
- 7.31. The Section 28 Guidance in relation to the making and application of development contribution schemes is set out in the Development Contributions Guidelines for Planning Authorities (Dept of Environment, Community and Local Government 2013). The Guidelines make the point that General Development Contribution Schemes under section 48 of the Planning and Development Acts, must be drawn up by planning authorities in respect of certain public infrastructure and facilities provided by, or on behalf of, the local authority that generally benefit development in the area. All planning permissions granted are subject to the conditions of the development contribution scheme in operation in the area of the planning authority. Special Development contribution conditions 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.

7.32. I address the referrer's questions in sequence.

7.33. **Is there a provision for the payment of a special contribution for water?**

7.34. The grant of permission under PL01.228507 did not identify any specific exceptional costs not covered by the Carlow County Council development contribution scheme over and above the standard contribution payable under the 2003 contribution scheme and therefore no special contribution towards water supply is payable by the developer to the County Council under the permission granted under PL01.228507.

7.35. **Is there a provision for the payment of a special contribution for wastewater?**

7.36. The grant of permission under PL01.228507 did not identify any specific exceptional costs not covered by the Carlow County Council development contribution scheme over and above the standard contribution payable under the 2003 contribution scheme and therefore no special contribution towards wastewater infrastructure is payable by the developer to the County Council under the permission granted under PL01.228507.

7.37. **Is there a provision for the payment of a special contribution land use levy?**

7.38. There is no provision in the Carlow County Council development contribution scheme 2003 for a land use levy, the Board did not provide for such a levy in its grant of permission and therefore no such levy may be imposed under the provisions of PL01.228507.

7.39. **Is there provision for the payment of a special contribution towards flood works?**

7.40. The grant of permission under PL01.228507 did not identify any specific exceptional costs for flood related works not covered by the Carlow County Council development contribution scheme 2003 over and above the standard contribution payable under the contribution scheme and therefore no special contribution towards flood related works is payable by the developer to the County Council under the permission granted under PL01.228507.

- 7.41. **Are the charges applicable under (2) of the scheme limited to the per acre charge?**
- 7.42. This question is ambiguous, and I do not understand it. I recommend that the Board does not address it further.
- 7.43. **Is indexation outside the provision of section 48 of the Planning and Development Act 2000 as amended?**
- 7.44. When considering matters referred to it for determination under section 34(5) the Board is constrained to consider only the condition the subject of disagreement between the developer and the planning authority in relation to the proposed development. Where a planning authority makes a development contribution scheme under section 48 of the Act the Board has no function in assessing the reasonableness or otherwise of the provisions of that scheme. In the present case the adopted scheme states that it shall be indexed in accordance with the House Building Cost Index from a base year of 1st May 2008. The Board has no function in determining if this complies with section 48 of the Act.

8.0 **Recommendation**

- 8.1. I recommend that the Board determine this case as set out in the draft order below.

9.0 Reasons and Considerations

9.1. The Board granted permission for 182 houses, 2 apartments (a total of 184 units) and a creche on foot of an original application for 196 houses, 2 apartments and a creche at Tullow Road, Carlow, County Carlow on the 24th November 2008. The applicable development contribution scheme at that time was the Carlow County Council Development Contribution Scheme 2003 and the Board's order referred solely to a requirement to make a contribution under that scheme. Having regard to the matters referred to the Board for determination under section 34(5) the Board determines the questions as follows.

9.2. **Is there a provision for the payment of a special contribution for water?**

9.3. The Board did not identify any specific exceptional costs not covered by the Carlow County Council development contribution scheme over and above the standard contribution payable under the 2003 contribution scheme and therefore no special contribution towards water supply is payable by the developer to the County Council in accordance with the permission granted under PL01.228507.

9.4. **Is there a provision for the payment of a special contribution for wastewater?**

9.5. The Board did not identify any specific exceptional costs not covered by the Carlow County Council development contribution scheme over and above the standard contribution payable under the 2003 contribution scheme and therefore no special contribution towards wastewater infrastructure is payable by the developer to the County Council in accordance with the permission granted under PL01.228507.

9.6. **Is there a provision for the payment of a special contribution in the form of a land use levy?**

9.7. There is no provision in the Carlow County Council development contribution scheme 2003 for a land use levy and therefore no such levy is payable by the developer to the County Council in accordance with the permission PL01.228507.

- 9.8. **Is there provision for the payment of a special contribution towards flood works?**
- 9.9. The Board did not identify any specific exceptional costs for flood related works not covered by the Carlow County Council development contribution scheme over and above the standard contribution payable under the 2003 contribution scheme and therefore no special contribution towards flood related works is payable by the developer to the County Council in accordance with the permission granted under PL01.228507.
- 9.10. **Is indexation outside the provisions of section 48 of the Planning and Development Act 2000 as amended?**
- 9.11. When considering matters referred to it for determination under section 34(5) the Board is constrained to consider only the condition the subject of disagreement between the developer and the planning authority in relation to the proposed development. Where a planning authority makes a development contribution scheme under section 48 of the Act the Board has no function in assessing the reasonableness or otherwise of the provisions of that scheme. In the present case the adopted scheme states that it shall be indexed in accordance with the House Building Cost Index from a base year of 1st May 2008. The Board has no function in determining if this provision is in accordance with section 48 of the Act.

Hugh Mannion
Senior Planning Inspector

24th March 2021