



An
Bord
Pleanála

Inspector's Report

ABP-309810-21

Development

Development consisting of retention to alterations to development that consisted of 76 houses granted under PL04/1514 as follows: (1) extension of the internal roadway to include footpaths, retaining walls, fencing and services as constructed (2) omission of mini roundabout on internal roadway as outlined in condition 4b.

Location

Farranacardy Td , Calry Road , Sligo.

Planning Authority

Sligo County Council

Planning Authority Reg. Ref.

20369

Applicant(s)

Blackmud Developments Ltd.

Type of Application

Permission.

Planning Authority Decision

Grant Permission with conditions

Type of Appeal

First Party v Condition 2

Appellant(s)

Blackmud Developments Ltd

Observer(s)

None.

Date of Site Inspection

N/A.

Inspector

Bríd Maxwell

1.0 Site Location and Description

1.1. This appeal relates to a site of 1.015 hectares located within the townland of Farranacardy on Calry Road, Sligo, Co Sligo. The site is located circa 2km to the northeast of Sligo City centre off the Regional Road R278 and comprises a residential development of 18 houses of recent construction which were permitted under planning permission reference, (04/1514) for 76 dwellings a creche and associated site works, and services granted on 26/10/2005. It is evident from the documentation provided that the site was partially developed and was subsequently constructed by the current applicant in a certain state of dereliction / disrepair. It is outlined by the first party that renovation and renewal works were carried out and services installed. In the interim period the lands have been re-zoned strategic reserve.

2.0 Proposed Development

- 2.1. The development as described in public notices involves permission to retain alterations to development layout that consisted of 76 houses granted under PL04/1514 as follows: (1) Extension of the internal roadway to include footpaths, retaining walls, fencing and services as constructed (2) omit mini roundabout on internal roadway as outlined in condition 4(b).
- 2.2 In terms of explanation of the background to the application it is outlined that the development of only eighteen houses as opposed to 76 necessitated the creation of a short link road from the 18 constructed houses to the site entrance. This application therefore seeks to regularise the altered road network.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 By order dated 1st March 2021 Sligo County Council decided to grant permission for retention and 4 conditions were attached including the following:

Condition 2 (subject of this appeal)

2(a) Within 6 months of the date of grant of Planning Permission the developer shall pay to the planning authority a financial contribution of €110,779 as a special contribution under section 48(2)(c) of the Planning and Development Act 2000 in respect of the proposed construction of a footpath to the southwest of the site along public road along the R278.

(b) No house shall be occupied until such time as the contribution has been paid in full; and the footpath to the southwest of the site along the public road has been constructed.

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.

Condition 3. Public lighting details to be submitted within 3 months of date of grant of permission.

Condition 4. Details of footpath roadway construction in accordance with TII Standards. Tie ins of internal roadway with the existing public road. Provision for dropped kerbing and tactile paving at all pedestrian crossing points. Proposed boundary wall/fence construction details. Signing and lining details. Traffic calming measures.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial Planner's report sought clarification on a number of issues by way of request for additional information. A request issued requiring:

- Details for the construction of the footpath along the public road to the southwest in accordance with condition 17 of governing permission PL04/1514. Clarification of who is constructing this footpath, specifications, and timeframe for delivery.
- Details of location, height, and extent of all retaining walls including site sections.

- Confirmation that finished floor levels of 18 houses as constructed are in accordance with the parent permission.
- Detailed landscaping plan.

Following submission of additional information. Final report recommends permission subject to conditions including condition 2 special contribution in respect of construction of footpath to the southwest of the site along the R278 as per subsequent decision.

3.2.2. Other Technical Reports

Acting Senior Executive Engineer's report. Application is premature pending proposals to address footpath construction to the southwest. Application misrepresents discussions /correspondence with Sligo County Council as no agreement has been reached with regard to the construction of a public footpath. Further information required.

Following response to further information request the Senior Executive Engineer's report asserts that as "there are issues in relation to the applicant providing this footpath due to land ownership difficulties it would be appropriate for Sligo County Council to construct this footpath" footpath construction by Sligo County Council as roads authority. As all the lands northwest and adjacent to the public footpath are zoned as "Strategic Reserve" under the SEDP 2010-2016 and amendments thereafter this development is the only development that will benefit from the proposed footpath." Contribution of €110,776 in respect of the full construction of the footpath and lighting.

3.3. Prescribed Bodies

No submissions

3.4. Third Party Observations

None

4.0 Planning History

PL04/1514 Permission granted 26th October 2005 for construction of seventy-six dwellinghouses a crèche and all associated site development works and services.

Condition no 3. Development Contribution €468,285 in accordance with the Development Contribution Scheme.

Condition 4 Revised layout including Relocation of raised traffic calming area at entrance to the site which shall be setback at least 20m from the centre of adjoining public road and shall be 10 metres in length. Relocation of proposed mini roundabout at creche which shall be independent of main access road.

Condition 15. Bond €339,000.

Condition 16 Part V agreement.

Condition 17. Developer shall construct footpath to the southwest of the site along the public road in accordance with details submitted to the Planning Authority on 27th July 2005.

5.0 Policy Context

5.1. Development Plan

The Sligo County Development Plan 2017-2023 and Sligo and Environs Development Plan 2010-2016 refer.

The site is zoned strategic reserve (where no development can take place during the plan period) following Variation No 2 Core Strategy.

5.2. Natural Heritage Designations

The site is not within a designated area, The nearest such site - Lough Gill SAC is within 600m to the southwest of the site.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal relates to condition 2 special contribution only. Grounds of appeal are summarised as follows:

- Site purchased by the First Party, Blackmud Developments Ltd, in 2013 in association with Cluainin Voluntary Housing CLG who, it was envisaged, would take over the Part V element of the development. The 18 houses were contracted to Sligo County Council as the Part V element.
- Sligo County Council released a bond to the vendors for a cash payment by the First Party of €122,4000 on the proviso that this bond would be released on a phased basis as rehabilitation of the site was carried out and a further 6 houses to be built.
- Site has been rehabilitated, dereliction removed, sewers and services connected, and housing stock renewed. No bond has been released and no assistance received from the Council.
- Funding streams under Derelict Sites and Vacant Sites register not addressed.
- As no permission could issue on the remainder of the site until zoning restriction removed it was agreed that a phased per house contribution would apply.
- Following engagement with the third-party landowner, Roads Section of Sligo County Council and the carrying out of surveys a detailed design was submitted to the council who advised that the matter was with the Council's solicitor.
- First Party was gobsmacked that Sligo County Council have now imposed two conditions as part of decision to grant permission which were not part of the original permission PL041/1514.
- Condition 2a imposes a charge of €110,779. Costs are not detailed. Against the 18 houses this is a further charge of €6,154 per house on top of the €11,911 per house (previous contribution and bond)
- Under condition 2b Occupancy is prohibited until the special contribution is paid in full.
- Decision is a gross and blatant departure from zoning permission PL04/1514.

- No provision is made for phasing of payments.
- No prorata adjustment allowed for payment of the special contribution divided by 87 units or is it the 18 units already built on a prorata basis which would be €110779 divided by 87 units x 18 units = €22,920.
- Sligo County Council costings are approximately 3 times the First Party's costings to construct the footpath.
- There are 47 private houses in the immediate domain of Calry Road, Shaws Avenue and Faughts Lane adjacent site entrance who will use the footpath on the R278.
- First party not disposed to putting infrastructure on the lands of adjoining owner Vincent Melvin the owners of the lands under and adjacent to the footpath proposed on the R278 by Sligo County Council.
- No credit allowed against the Special Contribution for storm sewer watermain and infrastructure provided on the site since it was purchased at a cost of €37,265.
- €92,000 of Development charges have been paid to Sligo County Council in good faith and first party is prohibited in of occupation of the houses.
- The extent of charges under the Sligo County Council Development Contribution Scheme 2018-2024 equates to €48,600. Whereas \$92,000 has been paid. This should be reimbursed. In line with government policy on provision of social and affordable housing no contributions should apply.
- Request a review of spending by Sligo Conty Council of the development fees and charges received for the 47 private houses in the vicinity and the public infrastructure of footpaths delivered with these fees on the Calry Road R278.
- Request that the Board review condition 2 and reduce the amount to be paid to €1 for the following reasons:
 - Sligo County Council has access to road and public infrastructure budget of the Dept of Environment to provide a footpath on the R278 which is a vital piece of infrastructure sought by the Calry residents' association over the past 10 years. This footpath would also link the 47 houses in the immediate vicinity and estates of Mulberry Park, Yeats Height and Ballinode (235 households).

- The provision of the footpath should not be burdened on Blackmud Developments Ltd and Cluainin Voluntary Housing Association as this is a shared public infrastructure provision.
- Sligo County Council under Development Contribution Scheme 2017-2024 item 10 exemptions and reductions page 8 and 9 have not applied any consideration of discounts against the charges imposed under PL20/369.
- 18 houses are Part V Social and Affordable and should be exempt from all development charges and special contributions. No credit or discount in relation to development on brownfield site (-30%), vacant site register (-30%) dereliction (-30%).
- Significant costs have been expended in terms of construction of stormwater pipe network and sewer pipe network and watermains on R278.
- Applicant is willing to construct the footpath at a cost of €37630 + VAT.
- Post decision correspondence with Sligo County Council indicates that there is no breakdown of the Special Contribution figure and that only when €110,779 is paid the process of tendering and procuring will take place.
- Following dialogue with Sligo County Council the applicant designed and has agreed to construct but the delivery has been frustrated by the Council.
- Sligo County Council has frustrated first party efforts to have file data ref PL04/1514 and PL20/369.
- Enormous charge for 271metres of 2m wide concrete path 100mm deep.
- Sligo Couty Council is statutorily mandated to fund and provide infrastructure from the standard development contribution charges prescribed on Page 7 of the Scheme 2018-2024.

6.2. Planning Authority Response

6.2.1 The response of the Planning Authority is summarised as follows:

- It is a condition of the parent permission 04/1514 that a footpath be constructed along the public road.
- Development contributions were paid by the original developer (Not the first party appellant) for 16 no houses (except for 2 associated with Part V)
- At pre planning stage the outstanding issues were brought to the attention of the first party including the requirement to construct a footpath.
- Application was lodged without clarity on the construction of the footpath. Site layout drawings indicates that a fiscal contribution will be paid.
- Further information request sought to clarify this issue. Response indicated that fiscal contribution would be paid. As the applicant has no interest in the land required to construct the footpath it is suggested that the Council exercise powers to acquire the grounds necessary to complete.
- The amount of contribution is based on the calculation attached from the Roads Department and quotation provided with respect to public lighting.
- Contrary to the contents of the appeal the site is neither on the derelict sites register nor the vacant sites register.
- Email correspondence between the first party appellant and roads Department of Sligo County Council is appended.
- It is respectfully requested that condition 2 remains.

6.2.2 Appendix 1 Breakdown – Is summarised as follows:

Series 100 Preliminaries	€8,300
Series 200 Site Clearance	€500
Series 3000 Fencing and Environmental Noise Barriers	€1,000
Series 500 Drainage & Service Ducts	€30,450
Series 600 Earthworks	€7,560
Series 700 Pavements	€4,150
Series 1100 Kerbs Footpaths and Paved Areas	€23,935
Public Lighting (Quotation attached from electric Skyline Ltd)	€11,705
Contingencies	€10,000
Total Ex Vat	€97,600
Total Cost Including Vat @ 13.5%	€110,776

Report of Acting Senior Executive Engineer asserts that he cannot see how this footpath could be constructed for €42,710 including Vat as suggested by the First Party.

Quotation provided in respect of public lighting,

6.3. Further Responses

6.3.1 The first party response to the response of the Planning Authority is summarised as follows:

- At the pre-planning meeting 29/10/2019 Council advised that permission would not be required for the footpath as it was an unfulfilled condition of previous permission PL04/1514.
- At the meeting with roads section 28th November 2019 it was agreed that Bury Architects would survey and design the public footpath on the R278 (a tree and road survey was submitted to the Council). It was also agreed that the provision of

services would be by Sligo County Council. Public lighting of the footpath was not included in the parent permission.

- The failure of Sligo County Council to provide breakdown of charge has frustrated efforts in terms of the first party's appeal considerations.
- Condition 17 of PL04/1514 is explicit in stating that the Developer shall construct the footpath.
- Sligo County Council has frustrated, delayed and impeded the execution of Condition 17.
- Irrelevant that contributions were paid by the previous owner. The fact that development charges were paid was factored into account in the purchase of the property.
- Cash bond was to be released as the site was rehabilitated. (Exhibit 8 correspondence from Sligo County Council demonstrates agreement in this regard).
- At no point in discussions with the Council was it discussed or agreed to waive the 'entitlement and right' of the first party to install the footpath.
- Latitude and fairness should have been shown in imposition of contribution as severe as €110,779 given the effective sterilisation of the remaining site.
- No factor of apportionment allocated toward the benefit of the public footpath to the other 47 private residences accessing and egressing R278.
- Exhibit 3 memo copied in planning file PL04/15/14 dated 2/3/2005 suggests that "Provision of footpath – may be difficulties in acquiring permission on adjoining lands but T.M (former owner) and R.McD (Former owner's Architect) to approach landowner or SCC in relation to provision."
- There is an obligation on Sligo County Council to grant consent or license to the first party to construct the footpath otherwise Condition 17 should be waived or cancelled and should not be used as a legal grounding for imposing a subsequent special contribution under PL20/369.

- Alternatively, the Board should direct Sligo Co Council to exercise its powers to acquire the grounds necessary and construct the footpath or accept fiscal contribution of €27,407 and this to be installed within 6 months.
- Fiscal contribution can be paid based on the following principals.
 - That the cost of the footpath only element is charged which is indicated in the Sligo County Council's own Cost schedule not exceeding the amount of €23,935
 - That the amount of €23.935 is phased over two installments. (First immediately and second following construction of the footpath.)
- Do not agree with the costings indicated by the roads authority. These are estimates and are embellished with inflated rates not in keeping with actual construction costings applied by building companies and contractors in charge of delivering such works.
- As demonstrated based on detailed quotations the total deduction from Sligo County Council Costings would be €47,436.03.
- Bill of quantities and costings backed up with actual quotations from suppliers indicates the costs for the footpaths and the placing of service pipework and accessories therein is €37.631.00 nett.
- Sligo County Council indicate in their costings that the footpath costs are €23,935 nett which are less however our costings includes for placing stormwater and ESB ducts within the price and supplying concrete bedding materials. (Piped services if supplied by Sligo County Council will cost them €7,535.48 (ref p 6 Bill of Quantities) Electrical kit if supplied by Sligo Co Council will cost €10,232.64 ref (O6 Bill of Quantities.)
- Sligo County Council failed to include the site on the derelict site and vacant sites register where it may have assisted owner in bringing the site into commercial use in meeting the housing needs in the area.
- The 18 houses on the site are the Part V houses that were contract purchased by Sligo County Council from the previous owner. First party inherited this unrescinded contract as part of purchase.

- These houses continue to be Part V houses for the overall development. Exhibit 7 is the legal covenant document attaching to the houses 1-18 which were to be exempted from development charges. First party took over these houses and rehabilitated them with Cluainin Voluntary Housing Association CLG to be made available to the rental and affordable housing market.
- Call on the good judgement and fairness of An Bord Pleanála to assess right to be treated *pari passu* with Sligo County Council and make a decision that all development charges be cancelled and rebated against Blackmud Development Ltd and Cluainin Voluntary Housing Association under the parent permission 04/1514 and under the retention permission PL20/369 for the 18 Part V Houses on Puffin Drive.

7.0 Assessment

- 7.1. This appeal was made against a condition set under S.48 of the Act, therefore it is appropriate that I confine my assessment to whether the financial contribution was correctly applied. The Act provides that the Board shall not determine the application as if it had been made in the first instance but shall determine only the matters under appeal in effect the condition being appealed against. I note that the first party appeal raises a number of wider issues and indeed specifically requests that the Board address issues including the appropriateness of imposition of the original condition 17 under PL04/1514, a call for the re-imburement of contributions previously paid and a for a review of spending by Sligo County Council of Development Contributions paid in respect of other private houses in the vicinity and of the level of public infrastructure delivered with these fees. These matters are clearly well beyond the remit of the current appeal and not a matter for the Board in this context.
- 7.2. The condition under appeal condition 2 requires payment of €110,779 euro contribution as a 'special' development contribution, set under S.48(2)(c) of the Act, as amended, which states: (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 and

(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 (or final instalment thereof, if paid by phased payment under subsection (15)(a)),

(ii) have commenced, but have not been completed within 7 years of the date of payment to the authority of the contribution (or final instalment thereof, if paid by phased payment under subsection (15)(a)), 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.

7.3 The Development Management Guidelines addresses such conditions as follows (section 7.12):

“Finally, ‘special’ contribution requirements in respect of a particular development may be imposed under section 48(2)(c) of the Planning Act where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. A condition requiring a special contribution must be amenable to

implementation under the terms of section 48(12) of the Planning Act; therefore it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. Circumstances which might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it. Where the benefit deriving from the particular infrastructure or facility is more widespread (e.g. extends to other lands in the vicinity) consideration should be given to adopting a revised development contribution scheme or, as provided for in the Planning Act, adopting a separate development contribution scheme for the relevant geographical area. Conditions requiring the payment of special contributions may be the subject of appeal.”

- 7.4 The amount of €110.000 is expressly stated to apply to “the proposed construction of a footpath to the southwest of the site along public road along the R278.” The background to the imposition of the contribution condition arises in light of unfulfilled condition 17 of the governing permission PL04/1514 which required that “Developer shall construct footpath to the southwest of the site along public road in accordance with details submitted to the Planning Authority on 27th July 2005.” Thus, it is evident that the provision of the footpath formed part of the plans and particulars of the original application which related to the larger site and development of 76 houses.
- 7.5 The first party appellant now questions both the requirement to pay the contribution per se, and in detail the amount of the contribution. The first party submissions outline that the site, which was in a state of dereliction and disrepair, was purchased by the first party in association with Cluainin Housing Association CLG in 2014. The first party had accepted that the works for the provision of the footpath were to be carried out by the developer and a scheme design had been drawn up by Bury Architects dated 24/1/2020 which had been submitted to the planning authority however on the basis of involvement of third party lands the Local Authority

determined that it would be more appropriate for Sligo County Council to carry out the footpath construction.

7.5 The first party has expressed frustration in its dealings with Sligo County Council and various emails provided by the first party and planning authority in response to the appeal demonstrate the protracted and unresolved discourse notwithstanding the significant passage of time from the grant of the original planning permission on 25/10/2005, the transfer of the site to the first party and Cluinin Housing Association in 2013. I note that the request for additional information which issued on 22/6/21 sought clarification on

“who is constructing the footpath and agreement for same.

Full construction details incorporating speciation’s on widths, levels, surface water drainage, public lighting etc.

Timeframe for delivery.”

I note that the first party indicated in response a willingness to make a fiscal contribution towards the construction of 398 linear metres of footpath.

7.6 As outlined at Paragraph 7.2 above, the specific explanation as to when a Planning Authority may require the payment of a special contribution is covered in Section 48 (2)(c) of the Planning and Development Act 2000. It is clear that such a request should only be made in respect of a particular development which is likely to incur specific exceptional costs not covered by the general development contribution scheme of the Council. They are in addition to the terms of the general scheme and might cover specific developments whereby the scale of the development and the demand the proposed development is likely to place on public services and facilities is deemed to be exceptional.

7.7 In addressing the question as to whether the provision of a footpath can be taken to fall within a category of works for which a special contribution might be sought, I note the nature of the application which is described as follows:

“Permission to retain alterations to development that consisted of 76 houses granted under PL04/1514 as follows: (1) extension of the internal roadway to include footpaths, retaining walls, fencing and services as constructed, (2) omit mini roundabout on internal roadway as outlined in condition 4b,”

Having regard to the limited nature of the development covered by the current appeal, (1) and (2) above, and on site area which is part of the overall site PL04/1514, I consider that the works would not relate to “specific exceptional costs” in respect of this particular development. I consider that it is appropriate that the matter is addressed by the Planning Authority and the first party as an issue of compliance. I would further concur with the first party that regarding the issues of benefit the proposed footpath would be of general benefit to the numerous houses located in the vicinity and the condition does not address the matter of apportionment. Furthermore, the condition is not sufficiently specific to be compatible with the terms of Section 48(12)(a) and the application of the terms of Section 48(12)(b) and (c) relating to refund or partial refund should the project not be commenced or be partially completed within the specified timeframes, if subsequently required. I conclude based on the foregoing that the condition is not amenable to implementation under S.48(12) of the Act. I therefore recommend that the Board use its powers under S.48 of the 2000 Act, as amended, to delete condition no. 2 of the permission.

Conclusion

- 7.8 Having reviewed the application documents, the grounds of appeal, I conclude that the planning authority acted ultra vires its powers under the Planning and Development Acts, 2000 as amended in attaching the requirement for a special contribution of €110,779. The contribution does not accord with the provisions of Section 48 (2) (c) of the Planning and Development Act, 2000 with reference to the payment of a special contribution and the said contribution is not amenable to being applied in accordance with the provision of Section 48(12) of the Act.

RECOMMENDATION

Omit condition 2 for the reasons and considerations set down below.

Having regard to the nature of the subject application, which comprises the alteration of a permitted development 04/1514, specifically the extension of the internal roadway to include footpaths retaining walls and fencing and services as constructed and the omission of mini roundabout on internal roadway as outlined in condition 4(b), the Board considered that Condition 2 requiring the payment of €110,779 as a special development contribution for the construction of a footpath to the southwest of the site along the R279 public road is not in accordance with the provisions of Section 48(2)(c) of the Planning and Development Act 2000 as it does not constitute a specific exceptional cost in relation to this particular development.

Bríd Maxwell
Planning Inspector,
28th March 2022