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Bord  
Pleanála

## Inspector's Report ABP-310178-21

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<b>Development</b>	Acceptance and processing of organic waste materials at the existing Anaerobic Digestion Facility of up to 30,000 tonnes per annum with associated buildings.
<b>Location</b>	Derryville, Moyne, Thurles, Co. Tipperary
<b>Planning Authority</b>	Tipperary County Council
<b>Planning Authority Reg. Ref.</b>	20816
<b>Applicant(s)</b>	Derryville Environmental Solutions Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	First Party V Contribution Condition
<b>Appellant(s)</b>	Derryville Environmental Solutions Ltd
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	None
<b>Inspector</b>	Una Crosse

## 1.0 Site Location and Description

1.1. The site has a stated area of 2.3ha and is located in an area of peat bog accessed from the R502 between Templeuohy and Johnstown in County Tipperary. The site is c. 3.7km west of the village of Templeuohy and c.11km east of the town of Templemore. The site accommodates the existing anaerobic digestion facility.

## 2.0 Proposed Development

2.1. The proposal relates to an increase in the amount and processing of organic waste materials of up to 30,000 tonnes per annum at the existing Anaerobic Digestion Facility. The proposal also provides for a glass lined steel digestate storage tank which is 46.1m in diameter and 5.67m in height and an office building (H- 5.83m, W- 7.6m and L-15m) and all associated works.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority granted permission subject to 9 conditions.

**Condition 9**, subject of this appeal, requires the payment of **€39,949.16** as follows:

Prior to the commencement of development a payment of a financial contribution shall be paid to the Planning Authority in respect of public infrastructure and facilities benefiting the development in the administrative area of Tipperary County Council that is provided, or intended to be provided, by or on behalf of the Authority in accordance with the terms of the Tipperary County Council Development Contributions Scheme 2020 made under Section 48 of the Planning and Development Act, 2000 (as amended). The amount of the development contribution under this condition is €39,949.16 which is calculated as follows:

<b>Class 8</b>	<b>(€ per sq.m)</b>	<b>Floor area (Sq.m)</b>	<b>Total Cost</b>
Industrial (Office Building)	€23.00	96.70	€2,224.10
		<b>Total</b>	<b>€2,224.10</b>

<b>Class 8</b>	<b>(€ per sq.m)</b>	<b>Floor area (Sq.m)</b>	<b>Total Cost</b>
Industrial (Digestate Storage Tank)	€23.00	1,640.22	€37,725.06
		<b>Total</b>	<b>€37,725.06</b>

**Reason:** It is considered reasonable that a contribution be made in accordance with the Tipperary County Council Development Contributions Scheme 2020 made under Section 48 of the Planning and Development Act 2000 (as amended).

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The planner's report recommended a grant of permission as set out in the manager's order.

Section 7 of the Planners Report states that "*development contributions will be levied in accordance with Class 8 of the TCC Development Contributions Scheme 2020 as set out*" in the Tables (see above). It states that "*there is no facility to levy development contribution per m<sup>3</sup> in relation to the proposed steel digestate storage tank which provides additional storage capacity of 9,300m<sup>3</sup>. Therefore, it is proposed that the capacity of 9,300m<sup>3</sup> is divided by the height of the tank (5.67) giving an area of 1,640.22 sq.m*".

#### 3.2.2. Other Technical Reports

3.2.3. None of relevance.

### 4.0 Planning History

4.1. **Ref. 11510331** - Permission was granted in November 2011 for an Energy Park which was described as consisting of a weighbridge, digester, crop drying shed, reception shed, offices, road entrance, internal road access and digestate storage tank.

Condition 20 of the decision required a development contribution of €24,734.74 which was applied under the provisions of the 2011 Scheme.

## 5.0 Policy and Context

### 5.1. Development Contribution Scheme

The Tipperary County Council Development Contribution Scheme 2020 is the applicable development contribution scheme. There are 3 classes of development which are within the Industrial Category. The following Classes of Development within the Scheme, Section 6 – Classes of Development, are of relevance to the appeal both of which are Industrial in category:

**Class 8** – the provision of an industrial building or light industrial building (including for non-retail warehousing, processing & manufacturing).

**Class 10** – The provision on, in, over or under land of plant or machinery or of tanks or other structures (other than buildings) for storage purposes.

The contribution payable for each Class is included in Section 12 – Schedule of Contributions.

### 5.2. Natural Heritage Designations

Not relevant

### 5.3. EIA Screening

Not relevant

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The appeal relates solely to the application of the TCC Development Contribution Scheme and to Condition 9.
- Notification of decision attached which includes Condition 9 which is detailed (see Section 3.1 above).
- Grounds of appeal very simple with appellant having no issue with a contribution cost being applied for the office building or the digestate storage tank.

- However, condition 9 applies the 'Class 8' rate of €23 per sq.m to the digestate storage tank, as development categorised as 'Industrial' ignoring the 'Class 10' industrial categorisation within the Development Contribution Scheme (attached).
- Class 10 relates to the 'provision on, in, over or under land of plant or machinery or of tanks or other structure (other than building) for storage purposes' where a contribution rate of €8 per sq.m applies (section 12).
- No consideration given to the application of Class 10 nor reason provided as to why the Class 10 rate would not be applied (section 7 of Planners Report – attached).
- Tank in question – a digestate storage tank (appellants emphasis) – clearly satisfies the development description outlined in Class 10 and appellant considers rate of €8 per/sq.m is more appropriate which would provide require a contribution of €13,121.76 (1,640.22 x €8)

## 6.2. Planning Authority Response

No response received.

## 6.3. Observations

Not applicable.

## 6.4. Further Responses

6.5. None

## 7.0 Assessment

7.1. This is an appeal against a contribution condition imposed by Tipperary County Council under the adopted Tipperary County Council Development Contribution Scheme 2020. Section 48(10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be made to the Board by an applicant for permission where the applicant considers that the terms of the adopted development contribution scheme have not been properly applied by the planning authority.

- 7.2. Condition 9 requires that a contribution of €39,949.16 is made to the Council on the basis that the two elements of the development, the office building and the digestate storage tank, comprise buildings to which Class 8 applies and where a contribution of €23 per sq.m is required. I would note that the appellant is not arguing the application of Class 8 to the office building.
- 7.3. The crux of the matter relates to the planning authority applying Class 8 to the storage tank structure. The appellants contend that Class 10 should have been applied as it refers specifically to tanks and the digestate storage tank is a tank. A contribution of €8 per sq.m would be required under Class 10. The contribution payable if Class 8 is applied is €37,725.06 and if Class 10 is applied is €13,121.76 which is significantly less.
- 7.4. The planning authority have not responded to the appeal with their rationale for applying the contribution for a building to what is clearly a tank. The digestate storage tank is described in the public notices as a tank and it is clear from the manner of its intended use that it is a tank. Therefore, I consider that the planning authority erred in applying Class 8 of the Scheme to the storage tank which should have been subject to Class 10. Therefore, the Planning Authority should be directed to amend Condition 9 to reflect the application of Class 10 to the area of the digestate storage tank with the amount of contribution levy amended accordingly as follows:

<b>Class 10</b>	<b>(€ per sq.m)</b>	<b>Floor area (Sq.m)</b>	<b>Total Cost</b>
Industrial (Digestate Storage Tank)	€8.00	1,640.22	€13,121.76
		<b>Total</b>	<b>€13,121.76</b>

## 8.0 Recommendation

- 8.1. I recommend that the planning authority be directed to amend Condition 9.

## 9.0 Reasons and Considerations

A development contribution is payable, as per the Tipperary County Council Development Contribution Scheme 2020, on foot of a grant of planning permission for an increase in the acceptance and processing of organic waste materials with digestate storage tank and office. Class 8 of the scheme relates to industrial or light industrial buildings with Class 10 relating to the provision of plant, machinery or tanks. Having regard to the use of the proposed digestate storage tank as a tank, this element of the development should be subject of the Class 10 contribution and not Class 8 as applied. The planning authority has therefore erred in its application of the scheme and Condition 9 should be amended accordingly.

### Condition 9

Prior to the commencement of development a payment of a financial contribution shall be paid to the Planning Authority in respect of public infrastructure and facilities benefiting the development in the administrative area of Tipperary County Council that is provided, or intended to be provided, by or on behalf of the Authority in accordance with the terms of the Tipperary County Council Development Contributions Scheme 2020 made under Section 48 of the Planning and Development Act, 2000 (as amended). The amount of the development contribution under this condition is **€15,345.86** which is calculated as follows:

<b>Class 8</b>	<b>(€ per sq.m)</b>	<b>Floor area (Sq.m)</b>	<b>Total Cost</b>
Industrial (Office Building)	€23.00	96.70	€2,224.10
		<b>Total</b>	<b>€2,224.10</b>

<b>Class 10</b>	<b>(€ per sq.m)</b>	<b>Floor area (Sq.m)</b>	<b>Total Cost</b>
Industrial (Digestate Storage Tank)	€8.00	1,640.22	€13,121.76
		<b>Total</b>	<b>€13,121.76</b>

**Reason:** It is considered reasonable that a contribution be made in accordance with the Tipperary County Council Development Contributions Scheme 2020 made under Section 48 of the Planning and Development Act 2000 (as amended).

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Una Crosse  
Senior Planning Inspector

21 June 2021