



An
Bord
Pleanála

Inspector's Report ABP311175-21

Development

Demolition of all buildings on site and construction of a retail development with a G.F.A. of 6,184 square metres, car parking and all associated works.

Location

Milltown, Donegal Town, County Donegal.

Planning Authority

Donegal County Council.

Planning Authority Reg. Ref.

2051194.

Applicant

Railway Road Trading Limited.

Type of Application

Permission.

Planning Authority Decision

Grant.

Type of Appeal

First Party -v- Financial Contribution Condition under the provisions of S.48(2)(c).

Appellant

Railway Road Trading Limited.

Observers

None.

Date of Site Inspection

6th October, 2021.

Inspector

Paul Caprani.

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1.0 Introduction

ABP311175-21 relates to a first party appeal against a financial contribution condition attached under the terms of Section 48(2)(c). The grounds of appeal argue that the financial contribution levied which amounts to €75,000 under Condition No. 27 has not been justified and as such does not accord with the requirements of Section 48(2)(c).

2.0 Site Location and Description

2.1. The appeal site is located in the north-eastern environs of Donegal Town approximately half a kilometre from the Diamond in the centre of Donegal Town. The site is roughly rectangular in shape and has a stated area of 2.53 hectares. The lands can be described as brownfield having formally accommodated picture framing/moulding factories in two separate large buildings on the site. The site is bounded to the north by Railway Road which serves a number of residential housing estates in the northern environs of Donegal Town. Tyrconnell Street runs southwards towards the centre of Donegal Town to the west of the site. St. John Bosco Community Centre, the Donegal Railway Heritage Centre and a large hardware and builder providers are located on lands to the west of the site. There is an existing right of way to the site located along the roadway to the southern boundary of the subject site. It connects the site with Tyrconnell Street and Water Street further south. McGee Clothing Factory is located to the south-west of the site whereas the lands adjacent to the southern boundary of the site are undeveloped and are under grass.

3.0 Proposed Development

3.1. The proposed development before the Board seeks the demolition of all existing buildings on site and the construction of a retail development with a gross floor area of 6,184 square metres. It will comprise of an anchor supermarket (G.F.A. 2,787), eight retail units and a café and restaurant unit. The development will also provide 201 car parking spaces and 33 cycle spaces. The main access to the site is provided

off Railway Road to the north. The anchor supermarket unit together with two retail units are located on the western side of the site. Six of the units plus the café are located in the northern portion of the site and face southwards onto the large expanse of surface car parking. A service road runs to the rear of these units with the service area located in the north-western corner of the site.

4.0 Planning Authority's Decision

4.1. Donegal County Council granted planning permission for the proposed development subject to 27 conditions.

4.2. The final condition attached stated the following:

The applicant (or person at the relevant time entitled to the benefit of the permission) shall pay the sum of €75,000 to the Planning Authority as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000 in respect of pedestrian and road infrastructure which facilitate the development.

This contribution shall be paid prior to the commencement of development or in such phased payments as the Planning Authority may facilitate.

Where the works in question

- (i) are not commenced within five years form the date of payment to the authority of the contribution, or the final instalment thereof, or*
- (ii) have commenced, but have not been completed within seven years of the date of payment to the authority of the contribution or final instalment thereof; or*
- (iii) where the local authority decides not to proceed with the proposed works or part thereof the contribution shall be refunded to the applicant together with any interest that may have accrued over the period while held by the local authority. Where a 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 of those works which have been carried out.*

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 by the Development Contribution Scheme and which will benefit the proposed development.

During the course of determining the application, Donegal County Council requested further information; some of which related to traffic issues including details of proposals for an upgrade of the right of way that accesses the site from the south that can accommodate vehicular and pedestrians movements. In this regard the applicant is also advised that a pre-planning submission indicated access from the new road via the existing right of way and the Planning Authority considers that there is merit in further discussion with regard to this alternative access route. In response to this issue it is stated that this laneway is not in the ownership of the applicant and therefore it is not possible to upgrade this laneway/road to provide a permanent alternative access.

5.0 Grounds of Appeal

- 5.1. The decision of Donegal County Council to grant planning permission for the proposed development was the subject of a first party appeal specifically in respect of Condition No. 27. The grounds of appeal state that they welcome the decision of the Planning Authority, and the first party appeal relates to Condition No. 27 only. It is requested that An Bord Pleanála restrict its consideration to the appropriateness of the condition as provided under Section 28(12)(a) of the Planning and Development Act 2000 (as amended).
- 5.2. It is argued that the condition which requires the payment of a special development contribution in respect of pedestrian and road infrastructure does not meet the requirements of the Act in respect of the attachment of special contribution conditions.
- 5.3. Reference is made to Section 7.12 of the Development Management Guidelines which states that it is essential that the basis for the calculation of the contribution should be explained in the planning decision, and it is necessary to identify the nature and scope of the works, the expenditure involved and the basis of the calculation including how it is apportioned to the particular development.

- 5.4. It is recognised that such contributions are justified when there is a specific exceptional cost incurred by the Planning Authority. It appears that Condition No. 27 was attached on foot of internal reports received from Donegal County Council Roads Design Section and the Area Engineer's Section. However, the information provided to justify the special contribution is not considered to be sufficient. There is no methodology for the calculation set out in any of the internal reports. Therefore, it is unclear as to why the developer is liable to pay this special development contribution.
- 5.5. The revised Transportation Assessment Report submitted by way of further information includes revised plans to Railway Road to take account of the Council's proposals for the Donegal Co-Op Livestock Mart and also to include for proposed crossings on Railway Road that will benefit pedestrian crossing movements. It is noted that the Road Safety Audit did not require the provision of a signalisation of a pedestrian crossing for the development.
- 5.6. Any pedestrian and road infrastructure works proposed within the red line of the application will be carried out by the applicant at their expense subject to agreement with the Planning Authority. Furthermore, the requirements of the Road Safety Audit are reflected in Condition 5(a) and 5(b) of the grant of planning permission and Condition No. 21 states that all facilitation works relating to the future proofing of the proposed pedestrian crossing points on Railway Road shall be carried out in consultation with the Area Road Engineers. Based on the above, and given the proposed development future proofs the future signalisation of the pedestrian crossing, it is considered that the requirement for a specific contribution has not been justified in accordance with the provisions of Section 48(2)(c) of the Act. Should the Board consider that a special contribution is required for the signalisation of the pedestrian crossing the applicant's traffic consultant estimates that the cost of this would amount to a mere €25,000 and therefore the special contribution should be reduced by €50,000.
- 5.7. It is noted that the Local Authority Road Design Section recommended that the footpaths be upgraded to provide a minimum width of 3 metres in order to accommodate the movement of small groups. No further information is contained in the planner's report or the internal reports as to whether or not provision for this improvement was contained in Condition No. 27. Furthermore, the widening of

footpaths along Railway Road could lead to other transport issues particularly on Mart days with associated Mart traffic parking on the footpaths.

6.0 Appeal Responses

6.1. Donegal County Council submitted the following response to the grounds of appeal.

6.2. It is considered that the imposition of a special contribution under Section 48(2)(c) is reasonable and appropriate. The works to be carried out under the financial contribution the connectivity of the site area with the town area through the upgrade of pedestrian and vehicular movements. From the total cost of the works that are foreseen, the charge as levied represents a 9.5% contribution towards these works. This contribution does not include for the controlled pedestrian crossing. Having regard to the scale of the proposed development and the increased volume of pedestrian and vehicular traffic that is envisaged as a result of the development it is considered that the charge as levied is appropriate and reasonable. The planned road and infrastructural improvements are set out in the table below:

Planned pedestrian footway & Road Infrastructure improvement works:	
Railway Road Pedestrian Footway	
1000 sq.m of Bitmac	€23,000
Civils (Kerb, Drainage and Ducting	€60,000
Lighting Infill	€12,000
Pedestrian Crossing (Pelican)	€21,000
Boundary	€5,000
Lough Eske Road Pedestrian Footway	
1000 m ² Bitmac	€23,000
Civils (Drainage Kerbs, ducting)	€120,000
Lighting infill	€30,000
Boundary (walls)	€35,000
Resurfacing of Railway Road	€70,000
Implementing One way system on Water Street New Row and Castle Street Roadworks, lighting, signage, lining and street	€400,000

furniture	
Total Expenditure	€789,000

6.3. Further Submission on behalf of Applicant

- 6.3.1. A further submission was received by John Spain and Associates in respect of the details submitted by Donegal County Council. It is argued that the submission by the Council does not provide any detailed response to the grounds of the first party appeal. No information is provided as to how these figures have been derived and no drawings or additional information on the details of the proposed improvement works to the footways are provided. Furthermore, it is not clear how the Lough Eske Road is relevant to the development given that it is located to the north of the site and is only connected to the Railway Road via New Row.
- 6.3.2. Furthermore, it is assumed that the upgrade will involve the provision of a minimum 3 metre wide footpath in accordance with the recommendation of the Road Design office. However as previously set out, the applicant's transport consultant has advised that given the constraints of the town centre, it is not clear how the minimum 3 metre width would be achieved. Furthermore, this could lead to problems with traffic parking along the road and on the footpath on Mart days.
- 6.3.3. A figure of €70,000 is provided for the surfacing of Railway Road to strengthen the road. However, no further information is provided as to how the road was assessed to determine that it requires strengthening to carry new traffic roads associated with the retail development. The road in question has accommodated the movement of Mart traffic consisting of truck loads of animals for decades.
- 6.3.4. With regard to the one-way system proposed on Water Street /New Row and Castle Street, no additional breakdown of costs is provided to explain how the figure was calculated. The provision of a retail development at this location will strengthen the retail offering within the confined town centre area and contributes to enhancing the town centre as the centre of commercial, retail, cultural and community life.
- 6.3.5. It is considered that the additional contribution information provided by the Planning Authority remains insufficient in terms of allowing a proper appraisal of the stated expenditure and how it will facilitate the development.

- 6.3.6. It is not clear or justified by Donegal County Council how the 9.5% was established as an appropriate levy. It is also noted that the subject site already benefits from direct access to good quality road infrastructure and the retail development is not dependent on the land, pedestrian and road infrastructure in order to allow the development to proceed.
- 6.3.7. On the basis of the above, it is argued that the specific exceptional costs incurred by the Planning Authority which will benefit the proposed development has not been fully justified and therefore does not accord with the requirements of Section 48(2)(c) of the 2000 Act. Furthermore, it is argued that the special contribution has not been sufficiently explained in the planning decision or the supporting documentation. On this basis it is respectfully requested that Condition No. 27 be removed.

7.0 Legislative Provisions and Guidelines

- 7.1. Section 48(2)(c) states that:

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 the Scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

- 7.1.1. Section 48(12) states the following:

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

(a) the conditions that 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 five 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 seven 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

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) Under subparagraphs (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 works which have not been carried out.

7.2. The Development Management Guidelines for Planning Authorities (June, 2007)

- 7.2.1. Section 7.12 of the guidelines note that special contribution requirements in respect of a particular development may be imposed under the provisions of Section 48(2)(c) where specific exceptional costs not covered by a scheme are incurred by the 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 of the calculation, including how it is apportioned to a particular development. Circumstances which might warrant the attachment of a special contribution condition would include where 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 a particular infrastructure or facility is more widespread (i.e. extends to other lands in the vicinity), consideration should be given to adopting a revised development contribution scheme or, as provided in the Planning Act, adopting a separate development contribution scheme for the relevant geographical area.

8.0 Assessment

- 8.1. Having regard to the nature of the first party appeal which specifically relates to a financial contribution, the Board is required to restrict its deliberations to this matter only in accordance with the provisions of Section 48(13)(a) of the Planning and Development Act 2000. The matters raised in the third-party appeal in respect of condition no.27 are evaluated below.

The Principle of Attaching a Special Contribution under the Provisions of Section 48(2)(c) of the Planning and Development Act 2000.

- 8.2. The subject site is located to the north-east of the town centre. The main vehicular access to the site is via Railway Park/Road along the northern boundary of the site. The main point of access along Railway Park/Road to the Diamond in Donegal Town Centre is estimated to be a distance 850 metres (via roadway as opposed to how the crow flies). The distance from the right of way along the southern boundary of the site is considerably less than this at c.500 to 550 metres.
- 8.3. Donegal County Council explained the rationale for the special contribution on the basis that the financial levies sought seeks to greatly improve the connectivity of the site area with the town centre by upgrading pedestrian and vehicular connectivity. It is acknowledged that the proposed development is strategically located approximate to the town centre and is governed by the town centre zoning objective in the development plan. As pointed out by the appellant, the development would provide logical extension to the town's retail core and will offer and strengthen the retail offering within the defined town centre area. As such it will enhance and reinforce the town centre as the centre of commercial retail and cultural activity within the urban area of Donegal Town. The strengthening of connectivity through improved pedestrian linkages, lighting and public realm improvements is in my view mutually beneficial to both the existing town centre and the proposed development in this instance. The fact that Donegal County Council seek to enhance and reinforce linkages between the subject site and the town centre is appropriate and in accordance with the proper planning and sustainable development of the area. On this basis I consider the attachment of a financial contribution under the terms of Section 48(2)(c) is acceptable in principle.

- 8.4. The next question which the Board must consider is whether or not appropriate detail has been provided to justify the expenditure in this instance.
- 8.5. The guidelines are somewhat vague in terms of detailing the level of information that should be provided by the Planning Authority in justifying the rationale for the development contribution amount. While some level of detail is obviously required to allow both the applicant and the Board assess the justification for the amount to be levied, it may not be necessary or indeed appropriate to assiduously list every item of expenditure with regard to details of materials, hiring of plant, labour cost etc. etc. Many of the costs will fluctuate over time and the exact details of the works to be undertaken as part of the enhancement team may yet to have been formulated in such detail. I would consider it appropriate that some form of generic estimation of costs based on previous experiences for similar schemes would be sufficient in this instance in order to justify the amount of financial contribution sought. On this basis it is my considered opinion that more generalised levels of expenditure can be submitted in accordance with the requirements set out in the guidelines referred to above. I therefore consider that the level of information submitted by Donegal County Council in this instance is acceptable. The Council have in my view detailed the scope and nature of the works to be undertaken in a sufficient manner to justify the amount of the financial contribution sought.
- 8.6. The appellant questions the appropriateness of including works to be undertaken along the Eske Road for the purposes of determining the financial amount to be levied. I would have some sympathy with the appellant in this regard. The Lough Eske Road is a long road located to the north of the subject site. It does not link the subject site with the town centre which appears to be the partial basis on which the special financial contribution under the provisions of Section 48(2)(c) is predicated. That is to say, that the upgrading of the Lough Eske Road in this instance will do very little to improve the connectivity of the site area with the town area as indicated in Donegal's Response to the Grounds of Appeal. The works envisaged for the Lough Eske Road are substantial in terms of cost - amounting to €208,000 - over a quarter of the entire envisaged expenditure. If the Board are considering adopting a revised financial contribution amount under the provisions of Section 48(2)(c) it could in my view discount any financial contribution predicated on the works to be carried out on the Lough Eske Road.

- 8.7. With regard to works to be undertaken on the Railway Road, the Council estimate that a cost of €70,000 will be required to strengthen the road in order to carry new traffic loads. It is in my view reasonable that the applicant would be expected to pay a portion of this amount. While the applicant suggests that any road strengthening works would primarily be based on the need to accommodate vehicles associated with the Mart, the Board should note that the Mart only occurs periodically (normally on Fridays only¹). Whereas the proposed retail development will operate 7 days a week. Having regard to the fact that Railway Road will be the primary point of access to the retail park it is reasonable in my opinion that the applicant would contribute towards any road strengthening works to accommodate new traffic loads.
- 8.8. Donegal County Council argue that the implementation of the one-way system on Water Street, New Row and Castle Street will require footpath works, surfacing works, public lighting upgrades, lining, signing and street furniture. There can be no doubt in my mind that the works in question will help foster connectivity between the subject site and the town centre as the streets in question are located between the site and the town. However, Donegal County Council in this instance have not provided any details as to how the amount of €400,000 was arrived at in this instance. While Donegal County Council have identified the nature and scope of works to be undertaken on these streets, the basis for the calculation of €400,000 has not been provided and in my view the information provided by the Council falls short of the requirements set out in Section 7.12 of the Development Management Guidelines.
- 8.9. Finally, the grounds of appeal suggest that the Council have failed to justify how the amount levied on the applicant was apportioned in this instance. Donegal County Council have indicated that the applicant will be required to provide 9.5% of the overall costs of the road improvement works on the subject site. Having regard to the overall size of the site at over 2 hectares constitutes a significant portion of the overall lands designated as town centre in the development plan. I would estimate that the subject site represents c.10% of the area which is designated as town centre in Map 15.5 (Layer 2A town) of the Donegal County Development Plan. On this basis

¹ According to the Donegal Town Mart website.

it would not seem unreasonable that the applicant would be required to contribute c.10% of the cost of the envisaged works. Furthermore, the works in question are to be carried out along thoroughfares directly linking the subject site to the town centre and in this regard to apportion 10% of the overall cost of works to the subject site would be acceptable in my view.

9.0 Conclusions and Recommendation

- 9.1. Arising from my assessment above therefore I consider that a financial contribution under the provisions of Section 48(2)(c) is warranted and justified in this instance as the works in question seek to improve connectivity between the subject site and the town centre site and to generally improve the public realm on the streets linking the two sites. This in my view is beneficial for both the development to be undertaken by the applicant and the strategic enhancement of the town centre as a whole.
- 9.2. However, I consider that the Board should consider revising the amount downwards on the basis that:
- (a) The applicant is being requested to contribute towards works to be carried out on the Lough Eske Road which is located to the north of the subject site and as such would not improve the connectivity of the site with the town centre area. Donegal County Council's response to the grounds of appeal clearly states that the rationale for the imposition of the special development charge is based on the requirement and objective to improve connectivity between the site area and the town centre. As the proposed works to be undertaken on the Lough Eske Road would not serve this objective, I consider that any financial contribution in respect of these works to be undertaken should be set aside for the purposes of calculating the contribution amount.
 - (b) Furthermore, while I acknowledge that works to be carried out at Water Street, New Row and Castle Street may well prove beneficial to both the town centre and the subject site in terms of improving connectivity and enhancing links between the site and the town centre, the Planning Authority has failed to provide the basis for the calculation of the cost of these works and as such any financial contribution under the provisions of Section 48(2)(c) would fail to meet the test set out in Section 7.12 of the Development Management

Guidelines for Planning Authorities. If the Board consider it appropriate to levy a special financial contribution for the works to be carried out for Water Street New Row and Castle Street. I would advise that they seek further details in relation to costings, so as to comply with the criteria set out in the guidelines. However I would stress that the Council have already been given an opportunity by the Board to provide such details and have failed to do so in sufficient detail.

On the basis of the above therefore I consider that any financial contribution should be predicated on the planned pedestrian footway and road infrastructure improvement works including road strengthening to be carried out on Railway Road should form the basis of any special financial contribution only. These works amount to €191,000. On the basis of apportioning 9.5% of the total cost of these works, I calculate that the applicant would be required to pay €18,145.

- 9.3. Therefore, if the Board agree with the rationale presented above it is recommended that Condition No. 27 be revised as follows:

The developer shall the sum of €18,145 (updated at the time of payment in accordance with the changes in the Wholesale Price Index – Building and Construction (Capital Goods) published by the Central Statistics Office) to the planning authority as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000 in respect of public infrastructure works to be carried out along Railway Road. This contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such an agreement, the matter shall be referred to the Board to determine.

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 governed by the Development Contribution Scheme and which will benefit the proposed development.*

Paul Caprani,
Senior Planning Inspector.

17th January, 2022.